**(2009) 03 P&H CK 0155**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Writ Petition No. 8911,3647,3730 & 13487 of 2007

Madan Lal and others APPELLANT

Vs

State of Punjab and others RESPONDENT

**Date of Decision :** 06-03-2009

**Acts Referred:**

**Citation :** (2009) 3 LLR 232 : (2009) 3 PLR 187 : (2009) 2 RCR(Civil) 536

**Hon'ble Judges :** S.K.Mittal, J and Jaswant Singh, J

**Advocate :** Mr. N.K. Suneja, Advocate Mr. Parminder Singh, Advocate, Mr. H.S. Sirohi, Advocate, Mr. Parminder Singh, Advocate, Mr. H.S. Sirohi, Advocate.For the Petitioner, Mr. N.K. Suneja, AdvocateFor the Respondent No. 1 and 2, Mr. Mahabir Singh Sindhu, Addl. General Punjab, Advocate, Mr. Parminder Singh, Advocate, Mr. H.S. Sirohi, Advocate., Advocates for appearing Parties

# Judgement

Jaswant Singh J.

1. This order will dispose of four civil writ petitions bearing C.W.P. No. 8911 of 2007, C.W.P. No. 13483 of 2007, C.W.P. No. 3647 of 2007and C.W.P. No. 3730 of 2008.

2. The aforesaid Civil Writ Petitions involve identical/common question of law. Therefore, the same are being disposed of by way of the present common judgment. Counsel for the parties have agreed that C.W.P. No. 8911 of 2007 be treated as main Writ Petition and rest of the Writ Petitions may be disposed of in the same terms. Therefore, we have decided to enumerate the facts in brief as pleaded by the parties in C.W.P. No.8911 of 2007.

3. The petitioners who are 15 in number have filed the present Writ Petition under Article 226/227 of the Constitution of India for quashing of the impugned order/notification dated 26.10.2004 (Annexure P5) passed by respondent No. 1State of Punjab and published in Punjab Government Gazette (extra) dated November 03, 2004 approving the extension of municipal limits of Municipal Corporation, Patiala as per proposed boundaries published in notification dated 6th July, 2004 (Annexure P4) and further to quash the impugned notices/

assessment order dated 17.01.2007 (Annexure P6) issued by respondent No.2Municipal Corporation, Patiala levying the housetax upon the properties of the petitioners being situated within the extended limits of Municipal Corporation, Patiala.

4. Briefly, the facts of the case are that earlier Patiala was having a Municipal Committee governed and regulated by Punjab Municipal Act, 1911 and the limits of the Committee were extended from time to time and one copy of such notification dated 14.02.1975 extending the Municipal limits by the Government of Punjab is appended as Annexure P1 with the Writ Petition. In the year 1976, the Punjab Municipal Corporation Act, 1976 (hereinafter referred to as "1976 Act") was enacted and the Municipal Committee, Patiala was declared as Municipal Corporation, Patiala on 23.09.1997.

5. Vide Resolution No. 61 dated 9th of October, 2003 (Annexure P 2) Municipal Corporation resolved and proposed for the extension of municipal limits of Patiala city and the decision of the General House of Municipal Corporation is reproduced here as under :

"Municipal Corporation, Patiala has constituted a Committee to extend the Municipal limit of Patiala City, earlier. This Committee had reported that after the upgradation of Municipal Corporation, no Municipal Limit was extended as yet. Although many commercial units had come over outside the Municipal Limit, resulting huge loss of Octroi to the Corporation; because of close proximity of godown etc. in these areas, the goods are being transported in the City through car/vehicle without payment of Octori. Besides this many commercial areas as per map can be included in M.C. limit and by doing so there will be increase in the revenue of the House Tax of the Corporation. The report of the Committee was put up before the house. After due discussion on the report, it was resolved that keeping in mind the economic benefit to the Corporation, the M.C. Limit for the time being may be extended from Rajpura road to Hira Bagh Byepass only as shown in the map. It was also resolved by the General House that after necessary action, the case may be sent to the Government for notification."

6. The resolution was forwarded to the Government vide letter dated 21.06.2004. Subsequent thereto in compliance with certain directions given by the Government of Punjab, respondent No.2M.C. Patiala vide letter dated 25.06.2004 sent schedule of boundaries of limits, proposed to be extended. The proposal submitted by respondent No.2 was, prima facie, found to be acceptable by respondent No.1 as the area proposed to be included within the municipal limits was/is contiguous to the existing boundary of Municipal Corporation, being predominantly the commercial area. Therefore, respondent No.1 while exercising powers conferred under sub Section 3 of Section 3 of 1976 Act decided to notify the proposed extension of limits of Municipal Corporation, Patiala for inviting objections and suggestions vide Government Gazette Notification dated 06.07.2004 (Annexure P3) in which it was stipulated that if any body has any objection, he can sent his objections in writing within a period of six weeks from

 

the date of publication of the notification, to the Principal Secretary, Punjab Government, Department of Local government through Commissioner, Municipal Corporation, Patiala.

7. In pursuance of Draft Notification dated 6th July, 2004, only two objections were received; one by Shri Harjit Singh Grewal, proprietor Attwal Filling Stationrespondent No.3 and the other objection as a joint objection by eight different Associations/Societies of the residents of Urban Estate, Patiala. They were given personal hearing on 8th October, 2004 by the Government. After giving personal hearing to the objectors, who were present, and considering their objections, the competent Authority keeping in view the provisions of Section 3 of the 1976 Act, and on being satisfied that the laid down statutory parameters were fulfilled, passed an order dated 26.10.2004, thereby partly accepting the objections relating to inclusion of "Atwal Filling Station" within the extended limit, and ordering the inclusion of the rest of the proposed area. The operative part of the order dated 26.10.2004 reads as under :

" As regards the compliance of the abovenoted provisions in the present case, firstly, Municipal Corporation, Patiala of their own have passed resolution bearing No.61 dated 9th October, 2003 for alteration of the Municipal limits as per draft proposal published in gazette on 6th July, 2004, however, on receipt of objections to the draft proposal it has been impliedly requested to the Government by Commission, Municipal Corporation, Patiala in his communication dated 10th September, 2004 that "inclusion of small pocket of Urban Estate, as proposed in draft notification is not justifiable", however, the remaining area has been recommended for inclusion in the City limits. Secondly, the proposed limits of Municipal Corporation were duly published in the official gazette on 6th July, 2004. After receipt of recommendations of Commissioner, Municipal Corporation, Patiala dated 10th September, 2004, it has emerged on record that objections received to draft notification has a merit. There is no justifiable ground to only include only a very small pocket of Urban Estate in City limits. Hence to objections received to draft notification of alteration of City limits have a merit. The area proposed to be included within the Municipal limits, except small area of Urban Estate, which was proposed for inclusion only to cover the Petrol pump site is contiguous to the existing boundary, being commercial in nature needs improved civic services and above all planned growth is required in peripheral areas, therefore, inclusion of areas covered by draft notification except the small pocket of Urban Estate whereon only "Atwal Filling Station" is situated, is in the larger public interest. Considering all these facts except the inclusion of small pocket of Urban Estate i.e. falling in between Killa No.77 and 56 of Village Chare (Petrol Pump site) on northern side of byepass, as shown in the site plan. I order the issuance of final notification under Section 3(3) of the Punjab Municipal Corporation Act, 1976 approving the alteration of Municipal limits of Municipal Corporation, Patiala as per the boundary notified in the Notification No. 14/83/047LGI/12836, dated 6th July, 2004. "

 

8. It appears that the order dated 06.07.2004 passed by the Government was in verbatem published in the official gazette vide Notification dated 03.11.2004 (Annexure P5) in exercise of the powers under Sub Section 3(3) of 1976 Act, thereby extending the municipal limits of M.C. Patiala.

9. Respondent No.2M.C. Patiala after the inclusion of the area of the petitioner(s) (in all the four aforesaid civil writ petitions) levied housetax, and issued the impugned housetax bills on the properties belonging to the petitioner(s).

10. It is this Notification dated 03.11.2004 (Annexure P5), by treating the same as an order and housetax bills raised are under challenge on the following grounds :

i) That while passing the impugned order dated 26th October, 2004, respondents No.1 and 2 have ignored the criterial laid down in Section 3(1) of the 1976 Act;

ii) That in pursuance of order dated 26th October, 2004 (Annexure P5) no notification under Sub Section 3 of Section 3 of 1976 Act has been issued and, further, such notification can only be issued if the matter is placed before the State Government (Cabinet) to take decision for the purpose of advising the Governor in the present case and without such decision of the Governor on any notification in regard to respondent No.2 i.e. Corporation has no power to issue notices for levying house tax.

11. Respondent No.1 filed written statement in which interalia it is submitted that the notification dated 3rd of November, 2004 (Annexure P5) has been issued in accordance with law and as per provisions of the 1976 Act. It is further pleaded that under the Rules of business of the matters relating to the Department of Local Government including the matters arising out of the 1976 Act, have been placed under the domain of the Department of Local Government and the department has prepared its own standing orders for the discharge of functions of the Government in the Department of Local Government. As per item No.28 of Standing Order dated 23.05.2003 (Annexure R 1), the matter relating to fixation of limit of Municipalities is within the competence of the Minister Incharge/ Administrative Secretary. It is further submitted that in the present case the final notification of alteration of municipal limits of Municipal Corporation, Patiala dated 03.11.2004 (Annexure P5) has been issued with the approval of the Competent Authority. It has further been submitted that as per Section 90(1)(a) of the 1976 Act the Municipal Corporationrespondent No.2, is fully authorized to impose the tax on lands and buildings (commonly known as house tax), and therefore, the properties of the petitioners are liable to be taxed accordingly. Alteration in the Municipal limits was proposed in consideration with the parameters enumerated in Section 3(1) of the 1976 Act and then only the final notification dated 03.11.2004 was proposed. It is further submitted that before issuing the final notification of alteration of municipal limits dated 03.11.2004, a detailed speaking and reasoned order dated 26.10.2004 was passed as proposal of the Municipal Corporation was duly considered and Municipal Corporation was

consulted before issuing notification.

12. Respondent No.2M.C. Patiala has filed separate reply and preliminary objection is raised that petitioners did not file any objection against the draft notification dated 6th July, 2004 (Annexure P3) and therefore, they are estopped from raising the issue at this belated stage. It is further submitted that assessment order passed by respondent No.2 is appealable under Section 146 of the 1976 Act.

13. Before deciding the matter in controversy, it is clarified that petitioner is describing the Punjab Government Gazette Notification dated 3rd of October, 2004 (Annexure P5) as impugned order rejecting the objection and wants to take benefit of last four lines, which were repeated in this gazette notification. In fact Annexure P5 is a gazette notification and not an order dated 26th October, 2004 and legal implication of this mistake on the part of respondent No.1 will be discussed in the later part of this judgment.

14. After hearing learned counsel for the parties and perusing the record, two points have emerged for determination in this case, which are as under :

i) Whether the gazette notification dated 3rd November, 2004 (Annexure P5) for extension of Municipal Limits of Municipal Corporation, Patiala is in consonance with the provisions of Section 3 of the 1976 Act or not?

ii) Whether the notification dated 3rd of November, 2004 (Annexure P5) is to be declared illegal in view of the fact that same is not described to be issued in the name of Governor of Punjab?

15. As far as extension of municipal limits of Municipal Corporation is concerned, Subsections (1), (2) and (6) of Section 3 of the 1976 Act are relevant and the same are reproduced hereasunder :

(1) Specification of an area to be a Larger Urban Area and constitution of Corporation therefore The Government may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non agricultural activities, the economic importance such other factors, as it may deem fit, specify by notification, in the Official Gazette, any area to be a larger urban area for the purpose of this Act :

Provided that no military cantonment or any part thereof shall be included in such larger urban area :

Provided further that a Corporation may not be constituted for such a larger urban area or part thereof as the Government may, having regard to the size of the area and Municipal Services being provided or proposed to be provided by an industrial establishment in that area and such other factors as it may deem fit, by notification, specify to be an industrial township.

(2) Where an area is specified as larger urban area under sub section (1), the

 

Government shall, by a notification in the Official Gazette, constitute a Corporation for such area.

(3) to (5) xxx xxx

(6). The Government may, from time to time, after consultation with the Corporation, by previous publication of a notification in the Official Gazette, alter the limits of any larger urban area.

(7) xxx xxx

16. In the present case there is no dispute that the resolution dated 9th October, 2003 was passed by respondent No. 2M.C. Patiala and draft proposal of the extension of municipal limit was published in the gazette notification by way of gazette notification dated 6th July, 2004 (Annexure P3) and there is also no dispute that some objectors filed objections and the same were considered by the Competent Authority and after giving personal hearing it was decided to accept some of the objections, as is clear from the operative part of order dated 26th October, 2004 is reproduced hereabove. The objections filed by respondent No. 3 on behalf of Atwal Filling Station were accepted. There is no dispute that the present petitioners had not filed any objections to the proposed draft notification for the reasons best known to them and have straightway questioned the illegality and propriety of the Government Gazette notification dated 3rd of November, 2004 (Annexure P5) by way of the present writ petition. Even the counsel for the petitioners is also not able to point out any infraction of subsections (1) and (6) of Section 3 of the 1976 Act in the present case. The matter was adjourned to verify whether in pursuance of the impugned order dated 26.10.2004, any final notification under Section 3 of the 1976 Act has been issued or not. In pursuance thereto, original gazette notification dated 3rd of November, 2004 was produced on record and the same was taken on record and marked as Annexure ''X''. Perusal of the same reveals that this is verbatim to Annexure P5 and there is no difference of even comma and full stop. In our considered opinion, thus, there is substantial compliance of subsections (1) read with subsection (6) of Section 3 of the 1976 Act and no fault can be found, although, the source and exercise of power by the competent Authority is wrongly recited in the notification.

17. Even otherwise, the nature of power exercised by the Government to extend/ alter the limits of Municipal Corporation/Municipal Council/Municipal Committee is concerned, a Division Bench of this Court, while considering the extension of limits of Municipal Council, Banur, District Patiala under the paramateria provisions of subsection (1) of Section 4 and Section 5 of the Punjab Municipal Act, 1911 in C.W.P. No. 2273 of 2007, Gram Panchayat Bassi Sekhan v. State of Punjab and others, 2009(1) RCR(Civil) 242 (P&H). decided on 04.09.2008, after relying on the judgment rendered by the Hon''ble Supreme Court in State of Punjab v. Tehal Singh and others, 2002(2) RCR(Civil) 1 : AIR 2002 SC 533, has held that the power exercised by the Government to alter or extend the

 

municipal limits is essentially legislative in nature and thus open to challenge on very limited grounds. The operative part of the aforesaid judgment dated 04.09.2009 reads as under :

" There is another aspect of the matter. In our considered opinion the exercise of powers by the State Government under Section 5 of the Act, while proceeding to alter the municipal limits by excluding or including certain areas in the said Municipality, is legislative in nature. This view of ours finds support from a decision of the Hon''ble Supreme Court rendered in State of Punjab v. Tehal Singh and others, 2002(2) RCR(Civil) 1 : AIR 2002 SC 533. In the reported case, their Lordships of the Hon''ble Supreme Court considered the nature of the power exercised by the State Government under Sections 3 and 4 of Punjab Gram Panchayat Act, 1952, providing for establishment of Gram Sabha areas and constitution of Gram Sabhas. Relying upon principles of law enunciated in earlier decision reported as Rameshchandra Kachardas Porwal and others etc. v. State of Maharashtra and others, 1981(2) SCC 722 and Union of India and another v. Cynamide India Ltd. and another, 1987(2) SCC 720, and the provisions of Sections 3 and 4 of the Punjab Gram Panchayat Act, 1952, it was held that making of a declaration under Section 3 of the Act, determining the territorial area of a Gram Sabha and thereafter establishing Gram Sabha for that area is an act, legislative in character. In Para 7 of the said judgment, their Lordships stated the principles of law, which read as under :

"7. The principles of law that emerge from the aforesaid decisions are (1) where provisions of a statute provide for the legislative activity i.e. making of a legislative instrument or promulgation of general rule of conduct or a declaration by a notification by the Government that certain place or area shall be part of a Gram Sabha and on issue of such a declaration certain other statutory provisions come into an action forthwith which provide for certain consequences; (2) where the power to be exercised by the Government under the provisions of a statute does not concern with the interest of an individual and it relates to public in general or concerns with general direction of a general character and not directed against an individual or to a particular situation and (3) lay down future course of actions, the same is generally held to be legislative in character. "

Applying the aforesaid principles of law, we find that vide draft notification dated 23.10.2006 (Annexure P2) under Section 5(2) of the Act and final notification dated 19.12.2006 (not under challenge) under Section 5 (1) of the Act, declaration for inclusion of the area of the petitioner Gram Panchayat within the municipal limits of Municipal Council, Banur does not concern with the interests of an individual or a particular resident of the area but is general in character and relates to an area inhabited by all the residents sought to be included within the municipal limits, and therefore, legislative in nature and not open to challenge on the grounds as canvassed in the present petition. "

18. In view of the above settled legal position also, we are not inclined to interfere with the notification dated 03.11.2004 (Annexure P5).

 

19. As regards the second point that the impugned notification (Annexure P5) is not published in the name of the Governor is concerned, the executive power of the Governor are enshrined in Article 166 of the Constitution of India, which reads as under :

" 166. (1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the government of the State, and of for the allocation among Ministers the said business insofar as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion. "

20. The counsel for respondent No. 1 has drawn our attention that the question that all executive action of a State shall be expressed and authenticated in the manner provided under Article 166 but omission to comply with those provisions render the executive action invalid or not was decided way back in 1952 in case titled Dattatraya Moreshwar Pangarkar v. State of Bombay and others, AIR 1952 SC 181 and relevant para is reproduced hereasunder :

" At the hearing before us, learned counsel has confined his arguments to challenging the validity of detention of the petitioner on two grounds, namely, (1) that the State Government has failed to comply with the requirements of Section 11(1) of the amended Act in that at the time of confirming the detention order it omitted to specify the petiod during which the detention would continue, and (2) that the order of confirmation is not a proper legal form, in that it is not expressed to be made in the name of the Governor as required by Article 166 (1) of the Constitution. "

With regard to ground (2) it was held as under :

" Article 166 directs all executive action to be expressed and authenticated in the manner therein laid down but an omission to comply with those provisions does not render the executive action a nullity. "

21. And even in the latest judgment B. Bala Krishna v. Director, CBI, New Delhi, 2008(4) SCC 409 it is held that the provisions of Section 166 are directory and not mandatory. Noncompliance of Section 166 will not nullify the notification. The original record was produced by the respondents during the course of hearing, which substantiated that the decision was taken upto the Minister Incharge, who is competent as per Rules of Business (Annexure R 1) and thus, there is no substance in the contention raised by the learned counsel for the petitioner(s).

22. In view of the aforesaid discussion, we find no merit in the aforesaid four writ petitions and are thus dismissed.

23. The petitioner(s) are, however, given liberty to file appeals under Section 146 of the Punjab Municipal Corporation Act, 1976 before the competent Authority against the impugned assessment orders/raising bills levying house tax on their respective properties, within two weeks from the date of receipt of certified copy of this judgment/order. We further, could not refrain ourselves from expressing our deep anguish with the utmost casual manner in which impugned notification has been drafted and issued, whereby the order dated 26.10.2004 passed by the Government considering and rejecting the objections has been in verbatim notified as a final notification and even the source and exercise of power by the competent Authority is wrongly recited. Thus, creating unnecessary confusion. We, therefore, direct the Chief Secretary, Government of Punjab to personally look into the matter and take suitable action against the officials concerned, howsoever, high they may be. The action taken shall be placed on record of this case.