PANJAB AND HARYANA HIGH COURT

Gram Sabha Begowal

Vs

State of Punjab

Civil Writ Petition No. 276 of 1979

(S.S. Sandhawalia, CJ. and Bhopinder Singh Dhillon and Gokal Chand Mital, JJ.)

03.10.1980

JUDGMENT

Gokal Chand Mital, J.

1. Whether Section 241 of the Punjab Municipal Act, 1911, (hereinafter called the Act), is *ultra vires* Articles 14 and 19 of the Constitution of India, being arbitrary and giving no guideline as to under what circumstances the State Government should create a notified area committee without affording a hearing to the inhabitants of the locality, is the primary point which the full Bench is called upon to determine in this set of four writ petitions before us.

2. In order to decide the aforesaid point, it will suffice to notice the facts of C.W.P. No. 276 of 1979. In the area of village Begowal, tehsil and district Kapurthala, a Gram Sabha was constituted under the Punjab Gram Panchayats Act, 1952. Fresh election for the Gram Panchayat was notified to be held on 16th of August, 1978, but that election was not held as the Government proposed to declare the area in village Begowal as a notified area under Section 241 of the Act. The Governor of Punjab, in exercise of powers conferred under Section 241 of the Act. The Governor of Punjab, in exercise of powers conferred under Section 241 of the Act, issued notification dated 19th of October, 1978, published in the Punjab Government Gazette on 27th of October, 1978, declaring the local area comprising village Begowal in the Kapurthala district, the boundaries of which were described in the Schedule annexed to the notification, to be a notified area for the purposes of the said Act. An extract from the said notification has been attached as Annexure P-1 to the writ petition. The Gram Sabha, Begowal and a member thereof, filed the writ petition on 24th of January, 1979, in this Court to challenge the aforesaid

notification and in para 4 thereof it was stated that no notification under Section 242 of the Act had been issued enforcing all or some of the sections of the Act in the notified area and if there is any, the petitioners sought liberty to challenge the same. In the written statement it was alleged that the notification dated 2nd of February, 1979, had been published in exercise of powers under Section 242 of the Act applying certain sections of the Act to the notified area committee. The challenge to the *vires* of Sections 241 and 242 are the Act was on the following grounds :-

> 1. Sections 241 and 242 of the Act confer arbitrary power on the Executive, the exercise of which leads to discrimination as no guideline has been provided as to how to apply them and for which area and thus are *ultra vires* Article 14 of the Constitution.
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> 2. While there is an elaborate procedure provided in Sections 4 to 7 of the Act for declaring a municipality, for altering the limits thereof and for exclusion of some local area from it, after inviting objections to the aforesaid proposals and for taking a final decision after considering those objections, according to the petitioners, no such provision is made while issuing the notifications under Sections 241 and 242 of the Act and the Executive has been given arbitrary power to create a notified area and to apply the Act or some part of it without affording an opportunity to the inhabitants to place their wishes before the State Government before taking a final decision. Since one procedure has been laid down in Sections 4 to 7 and a different procedure has been laid in Sections 241 and 242 of the Act, Sections 241 and 242 or *ultra vires* Article 14 of the Constitution. There is a provision in Section 10 of the Act giving power to the State Government to issue the notification to withdraw from the operation of the Act the area of any municipality constituted thereunder without inviting objections of the inhabitants of the municipality and this provision has been struck down by a Letters Patent Bench of this Court in *State of Punjab v. Shri Dewan Chand and others*[1], and on the same reasoning these two sections also deserve to be struck down.

3. In the written statement, all the aforesaid points have been controverted and it is pleaded by the State that the notifications are valid, Sections 241 and 242 of the Act are *intra vires* as there is enough guideline provided in these sections and it is not necessary that a hearing must be afforded to the petitioners or that there must be a provision for affording a hearing.

4. Intially, this writ petition and Civil Writ Petition Nos. 131 of 1975 and 2807 of 1979, came up for hearing before me while sitting singly and on noticing that the *vires* were being challenged and there appeared to be a little conflict between the decision of the Supreme Court in *Ram Bachan Lal v. The State of Bihar and another*[2], , and a Division Bench decision of this Court in Shri Dewan Chand's case (supra), all these writ petitions were referred to be decided by a Full Bench and that is how these writ petitions have been placed before us.

5. In order to decide the first point, it would be useful to reproduce Section 241 of the Act :-

> "241. *Constitution of Notified area.* - (1) The State Government may, by notification declare that with respect to some or all of the matters upon which a municipal fund may be expended under Section 52, improved arrangements are required within a specified

area, which nevertheless, it is not expedient to constitute as a municipality.

(2) An area in regard to which a notification has been issued under Sub-section (1) is hereinafter called a notified area.

(3) No area shall be made a notified area unless it contains a town or bazar and it is not a purely agricultural village.

(4) The decision of the State Government that a local area is not an agricultural village within the meaning of Sub-section (3) shall be final, and a publication in the official Gazette of a notification declaring an area to be a notified area shall be conclusive proof of such decision."

A plain reading of the aforesaid provision would show that whenever the State Government comes to the conclusion that all or some improved arrangements are required to be made within a specified area, as detailed in Section 52 of the Act, and it is not expedient to constitute the specified area as a municipality, yet for making improved arrangements it can issue a notification and the specified area in respect of which a notification is issued is called 'a notified area'. There is a prohibition in Sub-section (3) that a purely agricultural village cannot be made a notified area. The exception made is that if there is a town or a bazar and is not a purely agricultural village, then a notified area can be made. To consider the matter further, it will be useful to have a glance at Section 52 of the Act. Some of the important and relevant provisions thereof also deserve to be reproduced below :-

"52. *Application of fund* - (1) ... ...

(2) Subject to the charges specified in Sub-section (1) and to such rules as the State Government may make with respect to the priority to be given to the several duties of the committee the municipal fund shall be applicable to the payment in whole or in part, of the charges and expenses incidental to the following matters within the municipality, and with the sanction of the State Government outside the municipality, namely :-

(a) the construction, maintenance, improvement, cleansing and repair of all public streets, bridges, town-walls, town-gates, embankments, drains, privies, latrines, urinals, taks and water-courses and the preparation of compost manure;

(b) the watering and lighting of such streets or any of them;

(c) 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, and of rest houses, saraiis, poor houses, markets, stalls, encamping grounds, ponds, and other works of public utility, and the control and administration of public institutions of any of these descriptions.

(d) grants-in-aid to schools, hospitals, dispensaries, poor houses, leper-asylums, and other education or charitable institutions;

(g) the supply, storage and preservation from pollution of water for the use of men or animals;

(h) the planting and preservation of trees; and the establishment and maintenance of public parks and gardens;

(i) all Acts and things which are likely to promote the safety, health, welfare or convenience of the inhabitants or expenditure where on may be declared by the committee, with the sanction of the State Government to be an appropriate charge on the municipal fund."

6. Section 241 of the Act gives sufficient guidelines to the State Government as to which area deserves to be declared as notified area. Whenever the State Government finds that the proposed area is not big enough to be constituted as a municipality, but nevertheless requires improved arrangements with respect to some or all of the matters enumerated in Section 52 of the Act for which municipal funds may be expended, it can constitute a notified area. Further, the State Government has been prohibited from declaring a purely agricultural village to be a notified area but if such a village contains a town or a Bazar, then it can be declared to be a notified area. Before a decision is taken under Section 241 of the Act, the State Government has to apply its mind fully to consider the *pros* and *cons* whether the area can be constituted as a municipality but if it finds that it is not possible to do so because it is not such a large area so as to be able to sustain the expense of a municipality, but at the same time the State Government considered that some of the improved arrangements as detailed in Section 52 of the Act deserve to be made in that area, then the State Government has been given the power to constitute that area into a notified area subject to the restrictions imposed in Sub-section (3) of Section 241 of the Act. Therefore, Section 241 read with Section 52 of the Act gives enough guidelines to the State Government to constitute an area into a notified area. The aforesaid view finds support from *Ram Bachan Lal v. The State of Bihar and another.*

7. Similarly, once a notified area is constituted, Section 242 of the Act merely authorises the State Government to impose tax under Section 61 of the Act and to apply any of the provisions of the Act to the notified area subject to such restrictions and limitations, if any, as the State Government may think proper besides doing other beneficial Acts for the notified area as detailed in the section. Section 242 is merely consequential authorising the State Government to levy tax and to frame the procedure for recovery etc and to apply the Act insofar as it may be beneficial for the proper working of the notified area.

8. The learned counsel for the petitioners had in fact laid greater stress on the second point, namely, that while in Sections 4 to 7 of the Act a provision was made for inviting objections before taking a final decision as to the creation of a municipality, for altering the limits of a municipality already in existence or for exclusion of some local areas therefrom and since no such provision was contained in Section 241 of the Act, allowing opportunity to the inhabitants of the local area to file objections against the proposed constitution of the notified area, the section is violative of Article 14 of the Constitution and is thus *ultra vires*. Support for this argument is sought from the decision of the Letters Patent Bench in Shri Dewan Chand's case (supra). The fact of that case deserve to be noticed. The State Government had constituted Narot Jaimal Singh Municipality in district Gurdaspur in exercise of powers under Section 4 of the Act.

Thereafter, members of the municipal committee were elected and the Municipal Committee started functioning. While the Municipal Committee was functioning, the State Government issued a notification in exercise of its powers under Section 10 of the Act withdrawing the area of Narot Jaimal Singh Municipal Committee from the operation of the Act from a certain date. The resultant effect was that the area of Narot Jaimal Singh ceased to be a municipality and none of the provisions of the Act remained in operation in that area, and the President, Vice-President and other members of the Municipal Committee ceased to hold their offices and no taxes etc., were leviable or could be collected and no improved arrangements, as detailed in Section 52 of the Act could either be made in that area or if already made could be maintained or regulated. The members of the Municipal Committee filed C.W. No. 2328 of 1966, under Article 226 of the Constitution of India in this Court impugning the notification on two grounds, first, that no notice was given to the petitioners before passing the impugned notification under Section 10 of the Act and, secondly, that Section 10 is unconstitutional, arbitrary and illegal as it offends Articles 14 and 19 of the Constitution. Both the grounds prevailed with the learned Single Judge who, by judgment dated 23rd April, 1975, allowed the writ petition and quashed the notification. The State of Punjab came up in letters patent appeal. The Letters Patent Bench, although noticed that in Sections 5 to 7 of the Act, provisions for hearing of objections is made and no such provision is made in Section 10, but proceeded to decide the case merely on the second point that it is left completely to the whim of the State Government to withdraw any municipal area from the operation of the Act and no guideline at all has been prescribed or indicated as to in which cases and under what circumstances the State Government could resort to the provisions of Section 10, which was so drastic in nature that by exercising power under that section, a fully grown committee could be abolished. The Letters patent Bench agreed with this reasoning of the learned Single Judge and held Section 10 to be *ultra vires* Articles 14 and 19 of the Constitution. The other point as to the effect of non-issue of the notice to the petitioners before the issue of the notification was not gone into by the Letters Patent Bench. Therefore, Shri Dewan Chand's case (supra) is clearly distinguishable so far as the facts of the present case are concerned, as we have already held above that enough guidelines have been provided in Section 241, read with Section 52 of the Act and, therefore, the petitioners cannot taken any advantage of the same.

9. The next point which arises for consideration is that although in Sections 4 to 7 of the Act a provision for hearing of objections has been made, but no similar provision has been made in Section 241 and, therefore, what is its effect. No provision of law can be struck down as *ultra vires* merely because it does not contain a provision for affording a hearing to the persons concerned. No violation of the principles of natural justice arises in construing the statutory provisions. The Supreme Court and the other High Courts in this country have applied the principles of natural justice wherever the civil rights of a citizen are sought to be affected in his absence but that cannot be enlarged so as to conclude that all legislation which does not provide for a hearing would be *ultra vires*. A perusal of Sections 4 to 7, 10 and 241 of the Act would show that while the statute provides for a hearing in Sections 6 to 7, no hearing is provided while taking action under Section 241 of the Act. Therefore, wherever it was thought fit the legislature provided for a hearing to the inhabitants of the locality and a provision was made therefor but wherever it was not thought fit for affording a hearing, no such provision was made neither on principle nor on authority it has been supported by the petitioners that those sections which do not provide for a hearing would be *ultra vires* Article 14 of the Constitution. On the other hand, decisions are available against the proposition raised on behalf of the petitioners. Reference may be made to a Full Bench judgment of this Court in *Mota Singh and others v. The State of Punjab*

and others[3], where Sandhawalia, C.J., speaking for the Bench, observed as follows :-

> "At the very outset, it deserves to be highlighted that the rules of natural justice are not embodied rules. They cannot be raised to the pedestal of either constitutional or fundamental rights so as to override the mandate of the Legislature whether express or by necessary intendment. These rules can operate only in areas not covered by a law validly made and cannot supplant the law. Equally well settled it is that the Legislature can exclude the rules of natural justice either expressly or by necessary implication. It has, therefore, been rightly said that these rules come in only in areas where the mandate of the Legislature is otherwise silent. Therefore, if a statutory provision, either specifically or otherwise, excludes the application of any or all the principles of natural justice, there would be no warrant for a Court to ignore the statutory mandate and nevertheless thrust the rules of natural justice into the concerned provision. See paragraph 7 of the report in Union of India v. J.N. Sinha and another, AIR 1971 Supreme Court 40.
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> Construing the provisions of Section 13(8) to (12) in the light of the aforesaid cardinal principle, it appears to be evident that the Legislature when enacting the same was itself more than amply conscious of the rules of natural justice and the requirement or necessity of notice to the parties affected by the order of amalgamation. Section 13, Sub-section (9), expressly laid down that no order of amalgamation under the preceding Sub-section would be passed unless a copy of the proposed order had been duly despatched under certificate of posting to the society or societies concerned as also the creditors thereof. The Legislature in its wisdom, therefor, had specified both the nature and the content of the notice, the parties which in its view were necessarily to be informed thereof and even the mode in which the notice was to be sent.
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> It may equally be kept in mind that the judgment of the Division Bench in *Amerheri Co-operative Agricultural Service Society's case (1976 P.L.J. 302 D.B.)* was pronounced two years prior to the present enactment and it is a well known canon of construction that as a matter of law the Legislature is presumed to know the previous State of the law and the authoritative construction placed thereupon by the Courts. In that judgment it had been held that the rules of natural justice require that both the members and the creditors were also entitled to be served with a copy of the proposed order. Nevertheless, the Legislature in its wisdom when adding Sub-section (9) to Section 13 of the statute designedly included the societies as such and their creditors but made no mention of the necessity of any notice or the service of the proposed order on individual members. The inevitable inference would, therefore, be that whilst extending the scope of the service of the proposed order on societies alone (as existing in the State of Haryana), the Punjab Legislature in its wisdom included within its ambit the category of creditors only and by necessary implication excluded therefrom the class of individual members of all the societies."

There, the learned Judges were considering Section 13 of the Punjab Co-opertive Societies Act, 1961, which provided opportunity of hearing to the co-operative societies and the creditors before ordering amalgamation of societies but no such hearing was afforded to the individual members of the societies and it was sought to be urged that even individual members would be entitled to a hearing. It was ruled that the individual members who are not allowed a hearing by the statute cannot urge that the provision would be violative of the Constitution.

10. The aforesaid view finds further support from *The Tulsipur Sugar Co. Ltd. v. The Notified Area Committee, Tulsipur*[4], In that case, the Supreme Court was interpreting Section 3 of he U.P. Town Area Act (2 of 1914), which authorised the State Government to declare any town, village, suburb, bazar or inhabited place to be a town area for the purposes of the Act. The State Government had issued a notification under this provision notifying a town area and the notification was challenged on the ground that since no provision was made in Section 3 for publishing notice of the proposed notification and for considering any representation or objections filed in that behalf by the members of the public, the notification was liable to be struck down. The Supreme Court ruled as follows :-

> "Section 3 does not provide that the State Government should give previous publicity to its proposal to declare any area as a town area and should make such declaration after taking into consideration any representation or objection filed in that behalf by the members of the public. Nor Section 3 of the Act by necessary implication imposed a duty on the State Government to follow the principles of natural justice i.e. to give publicity to its proposal to declare any area as a town area and to decide the question whether any declaration under Section 3 of the Act should be made or not after taking into consideration the representations or objections submitted by the members of the Public in that regard. Therefore, the failure to comply with such procedure would not invalidate any declaration made under Section 3. The power of the State Government to make a declaration under Section 3 is legislative in character because the application of the rest of the provisions of the Act to the geographical area which is declared as a town area is dependent upon such declaration. Section 3 of the Act is in the nature of a conditional legislation. The maxim *'audi alteram partem'* does not become applicable to the case by necessary implication.
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> A notification issued under Section 3 which has the effect of making the Act applicable to a geographical area is in the nature of a conditional legislation and it cannot be characterised as a piece of subordinate legislation. Therefore, it is not necessary for the State Government to follow the same procedure which is applicable to the promulgation of rules under Section 39 of the Act. It is not possible to equate a declaration to be made under Section 3 with rules made under Section 39."

The decision of the Supreme Court in Tulsipur Sugar Co's case (supra), is on all fours with the present case. In both the cases the challenge is to the creation of a notified area/town area on the ground that it was done without affording an opportunity of filing objections against the proposed action of the State Government. Therefore, for the reasons recorded in the two said judgments of the Supreme Court, we do not find any merit in the second point raised on behalf of the

petitioners and hold that Section 241 of the Act is not *ultra vires* Article 14 of the Constitution merely because there is no provision therein for inviting objections from the inhabitants of the area before declaring a notified area.

11. Therefore, for the reasons recorded above, we hold that Sections 241 and 242 of the Act are not *ultra vires* Article 14 of the Constitution.

12. Since the matter was referred to the Full Bench on the *vires* of Sections 241 and 242 of the Act and having upheld the *vires* of the two sections, the cases will now go back to the learned Single Judge for decision of other points raised in the writ petitions.

S.S. Sandhawalia, C.J.

13. I agree.

Bhopinder Singh Dhillon, J.

14. I also agree.

Reference answered.

Cases Referred.

11970 P.L.R. 686
2AIR 1967 SC 1404
31984 R.R.R. 266
4AIR 1980 SC 1882