
(1990) 09 P&H CK 0034
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7274 of 1988

Balbir Singh Chauhan and ors.

APPELLANT

Vs

State of Haryana and ors.

RESPONDENT

Date of Decision : 14-09-1990

Acts Referred:

Citation : (1991) PLJ 127 : (1991) 2 RRR 62

Hon'ble Judges : Amarjeet Chaudhary, J

Advocate : Mr. H.S. Gill, Advocate., Advocates for appearing Parties

Judgement

Amarjeet Chaudhary, J.

1. The challenge in this petition is to a notification issued by the Haryana Government under Section 8 of the Haryana Municipal Act, 1973 wherein the action of the State Government in rescinding the notification by which a "C" class municipality was created earlier has been challenged. The attack is basically based on a decision given by the Division Bench of this Court in State of Punjab v. Dewan Chand, AIR 1979 Punjab and Haryana 46. Before advertng to the merits of the controversy, the brief facts may be noticed.

2. The State of Haryana in the exercise of powers conferred under Section 3 of the Haryana Municipal Act, 1973 (for short "Haryana Act") constituted a "C" class municipality. Initially the notification inviting objection was issued vide Annexure P1 and the final notification Annexure P2 was issued on 5.8.1980. By this notification the Government of Haryana declared the local areas of Shahzadpur and Majra in Naraingarh Tehsil in Ambala district as "C" class municipality. The residents of the locality did not reconcile with this action of the State Government of the notification issued on 5.8.1980. It appears that this persistent effort on the part of the residents of the local area prevalid with the State Government and the State Government issued a notification on 27.4.1987, Annexure P3 whereby the earlier notification creating a municipal committee was rescinded. The notification reads as under :

"No. 53/26/87/2CI. In exercise of the power conferred by subsection (1) of Section 8 of the Haryana Municipal Act, 1973, and all other powers enabling him in this behalf, and in compliance with the order dated 15.11.1987 of the Punjab and Haryana High Court passed in C.W.P. No. 3480 of 1987, the Governor of Haryana hereby rescinds the Haryana Government, Local Government Department, Notification No. 25/4/8CI, dated the 27th April, 1987 whereby the municipality of Shahzadpur in Ambala District was abolished.

Further in exercise of the power conferred by subsection (1) of Section 8 of the Haryana Municipal Act, 1973, the Governor of Haryana hereby proposes to abolish the said municipality of Shahzadpur in Ambala District.

Any inhabitant of the municipality of Shahzadpur or the local area in respect thereof who objects to the proposed abolition of the said municipality, may submit his objections in writing, through the Deputy commissioner, Ambala to the Secretary to Government, Haryana, Local Government Department, Chandigarh, within six weeks from the date of publication of this notification in the official gazette after the expiry of which the Haryana Government shall take such objections into consideration."

3. The issuance of this notification led to the filing of Civil Writ Petition No. 3480 of 1987 in this Court and an order was passed by this Court in that petition on 15.11.1987 to the effect that before abolishing the Municipal Committee constituted vide notification Annexure P2, it was necessary to give hearing to the affected parties. This hearing was duly afforded. This becomes apparent from notification Annexure P4. The State Government invited objections from the inhabitants of the municipality Shahzadpur and also from the residents of the local area. After hearing the objectors the final notification Annexure P5 was issued on 3.8.1988 by which in the exercise of the powers conferred under Section 8 of the Haryana Act the Municipality of Shahzadpur was abolished. It is this action of the State Government which is being challenged on the basis of the decision given in *Dewan Chand's case* (supra).

4. Another factor which may be noticed here is that the residents of the local area who have been agitating with the State Government for restoration of their status which they enjoyed before the issuance of the notification Annexure P1 have also come on record by preferring an application under order 1 Rule 10 of the Code of Civil Procedure and have also filed their written statement. They have opposed the writ petition and want their old status which has been restored be kept intact.

5. Before adverting to examine the validity of Section 8 of the Haryana Act it would be pertinent to examine the progress of the judicial view on the matter of creation and abolition of Municipal Committees and Corporations in this country. The Courts have been upholding the action of the State authorities when they have complied with the formality indicated by the Legislature in the relevant statutes. Thus in the case of *Tulsipur Sugar Co. Ltd. v. The Notified area*

Committee, 1985 RRR 139 (SC) : AIR 1980 SC 882, it was observed that the power of the State Government in creating a Notified Area Committee is legislative in character because the application of the provisions of the Act to the geographical Area which is declared as town area is dependent upon such declaration. Similarly, in Baldev Singh v. State of Himachal Pradesh, AIR 1987 SC 1239 : 1988 (1) RRR 491, the Supreme Court insisted on the compliance of the provisions of the Act only. These decisions were considered in the case of Sunderjas Kanyalal Bhathija and others v. The Collector, Thane, Maharashtra and others, AIR 1990 SC 61 : 1989 (2) RRR 111 (SC), wherein the Court held that the function of the Government in establishing a Corporation under the Act is neither executive nor administrative but it is a legislative process. Paras 23 and 24 which deal with aspect of the matter read as under :

"23. Reverting to the case, we find that the conclusion of the High Court as to the need to reconsider the proposal to form the Corporation has neither the attraction of logic nor the support of law. It must be noted that the function of the Government in establishing a Corporation under the Act is neither executive nor administrative. Counsel for the appellants was right in his submission that it is legislative process indeed. No judicial duty is laid on the Government in discharge of the statutory duties. The only question to be examined is whether the statutory provisions have been complied with. If they are complied with, then, the Court could say no more. In the present case the Government did publish the proposal by the draft notification and also considered the representations received. It was only thereafter, a decision was taken to exclude Ulhasnagar for the time being. That decision became final when it was notified under Section 3(2). The Court cannot sit in judgment over such decision. It cannot lay down norms for the exercise of that power. It cannot substitute even "its juster will for theirs."

24. Equally, the rule issued by the High Court to hear the parties is untenable. The Government in the exercise of its powers under Section 3 is not subject to the rules of natural justice any more than is legislature itself. The rules of natural justice are not applicable to legislative action, plenary or subordinate. The procedural requirement of hearing is not implied in the exercise of legislative powers unless hearing was expressly prescribed. The High Court, therefore, was in error in directing the Government to hear the parties who are not entitled to be heard under law."

6. In view of the aforementioned judgment in which the case law dealing with the subject of creating corporate municipal authorities was reviewed, there seems to be no merit in the contention of the petitioner. The petitioners in this case were duly heard. Objections were invited and after hearing the objections the final notification Annexure P5 was issued. This function which the State Government performs being legislative the proof which is required to undo such an act through judicial process requires very high standard and that is definitely missing in this case. The State Government even though not obliged to hear the

objections gave opportunity to all concerned as is apparent from notification Annexure P4. Objections were invited and thereafter final notification was issued vide Annexure P5. Therefore, no argument survives for sustaining the attack of the petitioner.

7. Even though the Supreme Court as noticed above has dealt with the matter, yet it would be fair to notice the arguments of the petitioners which are based on the decision given by the Division Bench of this Court in the case of Dewan Chand (Supra). In this regard, it would be pertinent to mention that after the aforementioned decision was given another litigation was resorted to in this Court. This was with regard to abolition of the Notified Area Committee of Bholath in Kapurthala district. The Division Bench of this Court in the case reported as Jaswant Singh Multani v. S.D.O. (Civil) etc., (1986) 1 Punjab Legal Reports and Status 489, came to the conclusion that the power conferred on the State Government under Section 244 to abolish the Notified Area Committee suffers from taint and unconstitutionality and Section 244 was struck down. Paras 18 and 19 of the judgment, which deal this aspect of the matter, read as under :

"18. Perhaps as a last argument of desperation it was sought to be argued on behalf of the respondent State that the power of constituting a Notified Area Committee having been vested in the Government, it had an inherent power to undo the same irrespective of Section 244 of the Act or in the alternative the said section was merely declaratory of that power. I am unable to subscribe to any such blanket proposition of what the learned Additional Advocate General styled as a sovereign or inherent power in the State Government to dissolve or obliterate statutory corporations or other authorities expressly created by or under a statute. It perhaps suffices to mention that herein admittedly the source of the power is the Punjab Municipal Act. If the constitution and the creation of the Notified Area Committee has to look for its legal sanction under Section 241, thereof then the power to renotify, dissolve the same must also necessarily flow from the same statute under Section 244 of the Act. If the later provision does not satisfy the test on the anvil of Article 14, it has to be necessarily struck down.

19. In the wake of the aforesaid discussion, I would hold both on principle and precedent that the provisions of Section 244 of the Punjab Municipal Act, 1911 plainly suffer from the taint of unconstitutionality and is hereby struck down."

8. It is pertinent to mention here that the Division Bench came to the conclusion that Sections 10 and 244 of the Punjab Municipal Act, 1911 are in pari materia with each other and as a matter of fact that Bench juxtaposed the provisions contained in Sections 10 and 244 and ultimately on the basis of ratio of the decision given in the case of Dewan Chand (supra), came to the conclusion which has been reproduced above.

9. This decision given by the Division Bench was subject matter of appeal before the Supreme Court and the Supreme Court did not agree with the reasons given

by the Division Bench and came to the conclusion that power conferred under Section 244 of the Punjab Municipal Act, 1911 does not suffer from unconstitutionality. The decision of the Supreme Court is reported as *S.D.O. v. Mehar Singh*, (1989) 6 Punjab Legal Reports and Statutes 550. Before analysing the legal situation arising out of the decision given by the Supreme Court in *Mehar Singh's* case (supra), reference may also be made to another decision given in the case of *Gram Sabha, Begowal v. State of Punjab and others*, (1986) 1 Punjab Legal Reports and Statutes 482. This was a decision where the creation of Notified Area Committee by putting end to the Panchayat in question was challenged and it was contended that the provisions of Sections 241 and 242 by which the Panchayat is abolished and the Notified Area Committee is brought into existence is ultra vires of Article 14. Reliance was again placed by the writ petitioners on the decision given in *Dewan Chand's* case (supra). However, the Full Bench did not agree with the reasoning given in *Dewan Chand's* case (supra) and came to the conclusion that provisions of Sections 241 and 242 under which the Notified Area committee is constituted are not violative of Articles 14 and 16 of the Constitution. Reference to this decision given by the Full Bench is being made with a view to indicate that if abolition of Gram Panchayat does not lead to violation of Article 14, then it is not possible to contend that the abolition of Municipal Committee (which may be reversal of the original decision) would lead to violation of Article 14 of the Constitution.

10. Now, the decision given by the Supreme Court in the case of *Mehar Singh* (supra) wherein the judgment given by the Division Bench was reversed may be adverted to. The Supreme Court did take notice of the decision given in the case of *Dewan Chand* and also of the decision given in *Gram Sabha, Begowal's* case (supra) and came to the conclusion that the provisions of Section 244 are not ultra vires of the Constitution. In paras 10 and 11 of the judgment, it was observed as under :

"10. With respect to the learned Judges, we are unable to concur in this conclusion. It is true that Section 244, by itself, does not in express words spell out the circumstances in which a notification issued under Section 241 or an order under Section 242 may be cancelled or modified. But in our opinion, Section 244 should not be read or construed in isolation from the rest of the Chapter dealing with this subject matter. The whole purpose of notifying areas under Chapter XIII of the Act is to grant a degree of selfautonomy to an area which is comprised in a village. The circumstances in which such a notification can be issued are set out in Section 241 with sufficient particularity. The section postulates area that it may be allowed to carry on its own local administration, that such administration should be run by a committee appointed by the Government, that the committee should be empowered to collect taxes and finally, that the committee should be empowered to take over the one pious responsibility of providing for various types of civic amenities and facilities as may be entrusted to it. But at the same time the Government should be of the opinion that either because of its location, population, lack of affluence,

backwardness or other considerations, it is not possible to constitute the area into a regular Municipality fully governed by the provisions of the Municipal Act. The Government, therefore, should consider that it is sufficient if the area is carved out as notified area to be given such powers as may be considered fit and proper in regard to its administration. The State Government is also empowered to gradually notify, if necessary, from time to time, the various provisions of the Act which would be applicable in respect of such notified area. In our opinion the provisions make clear the guidelines for declaring an area as a notified area.

11. SubSection (3) of Section 241 contains specific provisions against, against a purely agricultural village being converted into a notified area and against the declaration of an area as a notified area, if it does not contain any town or bazar. The learned Judges of the High Court have referred to the provisions of subsection(3) and have pointed out that once these requirements are satisfied then it is practically impossible to conceive of a situation when these requirements would cease to exist warranting the cancellation of the notification already issued under Section 241. There is substance in this comment of the learned Judges. But in our opinion, the crux of Section 241 lies in subsection (2) to which we have already referred. The whole scheme of Sections 241 to 244 is to be taken together. The idea is that as and when the economy of a particular area develops, the State Government should see to it that arrangement for administration also improve and provide for more efficient local administration. Thus, Section 241(1) envisages criteria of the development of a purely rural area into township or commercial centre, with increased trade and commerce, with increased population and with increased economic activities justifying its evolution into a notified area to which a certain amount of local autonomy could be granted. The whole process, however, is one of gradual evolution. The Act does not contemplate the sudden conferment of all types of local administrative powers to a Notified Area Committee. The provisions of Sections 241 to 244 of the Act make it clear that it is really an evolutionary process. The provisions that a notified area will exercise only such powers as are entrusted to it by the State Government under Section 242 and that only such provisions of the Act as the State Government considers fit can be applicable to a notified area show that the principal consideration is the economic and administrative viability of the particular unit to look after its own local affairs. If the area develops further and further and proves viable and selfsufficient economically and efficient administratively it may be eventually converted into a municipal area. If on the other hand, the area does not come up to expectations, is not financially solvent or is administratively weak, the status quo ante may have to be restored. If Section 244 is read in this context and background, it will be very clear that it is intended as a power enabling the Government to go forward or backward in the process of this evolution depending upon the circumstances of each case. It may turn out that a particular area is not economically viable and hence the notification issued under Section 241 has to be cancelled. It maybe that too much powers are found to have been entrusted to a particular notified area

committee and some of the powers need to be withdrawn. It may again be that this type of administration does not properly work in particular situation and that the experiment undertaken in that particular area is somewhat premature. The situations, in which cancellation or modification of a notification under Section 241 may be called for, will be numerous and impossible to be spelt out in a statutory provision. But all the same if one considers that Sections 241 to 244 form a compact group of sections of the Act which deals with a particular topic and if one bears in mind the contents of Sections 241 to 244, it will be clear that the power of cancellation or modification is not an arbitrary and unguided one but is one intended to be exercised in the light of the implementation of the notification in a particular local area having regard to the main principle and purpose behind Section 241. It is, therefore, difficult to agree with the High Court that Section 244 contains no guidelines whatever or that the guidelines admittedly discernible in Section 241 cannot be read into Section 244 also."

11. Thus the Supreme Court did not notice one aspect that there is basically no difference between the end result which ensures when action is taken either under Sections 10 or 244 of the Punjab Municipal Act, 1911. However, without expressly overruling the decision given in *Dewan Chand's case* (supra) the Supreme Court did not approve of the judgment in the case of *Jaswant Singh Multani* (supra) and while overruling the same came to the conclusion that provisions of Section 244 under which the Notified Area Committee is abolished are a valid piece of legislation. If this be the view of the Supreme Court with regard to the provisions of Section 244 of the Punjab Municipal Act, then it is difficult to hold that the provisions of Section 8 of the Haryana Municipal Act are in any way tainted with the vice of arbitrariness.

12. There is another way in which the whole matter can be looked at. It is a settled law that whatever procedure is required for doing an act, the same procedure can be followed in undoing that very act. It may be true, that under Section 8 no detailed procedure is indicated as to whether objections are to be heard or not, but then by resorting to the provisions of the General Clauses Act is it not possible to rescind the notification by following the same procedure which is followed for bringing the notification into existence. If this be the correct legal position, even then no fault can be found in the matter of issuing the notification Annexure P5. As noticed above, detailed objections were heard and it was thereafter the notification abolishing the municipality of Shahzadpur was issued. Thus no fault can be found with the issuance of the notification Annexure P5.

13. The matter can be looked from another point as well. Is the abolition of "C" class municipality and creation of a Gram Panchayat such a step which is not known to law? In this regard, the provisions of the Punjab Gram Panchayat Act, 1952, may be noticed. Section 4 of the Gram Panchayat Act deals with the establishment of a Gram Panchayat and it does contemplate the creation of Panchayat if majority of voter in a Notified Area Committee or Municipality of "C" class desire establishment of a Gram Panchayat in which case the assets and

liabilities of the Notified Area Committee or the Municipal Committee, as the case may be, shall vest in the Gram Panchayat thereafter established and the Notified Area Committee or the Municipality shall cease to exist. Section 4 of the Punjab Gram Panchayat Act, 1952, as applicable to the State of Haryana, reads as under :

"4. Demarcation of Sabha areas. (1) Government may, by notification, declare any village or group of contiguous villages with a population of not less than five hundred to constitute one or more sabha areas :

Provided that neither the whole nor any part of

(a) a Notified Area under Section 258 of the Haryana Municipal Act, 1973, or

(b) a Cantonment; or

(c) a Municipality of any class;

shall be included in a Sabha area unless the majority of voters in any Notified Area or Municipality of the Third class desire the establishment of Gram Panchayat in which case the assets and liabilities, if any, of the Notified Area Committee or the Municipal Committee, as the case may be, shall vest in the Gram Panchayat thereafter established and the Notified Area Committee shall cease to exist :

Provided further that the Government may, in any particular case, relax the limit of five hundred.

(2) Government may by notification include any area or exclude any area from the Sabha area.

(3) If the whole of the Sabha area is included in the Municipality, Cantonment or Notified Area under Section 258 of the Haryana Municipal Act, 1973, the Gram Panchayat shall cease to exist and its assets and liabilities shall be disposed of in the manner prescribed.

14. Thus, in view of Section 4 of the Punjab Gram Panchayat Act (as applicable to Haryana) the abolition of a "C" class Municipality and bringing into existence a Gram Panchayat is not such a retrograde step which is to be looked down upon. As a matter of fact, the Legislature has duly recognised the fact that it is possible to convert "C" class Municipality into a Gram Panchayat and if this be the position the action of the State Government is supported by this statutory provision as well. Not only this, the Directive Principles of State Policy as contained in Article 40 of the Constitution contemplate strengthening of village Panchayats. Article 40 of the Constitution reads as under :

"40. Organisation of village panchayats. The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of selfgovernment."

15. Thus, looking from any point of view, the act of the State Government in

abolishing a "C" Class Municipality and restoring old status is not only supported by the Statutory provisions contained in the Punjab Gram Panchayat Act, 1952 but the object is laudable if Article 40 of the Constitution is also taken into consideration.

16. In view of the above discussion, it can safely be concluded that notification Annexure P5 is perfectly valid. The local residents were duly heard in the matter and the State Government has respected the wish of the local residents to restore back their old status.