

Before S. S. Sodhi, J.

KARAM CHAND AGGARWAL,—Petitioner.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 7272 of 1976.

May 2, 1983.

Punjab Municipal Act (III of 1911)—Section 50—Municipal Commissioner asked to make good the loss caused to the Municipal Committee—Liability for the loss—When could be fastened on a Municipal Commissioner.

Held, that liability for loss, waste or misapplication of any money or other property belonging to a Municipal Committee can be fastened upon a person only if such loss, waste or misapplication of money, as the case may be, is a direct consequence of his neglect or misconduct in the performance of his duties as member of the Municipal Committee. In other words, neglect or misconduct constitute the foundation and the rationale of the liability of a member of the Municipal Committee, past or present, for loss, waste or misapplication, of any money or property of the Municipal Committee. The legality and validity of an order under section 50(1) of the Punjab Municipal Act, 1911 cannot be sustained except upon a finding of neglect or misconduct on the part of the member concerned in performance of his duties which led to the loss, waste and misapplication of money or the property in question. The absence of such a finding cannot but render an order made thereunder wholly without jurisdiction and contrary to law.

(Paras 5 and 7)

Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble Court may be pleased to call for the records of the case and after its perusal issue :

- (i) *a writ in the nature of Certiorari or any other appropriate writ, order or direction quashing the impugned orders annexures P-4 and P-7.*
- (ii) *Any other relief which this Hon'ble Court may deem just and proper under the facts and circumstances of the case may also kindly be awarded to the petitioner.*
- (iii) *Costs of this petition be allowed to the petitioner.*

It is further prayed that till the decision of the petition, operation of the impugned orders and recovery be stayed.

Sarwan Singh, Advocate, for the petitioner.

V. G. Dogra, for respondent No. 4.

Avtar Singh, for H. S. Mann, Advocate, for A.G., Punjab.

JUDGMENT

S. S. Sodhi, J (Oral).

(1) This order will dispose of the Writ Petition referred to above as also Civil Writ No. 8652 of 1976 (*Vishva Mitter Dhir v. State of Punjab and others*). The issue raised in both these Writ Petitions was the same and they were consequently heard together.

(2) The facts relevant to the controversy here are that the petitioners, in both the Writ Petitions, were members of the Municipal Committee, Nakodar. One Ram Dass Chopra was the Overseer of this Municipal Committee. On February 27, 1968, a charge-sheet was served upon the said Ram Dass Chopra, which culminated in a resolution being passed against him on May 23, 1968 that he be dismissed from service. The two petitioners were amongst the Members who voted in favour of this resolution. It was as a consequence of this resolution that the said Ram Dass Chopra was later dismissed from service.

(3) Shri Ram Dass Chopra filed an appeal against his dismissal. The Deputy Commissioner, Jullundur by his order of September 24, 1970, set aside the dismissal of Shri Ram Dass Chopra, holding that no proper enquiry had not been held against him. As a consequence of this order Shri Ram Dass Chopra was paid his wages for the period he remained out of service, this period being from May 26, 1968 to September 24, 1968. The amount paid to him was Rs. 6,140.62 Ps.

(4) This matter came to be examined by the Examiner, Local Fund Accounts, Punjab and on a report being made by this authority a notice was issued to the two petitioners and others under sub-section (1) of Section 50 of the Punjab Municipal Act, 1911 whereby they were asked to show cause why they should not be required to make good the loss of this amount of Rs. 6,140.62 Ps. This notice was issued on June 22, 1973. The Regional Deputy Director, Local Government, Jullundur, by his order of September 11, 1972 held the petitioners and another liable for the amount in question. The appeal filed against this order was dismissed on August 9, 1976. This decision was later notified in the Government gazette published on September 2, 1976 (Annexure P/7).

(5) Liability for loss, waste or misapplication of any money or other property belonging to a Municipal Committee can be fastened

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upon a person only if such loss, waste or misapplication of money, as the case may be, is "a direct consequence of his neglect or misconduct in the performance of his duties" as Member of the Municipal Committee. In other words, neglect or misconduct constitute the foundation and the rationale of the liability of a Member of the Municipal Committee, past or present, for loss, waste or misapplication, of any money or property of the Municipal Committee.

(6) It will be pertinent to note that the impugned orders contain no finding of any neglect or misconduct on the part of either of the petitioners. Mr. Sarwan Singh, counsel for the petitioners, therefore, argued that the impugned orders in the absence of such findings could not but be held to be without jurisdiction.

(7) Mr. V. C. Dogra, counsel for the respondent—Municipal Committee sought to sustain the impugned orders on the ground that despite an opportunity being afforded to the petitioners, they had failed to show sufficient cause why the amount in question be not recovered from them. The contention being that in the absence of such sufficient cause the impugned orders did not warrant interference in writ proceedings. This contention is patently devoid of merit. The legality and validity of an order under Section 50(1) of the Punjab Municipal Act cannot be sustained except upon a finding of neglect or misconduct on the part of the member concerned in performance of his duties which led to the loss, waste and misapplication of money or the property in question. The absence of such a finding cannot but render an order made thereunder wholly without jurisdiction and thus contrary to law.

(8) For the reasons set out above the impugned orders (Annexures P/4 and P/7) are hereby quashed. In the result both the Writ Petitions are accepted. In the circumstances, however, there will be no order as to costs.

N. K. S.