
(1956) 12 P&H CK 0001

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 132 (P) of 1956

Brij Lal

APPELLANT

Vs

The State of Patiala and Another

RESPONDENT

Date of Decision : 20-12-1956

Acts Referred:

Constitution of India, 1950 — Article 163(3), 166(2), 226
Punjab Municipal Act, 1911 — Section 238(1)

Citation : AIR 1957 P&H 100

Hon'ble Judges : Bishan Narain, J

Bench : Single Bench

Advocate : D.S. Nehra, for the Appellant; Lachhman Dass, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Bishan Narain, J.—Brij Lal, a nominated member of the Municipal Committee, Jaitu Tahsil Faridkot, District Bhatinda (Pepsu) filed this petition under Article. 226 of the Constitution against the Pepsu State and against the Minister-in-charge Local Self-Government of that State for an order restraining them from superseding the said Municipal Committee. This petition was originally filed in the Pepsu High Court but as that Court was abolished by the States Reorganisation Act, 1956, the petition has been placed before this Court for decision. The Municipal Committee was superseded and a notification was issued to that effect on the 14th August, 1956, which is also the date of this petition.

In view of the altered circumstances I allowed the petitioner's counsel to argue on the basis as if the relief sought by his client was that the Municipal Committee was not superseded in accordance with law. The learned counsel for the petitioner urged only two points in support of his case. Firstly it was urged that the order of supersession was passed by the Minister-in-charge illegally and with male fide intention as he was personally interested in the matter, and secondly, that the notification issued u/s 238(1) of the Punjab Municipal Act was illegal and

not in accordance with law and therefore must be quashed.

2. It appears that the Municipal Committee had ordered demolition of temporary wooden stalls for constructing 12 pukka shops on the same site. The learned counsel urged that the Minister-in-charge objected to this order as he was interested in certain temporary stalls in a near-by-chowk and wanted to avoid their demolition also. The notification issued u/s 238(1) of the Punjab Municipal Act, 1911, is in the name of His High- ness the Rajpramukh (Pepsu) and it appears to me that it cannot be challenged on this ground. Under Article. 166(2) of the Constitution the validity of the notification cannot be questioned on the ground that it is not an order made by the Rajpramukh, It is not the petitioner's case that the order of supersession has not been authenticated in accordance with law. It is not open to this Court to enquire into the question whether any and if so what advice was tendered by the Minister-in-charge of Local Self-Government to the Rajpramukh in the present case (vide Article. 163 of the Constitution). It, therefore, follows that the mala fide, if any, of the Minister-in-charge cannot be investigated by this Court or by any Court when the order has been issued in the name or the Rajpramukh as laid down in the Constitution.

Moreover, it is stated to the written statement filed by the Pepsu Government that the non-compliance of the orders of Government in the matter of demolition etc. of these stalls was not the only ground for superseding the Municipal Committee, that the Government had received several complaints against the working of the Municipal Committee and that after considering all matters the order of supersession was passed. In these circumstances I have no hesitation in rejecting this contention of the learned counsel.

3. It was then argued that the Government gave no opportunity to the Municipal Committee to show that the order of supersession passed against it was not justified There is, however, no provision of law in the Municipal Act which makes it- incumbent on the State Government to issue notice to the Municipal Committee giving grounds on which the Government proposes to supersede the Municipal Committee u/s 238(1) of the Punjab Municipal Act. If the contention of the learned counsel be considered to be correct, then no Municipal Committee could be superseded without an elaborate enquiry into its affairs and such an enquiry is likely to take a long time. Such a course must affect the residents of the locality adversely and municipal affairs must be neglected in the course of the enquiry.

The object of the Act is also likely to be defeated if an enquiry into the affairs of a defaulting committee is held to be the necessary condition precedent before the provisions u/s 238(1) of the Act are invoked in the interest of public interested in the efficient working of the Municipal Committee. It cannot be said that the Government has been constituted a tribunal under this provision of law and therefore the question of its observing rules of natural justice or of holding an enquiry before superseding a Municipal Committee does not arise. No case was cited before me by the learned counsel in which such a notice was held to be

imperative before action could be taken under this provision of law. I have, therefore, no hesitation in rejecting this contention of the learned counsel,

4. Finally it was argued that the provisions of Section 238(1) of the Act were of mandatory character and as the notification omitted to give reasons the order of supersession must be held to be void and illegal. On the other hand it was argued on behalf of the State that it was not obligatory on the part of the State to give reasons for superseding the Municipal Committee to the notification and in any case the direction to this effect must be considered to be directory. It was further urged on behalf of the State that the provisions of Section 238(1) had been substantially complied with in this case. Now, Section 238(1) of the Punjab Municipal Act reads:

"238(1), Should a committee be incompetent to perform, or persistently make default in the performance of, the duties imposed on it by or under this or any other Act, or exceed or abuse its powers, the Provincial Government may, by notification, in which the reasons for so doing shall be stated, declare the committee to be superseded"

and the notification in the present case reads:

"No. 132.--As the Municipal Committee Jaitu is incompetent to perform the duties imposed upon it under law. His Highness the Rajpramukh, under provisions of Sub-section (1) of Section 238 of the Punjab Municipal Act, 1911, as in force in Pepsu, declares the Committee to have been superseded and to direct that until the Committee is reconstituted, all its powers and duties shall be exercised and performed by the S.D.O. Faridkot, as Administrator."

The notification does give the reason of in-competency for superseding the Municipal Committee. It was urged that the reason given was not sufficient compliance with Section 238(1) as reasons for coming to the conclusion that the Municipal Committee was incompetent to perform its statutory duties had not been given in the notification. There does not appear to be any force in this contention. The section does not lay down that the occasions on which the Municipal Committee was considered to be incompetent must be given in the notification. A Municipal Committee can be superseded on three grounds given in the section, and what is contemplated is that the notification should state which of these reasons has led to the supersession of the Municipal Committee and I see no warrant for concluding from the wordings of the section that instances in which the Municipal Committee had been found to be in default should be given in the notification.

If the contention of the learned counsel is accepted, then the notification of necessity must be cumbersome and no useful purpose can be served by issuing such a detailed notification particularly when such an order cannot be challenged under the Act on appeal or otherwise on the ground that the instances given in the notification do not satisfy any of the three grounds mentioned in the section. In my opinion, the notification issued in the present case cannot be challenged

on this ground.

5. In any case it appears to me that if Section 238(1) is to be construed as contended for by the learned counsel, then it must be held that the direction to give reasons is not mandatory but only directory. It is true that Section 233(1) lays down that the reasons for superseding the Municipal Committee shall be stated in the notification, but that by itself does not show that the provision is mandatory in character.

It is well settled that no universal rule can be laid down for determining whether the provision of a statute is to be considered as a mere direction involving no invalidating consequences or as imperative with an Implied nullification for disobedience. To determine this matter. It is necessary to consider the meaning and intention of the legislature which can be ascertained not only from the phraseology of the statute but also on consideration of its nature, context and object as well as the consequences of adopting either construction. This subject is discussed in para. 262 onwards in Crawford's well known treatise on the Construction of Statutes and it is not necessary, to reproduce these rules in this Judgment.

6. In the present case we are concerned with a statutory provision which certains to an official action. Such a provision is generally construed as directory rather than mandatory". Section 238 lays down the circumstances in which a Municipal Committee is to be superseded and then provides the consequences of such a supersession. The section lays down how the supersession is to be notified as I read this section, it does not lay down how a Municipal Committee is to be superseded and it only prescribes the mode in which the act of supersession is to be expressed. The "manner of such an expression should be considered as merely a matter of form and formality for doing a public act.

That being so, this formality should be considered to be directory and not mandatory in character. The Hon'ble Mr. Justice S.R. Das, now Chief Justice of India, has laid down the rules in *Dattatreya Moreshwar Pangarkar Vs. The State of Bombay and Others*, in these words:

"It is well settled that generally speaking the provisions of statute creating "public duties are directory and those conferring private rights are imperative. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice of the Courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done."

Applying these rules to the present case it cannot be said that the direction that the notification should give reasons cannot but be considered directory. After all as laid down in *Thakur Pratap Singh Vs. Shri Krishna Gupta and Others*, it is the

substance of the rule and not its mere form that is to be taken into consideration when determining whether it is directory or mandatory. In this decision the Supreme Court has deprecated the tendency towards technicalities and laid down that the technicalities should be avoided.

Taking the object of Section 238, Punjab Municipal Act, it appears to me clear that the direction laid down therein as to what the notification should contain is only directory in character and its disobedience does not nullify the notification or the order of supersession.

6-a. No other point was urged before me.

7. The result is that this petition fails and is dismissed with costs. Petition dismissed.