

Municipal Committee, Amritsar and Others

Vs

The State of Punjab and Another

Civil Appeal No. 1321 of 1966

(J. C. Shah, V. Ramaswami-I, A.N. Grover JJ)

12.09.1969

JUDGMENT

GROVER, J. –

1. This is an appeal by special leave from a judgment of the Punjab High Court dismissing a petition under Articles 226 and 227 of the Constitution which had been filed by the appellant Municipal Committee challenging the taking over by the State of all the schools which were being run by it together with all the buildings in which the schools were functioning and other movable and immovable properties connected with these institutions which belonged to the Committee. The order of the State for payment of an annual contribution which upto the date of the filing of the writ petition i.e. May 10, 1964 had reached the figure of 53 lakhs was also challenged.

2. The appellant Committee is a first class Municipal Committee and has been in existence from a long time. It has been managing its local affairs through the elected representatives from the city who are called Municipal Commissioners. It is constituted and functions under the provisions of the Punjab Municipal Act, 1911. A number of primary schools were being run by the Committee within the municipal limits of the town of Amritsar for which it was getting grant-in-aid from the Punjab Government. It was, however, running schools up to the middle and high standards for girls and boys for which all the expenses were incurred by itself without any grant from the Government. The primary liability, however, for incurring the extra expenditure even in connection with the aided schools was of the Committee. The Punjab Government took an administrative decision to provincialise all the schools run by all local bodies in the State with effect from October 1, 1957. This information was conveyed by means of a letter, dated July 19, 1957, by the Secretary to the Government, Education Department through the Deputy Commissioners in Jullundur and Ambala Divisions. At a meeting of the appellant Committee held on July 31, 1957, a resolution was passed that a strong representation be made to the Government against the decision to provincialise the schools run by the local bodies. On September 26, 1957, the Assistant Director of Schools wrote to the District Inspector that "as all the local body schools are being provincialised with effect from October 1, 1957, the tuition fees, etc. to be realized in such schools after that date should be credited to the Government in the treasury under the head....." Without enacting any legislation the State took over all the schools run by the local bodies on October 1, 1957. A memorandum from the Director of Public Instructions, Punjab to the District Inspector of Schools sent on October 5, 1957, conveyed the following direction :

"All the erstwhile Local Body Schools which have been provincialised with effect from the 1st October, 1957, will henceforth be known as Government High/Middle/Primary Schools for Boys or Girls as the case may be."

The Executive Officer of the appellant Committee (appointed under the Punjab Municipal Executive Officers Act, 1931), wrote to the Deputy Commissioner, Amritsar, on November 21, 1957, that no formal orders had been received from the Government requiring the Committee to give up possession of the schools and it appeared that no procedure had so far been devised in that behalf or for the settlement of terms and conditions on which the buildings, furniture, fittings and other materials were to be transferred. He pressed for proper steps being taken. The Secretary to the Government, Punjab, Health and Local Government Department sent a memorandum, dated September 10, 1958, to all the Deputy Commissioners saying that the work of proper maintenance of the buildings of the Provincialised schools of the local bodies would be entrusted to the Public Works Department, Buildings and Roads. A letter was addressed by the same authority, dated September 30, October 4, 1958, to the Deputy Commissioners requesting them to supply immediate information showing the contributions actually deposited into the treasuries by the local bodies in respect of the provincialisation of the schools. This was followed by the memorandum, dated December 12, 1958, to the effect that all local bodies "be advised to execute the transfer notes in respect of the school buildings, etc. by their respective Engineering Establishments in favour of the Superintending Engineers concerned". By means of another memorandum, dated December 26, 1958, orders of the Government were conveyed that immediate steps should be taken for getting the contribution from local bodies and also for obtaining transfer of buildings and equipment. The Deputy Commissioners were requested to get the requisite resolutions passed by the local bodies in the prescribed form. The appellant Committee at its meeting held on January 10, 1959, decided not to pay any contribution for the time being. It was also resolved that the Committee was not in favour of transferring the proprietary right in movable and immovable property which was in possession of the schools.

3. It appears that up till June 17, 1959, the State continued the process of provincialisation of the schools mentioned before without any authority of law. There was no statutory provision which entitled the State to take over the schools of the local bodies including the buildings in which the schools were being run as also furniture, etc. which belonged to the local bodies. Moreover the extraordinary step of demanding annual contribution was also taken without any sanction or authority of law. The appellant Committee which is one of the biggest Committees in the State seems to have resisted the attempt on the part of the Government to take over the schools and acquire or requisition its properties in the manner in which it was done. Legislation was for the first time enacted in the shape of the Punjab Local Authorities (Aided Schools) Act, 1959 (Act No. XXII of 1959), hereinafter called the Act. It received the assent of the President on June 9, 1959. According to the preamble the Act was enacted to provide for the management and control of local authorities' schools receiving grants-in-aid from the State of Punjab. By a deeming provision the Act was to come into force with effect from October 1, 1957. Section 2 gave the definition of "aided schools", "local authority", and "school". "School" has been defined to include land, buildings, playgrounds and hostels of the school and the movable property such as furniture, books, apparatus, maps and equipment pertaining to the school. The following provisions of the Act as amended may be reproduced :

Section 3. "Power of local authorities to transfer management and control of aided schools to State Government :

(1) A local authority may pass a resolution to transfer the management and control of aided school to the State Government and communicate the same to the State Government.

(2) On receiving such as resolution, the State Government may direct that the aided schools shall be

taken over under its management and control and thereafter all rights and interests including the right of maintenance, management and control shall be transferred to and vest in the State Government and the rights and interests of the local authority in respect of such schools shall cease."

Section 4. "Power to withdraw grant-in-aid. The State Government may withdraw the grant-in-aid from any local authority in respect of aided schools if the resolution mentioned in Section 3, has not been passed and communicated to the State Government within a period of three months from the date on which this Act is published in the Official Gazette."

Section 5. "Power to take over aided schools where local authority neglects to perform duty. - (1) Whenever the State Government is satisfied that a local authority has neglected to perform its duties in respect of aided schools or that it is necessary in public interest to take over their management for a period not exceeding ten years, it may after giving the local authority a reasonable opportunity for showing cause against the proposed action, make an order to take over the management :

Provided that in cases of emergency, where the State Government is satisfied that such a course is necessary in the interests of the students, it may, without giving such notice take over the management of such schools after publication of a notification to that effect in the Official Gazette."

#(2) and (3) X X X##

Section 6. "Amendment of Punjab Acts No. III of 1911 and No. XX of 1883. - Where a local authority has passed a resolution under Section 3 or the State Government has taken over management of aided schools of a local authority under Section 5, the Punjab Municipal Act, 1911 and the Punjab District Boards Act, 1883, shall be deemed to have been amended in the manner specified in the Schedule appended to this Act with effect from the 1st October, 1957."

Section 52(1) of the Punjab Municipal Act relates to the setting apart of the municipal funds and apply the same for different purposes as mentioned in clauses (a) to (f). By means of the Schedule to the Act after clause (f) of sub-section (1), clause (g) was added which is in the following terms :

"(g) seventhly, such sum to be paid annually by the Committee to the State Government by way of contribution as is equivalent to -

(i) the total provision made in the budget for the year 1957-58 under the main head 'Education' excluding educational grants and the provision made for 'original works' relating to schools; and

(ii) a sum representing one per centum of the total income from its own resources for the year 1957-58, in lieu of the deductions made for 'original works' made under clause (i) :

Provided that in respect of the financial year 1957-58, the Committee shall make a payment to the State Government of the sums which have remained unexpanded on 31st March, 1958, out of the provisions under the head 'Education' in the budget of 1957-58."

Section 59 of the Punjab Municipal Act provides that the Committee may with the sanction of the State Government transfer to the Government any property vesting in the Committee under Section

56 or Section 57 but not so as to affect any trusts or public rights subject to which the property is held. A proviso was added to the section by the Schedule which was as follows :-

"Provided that where a Committee has passed a resolution under Section 3 of the Punjab Local Authorities (Aided Schools) Act, 1959, or the State Government has taken over the management of aided schools of a Committee under Section 5 of that Act, all rights and interests in the establishment, maintenance and management of the aforesaid schools immediately before the 1st October, 1957, including all interests in the lands, buildings, play-grounds, hostels of the said schools as also in the movable properties like furniture, books, apparatus, maps and equipment pertaining thereto shall be deemed to have been transferred to the State Government on that date, and all unspent balances in respect of grants and contributions received for the maintenance and promotion of these schools shall be deemed to have been surrendered to the State Government."

4. After the promulgation of the above legislation the appellant Committee passed a resolution on February 24, 1960, reiterating the decision taken in the Local Bodies Conference held at Jullundur and its own decision to request the Punjab Government to restore the schools run by the local bodies to them. At another meeting held on June 9, 1960, the appellant Committee decided not to pass the resolution under Section 3 of the Act transferring its schools and property to the State Government. The Punjab Government, however, issued a notification, dated September 26, 1960, saying that the Governor was satisfied that it was necessary in the interests of the students to take over for a period of ten years the management of the schools specified in the Schedule and administered by the Municipal Committee, Amritsar, and therefore in exercise of the powers conferred by the proviso to Section 5 of the Act the Government took over for a period of ten years the management of the said schools. The Schedule contained the list of 42 such schools. The question of the payment of the contribution which was being demanded by the Government came up for consideration at a meeting of the appellant Committee on January 3, 1962. It was decided that the payment be made on the basis of a formula laid down by the State Government in that behalf with effect from October 1, 1957, but that the proprietary right of the Committee in the school buildings be retained and the use of these buildings free of charge be allowed to the Government for the purpose of running the schools. At a subsequent meeting held on March 28, 1963, the appellant Committee, however, revised its previous decision in view of a resolution passed in the meeting of the Standing Committee of Urban Local Bodies Conference held on June 21, 1962. It was decided that the State Government was not entitled to charge contributions from the Municipal Committee. On April 10, 1964, the Deputy Commissioner, Amritsar, made an order in exercise of the powers vested in him under Section 234(1) of the Punjab Municipal Act requiring the appellant Committee to pay an amount of Rs. 53,66,146/- on account of contribution for the maintenance of the provincialised schools for the periods 1957-58 to 1963-64, failing which realisation was to be made under sub-section (2) of that section. Thereupon the petition under Articles 226 and 227 of the Constitution was filed by the appellant Committee in which apart from other matters the validity and constitutionality of the Act were challenged. In the return filed on behalf of the State reliance was placed on the provisions of the Act, the resolution passed by the Committee itself on January 3, 1962, agreeing to pay the contribution and allow the use of school buildings to the Government free of charge and the notification which had been issued under Section 5 of the Act on September 26, 1960, whereby the management of the schools of the Committee had been taken over for a period of ten years.

5. The High Court was of the view that since the Government had taken over the control and

management of the aided schools it was considered necessary that the property in possession of these institutions should also be taken over and managed for a limited period of ten years. Since no compensation was being paid for what may be called compulsory acquisition the legislation could be struck down as being in contravention of Article 31(2) of the Constitution. In the present case, however, the management of the property in possession of the schools was being taken over for a period of ten years in the public interest by virtue of the provisions of Article 31-A(1)(b) and the contravention of Article 31(2) was of no consequence. The argument raised on behalf of the State that the resolution of the appellant Committee, dated January 3, 1962, consenting to the payment of the contribution with effect from October 1, 1957, had been passed in terms of Section 3 of the Act was refuted. As regards the notification issued on September 26, 1960, under the Act the High Court was of the opinion that although it did not contain any provision for retrospective operation it should be considered that it had retroactive effect since the Act itself had been enforced from October 1, 1957. It was conceded before the High Court that the notification did not apply to those schools which did not receive any aid from the Government.

6. The learned Attorney General for the appellant Committee raised the following main contentions : (1) The material provisions of the Act were ultra vires Article 31(2) of the Constitution. (2) The taking over of movable and immovable property of the Committee could not possibly fall within Article 31-A(1)(b) and such action was in direct contravention of Article 31(2). (3) The notification, dated September 26, 1960, could not have been issued under the proviso to Section 5 because there was no question of any emergency nor such an emergency has been pleaded or proved by the State. (4) The said notification could not and did not validate the action taken prior to the date when it was issued nor Section 6 of the Act could be attracted which effected amendments of the provisions of the Punjab Municipal Act as per the Schedule. (5) The annual contributions which were being demanded from the appellant Committee were wholly illegal and could not be levied on account of legislative incompetence.

7. Now the scheme of the Act is that it is initially left to the local authority to pass a resolution to transfer the management and control of aided schools to the State Government. In order to employ compulsive persuasion the State Government can withdraw the grant-in-aid from any local authority in respect of aided schools if such authority does not pass a resolution in terms of Section 3 within a period of three months from the date of enactment of the Act (vide Section 4). Section 5 gives the power to the State Government of take over aided schools where the local authority neglects to perform the duty but that can be done only after the local authority has been given a reasonable opportunity for showing cause against the proposed action and also if it is considered necessary in public interest to take over the management for a period not exceeding ten years. The proviso, however, arms the State Government with powers in case of emergency and in the interests of students to take over the management straightaway after publication of a notification to that effect. The amendments which are effected in Sections 52 and 59 of the Punjab Municipal Act, enable the State Government to get an annual contribution from the local bodies and further to vest in the State not only management of the school taken over but also of all interests in the lands, buildings, etc. of the school along with the movable properties pertaining thereto which shall be deemed to have been transferred to the State. There is no provision whatsoever for an automatic retransfer of these properties after a lapse of a period of ten years for which the taking over of the schools can be effective. This means that once action is taken under Section 5 which can be done pursuant to a resolution passed under Section 3 or after giving a notice to the local authority of without giving such notice in case of emergency all the properties movable and immovable belonging to the local body pertaining to the schools taken over become the property of the State. This is nothing short of compulsory acquisition within the meaning of Article 31(2) of the Constitution. Under that Article

no property can be so acquired or requisitioned unless it is under an authority of law which either fixes the amount of compensation or specifies the principles on which and the manner in which the compensation is to be determined and given. There is no provision in the Act or in the amendment of Section 59 of the Punjab Municipal Act made by the Act for payment of any compensation. On the assumption that taking over of the property for a period of ten years would be an act of requisitioning, the requirements of Article 31(2) must be satisfied to sustain the validity of the law. The High Court entertained no doubt that under that article property could not be acquired or requisitioned without complying with its provisions but it fell into an error in applying Article 31-A(1)(b) to the provisions under consideration.

8. Under the above Article it is only the management of any property which can be taken over for a limited period either in the public interest or in order to secure its proper management. According to the High Court Committee was indisputably the owner of the property which was being taken over by the State but P. C. Pandit, J., who delivered the judgment of the division bench proceeded to say :

"In the present case, the management of the property in possession of the schools was being taken over for ten years in public interest and, as such, by virtue of the provisions of Article 31-A(1)(b), the contravention of Article 31(2) was of no consequence. Learned Counsel for the petitioner submits that Article 31-A(1)(b) does not apply to the facts of the instant case, because here the management and control of an institution namely, the school, was being taken over by the Government, whereas this Article applied where the management of any property was being taken over by the Government for a limited period in the public interest. This argument is without any merit, because the property may belong to anybody, whether it be an individual, or a Committee or an industrial or commercial undertaking or any kind of other institution. In all these cases, where the management of the property is taken over for a limited period in public interest, this Article would be attracted and the legislation would not be hit by the provisions of Article 31 of the Constitution."

Clause (b) in Article 31-A(1) came to be inserted for the first time by the Constitution (Fourth Amendment) Act, 1955. It was intended apparently to counteract the effect of the decisions in the two Sholapur cases, Charanjit Lal Chowdhuri v. The Union of India and Others ((1950) SCR 869) and Dwarkadas Shrinivas of Bombay v. The Sholapur Spinning and Weaving Co. Ltd. and Others. ((1954) SCR 674). The purpose, therefore, of inserting this provision was to remove any legislation from the pale of attack on the ground of contravention not only of Article 31 but also of Articles 14 and 19. Although management and control of the aided schools under the impugned legislation could be taken over for a limited period in the public interest it is not possible to understand how even the proprietary interests in the movable and immovable property pertaining to the schools, which have been found to belong to the Committee, could have been acquired under clause (b) of Article 31-A(1). With all deference to the High Court we have not been able to properly appreciate the decision on this point given in the paragraph extracted above. The High Court did not consider the true import and effect of the amendment made in Section 59 of the Punjab Municipal Act by virtue of which all rights and interests in the lands, buildings, play-grounds, hostels of the schools as also in the movable property like furniture, books, apparatus, maps and equipment pertaining thereto shall be deemed to have been transferred to the State Government with effect from October 1, 1957. We are, therefore, unable to uphold the view which leads to the result that property can be acquired while taking over management and control under Article 31-A(1)(b) in complete negation and contravention of Article 31(2) of the Constitution.

9. The next question is whether there was due compliance with the provisions of the proviso to Section 5 of the Act. In the notification which was issued on September 26, 1960, there is no indication that the management of the schools was being taken over because of certain emergency having arisen. If any emergency existed it was the creation of the Government itself which had proceeded to take over the management and control of the aided schools along with the properties pertaining to them without any authority of law prior to the enactment of the Act. That was the reason why the Act had to be given retrospective operation. According to the High Court the moment the State Government was satisfied that it was in the interest of the students to take over the management of the schools it became a case of emergency. It also relied on the principle that it was not necessary to mention the actual emergency which had arisen in the notification itself or to make a recital that an emergency had arisen. The State could not show by placing material before the Court that it was a case of emergency justifying the action under the proviso to Section 5 because no foundation in this behalf had been laid in the writ petition. The third point pressed by the learned Attorney General, therefore, cannot be acceded to.

10. The fourth point of the learned Attorney General may now be considered. There was some argument before the High Court and the same has been repeated before us on behalf of the State that the question of validity of the notification and the action taken thereunder did not arise because the Committee itself had passed a resolution on January 3, 1962, which should be regarded as having been passed under the provisions of Section 3 transferring the management and control of the schools to the Government and agreeing to pay the contribution with effect from October 1, 1957. The High Court has rightly pointed out that a reading of the resolution would show that the Committee agreed to the payment of contribution with effect from October 1, 1957, in accordance with the formula laid down by the State Government. It was, however, made clear that the proprietary rights of the Committee in the movable and immovable property pertaining to the schools would be retained by it. The Committee had subsequently passed several resolutions which had the effect of almost rescinding the previous resolution. The submission on behalf of the State that the resolution, dated January 3, 1962, passed by the Committee fell within the first part of Section 3 of the Act is wholly devoid of merit and has rightly not been accepted.

11. As regards the notification having retrospective operation we are unable to agree with the High Court that any such effect could be given to it. There is nothing to indicate in the notification that it was intended to operate retroactively. The mere fact that the Act in terms was retrospective would not make the notification issued under the proviso to Section 5 retrospective in the absence of express words or appropriate language from which retroactivity would be implied. All that the notification says is that the Governor of Punjab is taking over for a period of ten years the management of the schools of the Committee in exercise of the powers conferred by the proviso to Section 5 of the Act. This clearly means that the management is taken over from the date of the notification and not from any prior date. It would follow that whatever was done before the date of the notification regarding the assumption of management and vesting of the Committee's properties was wholly void and illegal.

12. Under Section 6 of the Act is only after the local authority has passed a resolution under Section 3 or the State Government has taken over management of the aided schools under Section 5 that Sections 52 and 59 of the Punjab Municipal Act would be deemed to have been amended in the manner specified in the schedule with effect from October 1, 1957, or from the date aided schools are taken over as the case may be. If the notification, dated September 26, 1960, could not be given retrospective operation the amendments in the aforesaid provisions of the Punjab Municipal Act would be effective only after the date of the notification and not for the prior period. Thus even on

the assumption that the provisions of the Act are valid the State could not ask for any contribution from the Committee for the period prior to the date of the notification. But the addition of clause (g) after clause (f) in sub-section (1) of Section 52 of the Punjab Municipal Act is void and wholly ineffective for the reasons which will be presently noticed.

13. Chapter IV of the Punjab Municipal Act relates to municipal fund and property. Section 51 deals with the constitution of the municipal fund. Section 52 provides for the application of the fund. Before the amendment made by the Act sub-section (1) had six clauses containing the provisions for the application of the fund. It is noteworthy that although the State Government has been empowered to require the Committee to make contributions but in each case that is confined to an eventuality or a situation where certain cost has been incurred by the Government which had to be defrayed by the Committee, e.g., clauses (b), (d) and (f). According to clause (e), however, the Committee may be required by the State Government to contribute towards the maintenance of pauper lunatics or lepers sent from any place in the State to mental hospitals or public asylums whether in or outside the State. Sub-section (2) says that subject to the charges specified in sub-section (1) the municipal fund shall be applicable to the payment of the matters set out in clauses (a) to (l). Clause (c) is in these terms :

"the constitution; establishment and maintenance of schools, hospitals and dispensaries, and other institutions for the promotion of education or for the benefit of the public health....."

In the context of Section 52 it is difficult to envisage that the municipal fund of a particular Committee could be diverted to such institutions which had no connection with the Committee. We are, however, not called upon to pronounce upon the true scope, ambit and validity of all the provisions in Section 52. Clause (g) which has now been inserted by means of Section 6 of the Act has to be tested by the guarantees in Part III of the Constitution. By asking the Committee to make contributions from its funds to the cost of the schools which have been taken over by the State, part of its funds are being compulsorily acquired by the State. This is something which could not be done except in accordance with the provisions contained in Article 31(2) of the Constitution. In Writ Petition No. 295 of 1968, Municipal Committee, Amritsar v. State of Punjab, (Decided on 30-1-1969) in which the provisions of the Punjab Cattle Fairs (Regulation) Act, 1968, came up for examination, it was laid down by this Court that the State was incompetent to declare land belonging to the Municipal Committee as falling within the fair area and to take possession of that land in exercise of the power conferred by the Act without providing for payment of compensation guaranteed by Article 31(2). Clause (g), therefore, which has been inserted in Section 52 of the Punjab Municipal Act is void and illegal as it contravenes Article 31(2) of the Constitution.

14. It may be mentioned that the learned Attorney General has also pointed out that the State Legislature did not have the competence, under any of the entries in List II of the Seventh Schedule, to enact legislation of the nature embodied in clause (g) which was inserted in Section 52 relating to compulsory contribution by the Committee to the State Government. Counsel for the State has sought to rely on Entries 5 and 11 in List II which relate to local government and education. It is unnecessary to decide this matter since it has been held by us that the impugned provisions with regard to contribution contravene Article 31(2) of the Constitution.

15. We may now determine the provisions of the Act which are unconstitutional and invalid. There is nothing in Sections 3(1), 4 and 5 of the Act per se which would bring them into conflict with the constitutional provisions, particularly, in view of Article 31-A(1)(b) under which the management

of the schools could be taken over by the State for a limited period in public interest. But the difficulty arises about Sections 3(2) and 6 which have to be read together. When the State Government makes a direction under Section 3(2) that the aided schools shall be taken over all rights and interests of the Committee including the right of maintenance, management and control shall be transferred to and vest in the State Government. This essentially has reference to proprietary and ownership rights apart from the rights pertaining to management and control. Section 6 comes into operation as soon as a local authority has passed a resolution under Section 3 or the State Government has taken over management under Section 5. Then the provisions relating to acquisition of property of the Committee as also of its funds by way of contribution come immediately into operation by virtue of the amendments effected in Sections 52(1) and 59 of the Punjab Municipal Act. These provisions are clearly unconstitutional as they contravene Article 31(2) of the Constitution.

16. In the result the appeal is allowed with costs and the judgment of the High Court is set aside. It is declared that Section 3(2) of the Act and the amendments which would become operative under Section 6 in respect of Sections 52(1) and 59 of the Punjab Municipal Act are void and unconstitutional. The orders by which the movable and immovable property of the Committee have been transferred to the State are hereby quashed and such transfers are declared to be wholly void. The respondents are further directed not to recover any contribution in accordance with clause (g) of Section 52 of the Punjab Municipal Act as also the sum of Rs. 53 lakhs mentioned in the order of the Deputy Commissioner, dated April 10, 1964, from the appellant Committee. Appropriate writs and directions shall issue in this behalf.

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