
(1971) 08 P&H CK 0050

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 62 of 1971

Sat Dev

APPELLANT

Vs

The Punjab State etc.

RESPONDENT

Date of Decision : 25-08-1971

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227
East Punjab Urban Rent Restriction Act, 1949 — Section 3
Patiala Municipal (Executive Officers) Act, 2003 — Section 1(2)
Punjab Municipal (Executive Officer) Act, 1931 — Section 1(2)
Punjab Municipal Act, 1911 — Section 3(1), 3(4), 4

Citation : (1974) 1 ILR (P&H) 93

Hon'ble Judges : Harbans Singh, C.J.;Gurdev Singh, J

Bench : Division Bench

Advocate : Ram Lal Aggarwal and Amar Dutt, for the Appellant; Gurmukh Singh Chawla, for A.G., for the Respondent

Final Decision : Dismissed

Judgement

Gurdev Singh, J.—This order will dispose of two Appeals (Nos. 62 and 110 of 1971) under Clause 10 of the Letters Patent, which are directed against the order of the learned Single Judge, dated 27th of October, 1970, whereby he dismissed the Appellants' writ-petitions-under Articles 226 and 227 of the Constitution, assailing the validity of the notifications issued by the State Government extending the provisions of the Punjab Municipal (Executive Officers) Act, 1931 (hereinafter called the Act), to the Municipal Committees of Moga and Abohar, respectively.

2. The Act was enacted to provide for the appointment and powers of the Executive Officers in the Municipal Committees in Punjab, amending some of the provisions of the Punjab Municipal Act, 1911, for that purpose. Though it came into force on the 16th of October, 1931, it was not made applicable to any Municipal Committee in the Punjab, but it was left to the State Government to extend it to any Municipal Committee as is apparent from Sub-section (2) of

Section 1, which provides:

It may by notification be extended by the State Government to any municipality in Punjab.

3. Section 3 then provides that within three months from the date of such notification issued under Sub-section (2) of Section 1, the Municipal Committee has, by a resolution at a meeting convened for the purpose, to appoint an Executive Officer with the approval of the State Government. If the Committee fails to appoint an Executive Officer within three months from the date of the notification, the State Government is authorised under Sub-section (4) of Section 3 to appoint any person as Executive Officer of the Committee. The powers of the officer so appointed are set out in Section 4 of the Act and for that purpose certain provisions of the Punjab Municipal Act, 1911 detailed in Schedule 2 to the Act shall be deemed to be amended to the extent and the manner stated therein. There is no gainsaying the fact that as a result of appointment of an Executive Officer of the Municipal Committee, the powers and authority of the Committee are affected.

4. The notification extending the Act to the Municipal Committee, Moga, under Sub-section (2) of Section 1 of the Act was issued on the 19th of June, 1969, and simultaneously a direction was issued to its President Sat Dev Appellant to take necessary action for appointment of an Executive Officer u/s 3(1) of the Act within three months. The Committee having resolved not to appoint an Executive Officer the Punjab Government initiated action to appoint an Executive Officer by advertising the post in the Daily Tribune of 25th January, 1970. Thereupon Sat Dev, President of this Municipal Committee, approached this Court under Article 226 of the Constitution, challenging the vires of the Act and validity of the notification issued directing its extension to Municipal Committee, Moga.

5. In the other case the notification under Sub-section (2) of Section 1 extending the Act to the Municipal Committee, Abohar, was also issued on 19th June, 1969. This Committee also refused to appoint any Executive Officer and accordingly the Government proceeded to take action for such an appointment.

6. In challenging the vires of the Act and assailing the validity of the notifications extending the Act to the Municipal Committees of Moga and Abohar, the common contentions raised were:

1. That Section 1(2) of the Act empowering the State Government to extend the provisions of the Act to any Municipal Committee suffers from excessive delegation as it confers unbridled unguided and absolute powers on the State Government to apply the provisions of the Act to any Municipal Committee it chooses;

2. that the power vested in the State Government can be exercised arbitrarily and would lead to discriminatory treatment of various Municipalities;

3. that the executive power exercised by the State under the impugned

notification does not give effect to any policy, nor does it disclose any basis for classification and is thus hit by Article 14 of the Constitution;

4. that in the absence of the clear declared policy of the legislature, the provisions of the Act are haphazard and can be discriminately applied by the Government to suit the political convenience and bargaining motivated by extraneous considerations not contemplated by the Act.

5. that there was no necessity for the extension of the provisions of the Act to any of these two Municipal Committees of Moga and Abohar; and

6. that the impugned notifications are mala fide having been made with the ulterior motive of conferring advantage on various persons and to interfere with the working of the Municipal Committees by the elected representatives of the people.

7. The learned Single Judge found no substance in any of these contentions and has held that the Act is a valid piece of legislation and the impugned notifications issued under Sub-section (2) of Section 1 thereof were perfectly legal. The plea of mala fide raised in both the petitions was negated. In fact, despite opportunity no material has been placed on record to support this plea, nor is there anything to bear out the contention that there was no necessity for extension of the provisions of the Act to any of the two concerned Municipal Committees. The only question that survives for our consideration is, whether Sub-section (2) of Section 1 of the Act suffers from excessive delegation and consequently the notifications issued under that provision are invalid.

8. The matter is not *res Integra* and in coming to the conclusion that there is no merit in the challenge to the vires of the Act and the impugned notifications, the learned Single Judge has based himself on a recent Division Bench authority of this Court in *The Municipal Committee, Gobindgarh v. The State and Anr.* C.W. No. 2228 of 1968. That case related to the Municipal Committee of Gobindgarh, which formed part of the erstwhile State of Pepsu and to which the Patiala Municipal (Executive Officers) Act, 2003 Bk.(Act 6 of 2003 Bk.) was extended by the State Government in June, 1968. The provisions of that Act are identical to those of the Punjab Municipal (Executive Officers) Act, 1931. Though in Sub-section (2) of Section 1 of Patiala Municipal (Executive Officers) Act it was specifically stated that it would apply to Patiala Municipal Committee, but at the same time it was provided that it "may by notification be extended by the Government of the State to any municipality in the state." On the authority of this provision the Patiala Act was extended to the Municipal Committee of Gobindgarh. This provision for extension of the Act to any Municipal Committee within the State and the notification issued thereunder applying it to the Municipal Committee of Gobindgarh were challenged by the Municipal Committee itself on grounds similar to those which have been raised before us. Rejecting the contention that Sub-section (2) of Section 1 of the Patiala Act suffered from excessive delegation and was, therefore, ultra vires Article 14 of the Constitution,

the learned Judges (D.K. Mahajan and B.R. Tuli, JJ.) observed as follows:

So far as the first contention is concerned, it must fail in view of the decision of this Court in *Sadhu Singh S. Mulla Singh Vs. District Board, Gurdaspur and Another*, . It is not necessary to cover the same ground all over again. The principal feature which saves the present provision is that, it is not a piece of delegated legislation but is merely conditional legislation. The learned Counsel for the committee relied upon a large number of decisions. Practically all of them were considered in the decision referred to above, excepting *Satwant Singh Sawhney Vs. D. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi and Others*, . *Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others*, , *S. Ajit Singh v. State of Punjab* 1967 S.C.N. 110, and *Umrao Singh v. The State of Punjab* 1969 Cri.L.J. 563. We have gone through these decisions. They do not in any manner go contrary to the rule laid down in *Sadhu Singh's* case. The facts of these cases are clearly distinguishable and they are no authority for the proposition canvassed before us.

9. Dealing with the contention that there was no guidance provided in the Act which could indicate in what circumstances the Government is to extend the Act to a particular Municipal Committee, their Lordships observing that the Patiala Act had been borrowed from the Punjab Act and had been enacted on the same lines, referred to the statement of Objects and Reasons of the Punjab Act, and held that these as well as the provisions contained in Schedule I to the Act clearly indicated the purpose for which the Executive Officer is to be appointed and thus provided sufficient guideline on the basis which the Government may extend the provisions of the Act to the Municipal Committee.

10. The plea that the provisions of Sub-section (2) of section 1 were capable of being abused, leading to discrimination, the learned Judges said:

We cannot assume that the Government will act unreasonably and must proceed on the basis that only in a befitting case the provisions of the Act will be extended....

It is no doubt true that individual act of the Government can be struck down on the basis of Article 14. if it leads to discriminatory application of a law. In order to succeed. proper material has to be placed before the Court and that has not been done in this case. On that short ground. this contention must also fail.

11. In following this authority and holding that Sub-section (2) of Section 1 of the Act could not be struck down on the ground of excessive delegation, the learned Single Judge, in the case before us, has observed thus:

The argument of the learned Counsel that Section 1 of the Act empowering the State Government to extend the provisions of the Act to a Municipal Committee is a piece of delegated legislation is misconceived. When power is given to a State Government to determine the persons to whom a particular statute is to apply or when the same is to apply, it has never been, as observed in the Bench

decision, held to be a case of delegated legislation. The Act is to apply on the happening of certain conditions or existence of certain circumstances which are left to be determined by the State Government and the statute is thus a piece of conditional legislation delegating no legislative policy incorporated in that legislative measure....

The policy of the Act is contained therein and no part thereof has been delegated to the State Government u/s 1 excepting that the choice of selecting the Municipal Committee to which that legislative policy should apply has been left to the determination of the State Government.

12. The learned Judge also endorsed the Bench decision that the Act did not confer unbridled and uncanalised powers upon the State to make an arbitrary selection of the Municipal Committee in the application of the Act and consequently held that Article 14 of the Constitution was not violated. These findings are indisputably in consonance with the rules laid down by the Division Bench in *Municipal Committee, Gobindgarh's case* C.W. No. 2228 of 1968 (supra). It has, however, been urged before us that this Bench decision does not lay down good law and needs re-consideration, as the earlier decision in *Sadhu Singh's case* ILR 1962 (1) Pb. 407 : AIR 1962 Pb. 204 , on which it proceeds was under an entirely different piece of legislation, viz., the East Punjab Urban Rent Restriction Act, 1949, where the question raised pertained to the vires of Section 3 of that Act, empowering the State Government to direct that any of the provisions of that Act shall not apply to a particular building or rented land or any class of building or rented land. In assailing the validity of that provision, it was urged before the Division Bench (Mehar Singh and D.K. Mahajan, JJ.) that Section 3 delegated power to the Provincial Government to exempt certain buildings or class of buildings from the operation of the Act and as this power was unfettered, uncanalised and no guidance for its exercise had been indicated in the Act, it suffered from the vice of excessive delegation and was thus void. On exhaustive review of the various authorities relating to delegated legislation, the learned Judges found that this contention was untenable. The distinction between delegated legislation and conditional legislation was brought out and observing that it was not a case of delegated legislation but conditional legislation, it was ruled that the impugned provision was perfectly valid. After referring to the leading cases laying down the principles of law regarding delegated legislation, including *Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others*, , and *Vasantlal Maganbhai Sanjanwala Vs. The State of Bombay and Others*, , D.K. Mahajan, J., delivering the judgment of the Court, summed up his conclusion in these words:

It is not disputed and indeed it could not be in view of any number of decisions of the Privy Council and the Supreme Court, for instance, *Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and*

Others, and AIR 1961 S.C. 4 that delegation of power to the Government to determine the time as to when the statute should apply, the person or persons to whom it is to apply and the place or places to which it would apply has never been held to be void because it has always been treated as conditional legislation and not delegated legislation. In principle, we do not see any difference between the grant of this type of power and the power under the impugned Section 3.

13. It has now been argued by the learned Counsel for the Appellants that this is not the correct appreciation of the legal position and these observations cannot govern the case in hand which is under a different statute conferring uncontrolled and unguided power on the State to extend the provisions of the Act to any Municipality it chooses. We are not inclined to accept this contention and find no substance in it. There is a distinction between delegated and conditional legislation and this has been brought out in several decisions of their Lordships of the Supreme Court, including *In Re: The Delhi Laws Act, 1912, the Ajmer-Merwara (Extension of Laws) Act, 1947 and the Part C States (Laws) Act, 1950*, , *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, , *Hamdrad Dawakhana v. Union of India* (7), and *Sardar Inder Singh Vs. The State of Rajasthan*, . Most of these authorities have been noticed and considered in *Sadhu Singh S. Mulla Singh Vs. District Board, Gurdaspur and Another*, , and it is needless to cover the same ground. We may, however, refer to the decision in *Sardar Inder Singh Vs. The State of Rajasthan*, , wherein it has been ruled that when an appropriate Legislature enacts a law and authorises an outside authority to bring it into force in such area or at such time as it may decide that is conditional and not delegated legislation, and such legislation is valid. In that case, in fact, even the authority to extend the life of the Act beyond the period fixed therein given to the Raj Pramukh was held to be valid.

14. In the recent case of *M/s. Devi Dass Gopal Krishan v. State of Punjab* AIR 1967 S.C., Subha Rao, C.J., after referring to some earlier decisions of the Court, including *Vasanlal Manganbhai v. State of Bombay*, AIR 1961 S.C. and *Union of India (UOI) and Others and State of Delhi (Now Delhi Administration) and Others Vs. BhanaMal GulzariMal Ltd. and Others*, , reiterated the rule laid down their Lordships earlier to *Vasanlal Manganbhai's* case AIR 1961 S.C., (supra), and quoted the following passage from that judgment as summing up the correct legal position:

The Constitution confers a power and imposes a duty on the legislature to make laws. The essential legislative function is the determination of the legislative policy and its formulation as a rule of conduct. Obviously it cannot abdicate its functions in favour of another. But in view of the multifarious activities of a welfare State, it cannot presumably work out all the details to suit the varying aspects of a complex situation. It must necessarily delegate the working out of details to the executive or any other agency. But there is a danger inherent in such a process of delegation. An overburdened legislature or one controlled by a powerful executive may unduly overstep the limits of delegation. It may not lay

down any policy at all; it may declare its policy in vague and general terms; it may not set down any standard for the guidance of the executive; it may confer an arbitrary power on the executive to change or modify the policy laid down by it without reserving for itself any control over subordinate legislation. This self effacement of legislative power in favour of another agency either in whole or in part is beyond the permissible limits of delegation.

15. In the case before us the legislature has itself made complete and elaborate provisions to carry out its policy and purpose in enacting the Punjab Municipal (Executive Officers) Act, 1931 and the only thing that has been left to the State Government u/s 1(2) of the Act is to extend it to the various Municipal Committees as and when necessity for applying this Act arises. In *Sardar Inder Singh Vs. The State of Rajasthan*, it was held that when an appropriate Legislature enacts a law and authorises an outside authority to bring it into force in such area or at such time as it may decide that is conditional and not delegated legislation, and such legislation is valid. In this connection, Venkataram Ayyar, J., speaking for the Court, observed as follows:

The reason for upholding a legislative provision authorising an outside authority to bring an Act into force at such time as it may determine is that it must depend on the facts as they may exist at given point of time whether the law should then be made to operate, and that the decision of the such an issue is best left to an executive authority. Such legislation is termed conditional, because the Legislature has itself made the law in all its completeness as regards "place, person, laws, powers," leaving nothing for an outside authority to legislate on, the only function assigned to it being to bring the law into operation at such time as it might decide.

16. Reference in that case was made to the Privy Council decision in *Her Majesty the Queen v. Burah* (1875) 5 I.A. 178, wherein their Lordships of the Judicial Committee has expressed the legal position in these words:

The proper Legislature has exercised its judgment as to place, person, laws, powers; and the result of that judgment has been to legislate conditionally as to all these things. The conditions having been fulfilled, the legislation is not absolute. Where plenary powers of legislation exist as to particular subjects, whether in an Imperial or in an Provincial Legislature, they may (in their Lordships' judgment) be well exercised, either absolutely or conditionally. Legislation, conditional on the use of particular powers, or on the exercise of a limited discretion, entrusted by the Legislature to persons in whom it places confidence, is no uncommon thing, and, in many circumstances, it may be highly convenient. The British Statute Book abounds with examples of it; and it cannot be supposed that the Imperial Parliament did not, when constituting the Indian Legislature, contemplate this kind of conditional legislation as within the scope of the legislative powers which it from time to time conferred.

17. Dealing with the subject of delegated legislation H.M. Seervai in his

Constitutional Law of India: A Critical Commentary (1967 Edition) has summed up the result of the various decisions of the Supreme Court of India at page 890 in these words:

We have seen that in *Burah's case*, (1875) 5 I.A. 178, the power to extend the provisions of an Act to another area was upheld by the Privy Council as conditional legislation. In *Sardar Inder Singh Vs. The State of Rajasthan*, after referring to *Jatindra Nath Gupta's case*, Venkatarama Aiyar J. observed that in the *Delhi Laws Case*, (9) it was held that a power conferred on an outside authority to bring an Act in to force was conditional and not delegated legislation and was valid, and he added that in principle, it was equally competent to the legislature to pass a law and prescribe the duration which appeared to the legislature to be then necessary having regard to the circumstances then existing, and to confer on an outside authority a power to extend the duration for a further period if that authority was satisfied that the state of facts which called for the legislation continued to exist. When that power was exercised by the outside authority, the law that would operate was the law which was enacted by the legislative authority in respect of "place, person, laws, powers" and it was clearly conditional and not delegated legislation and was valid. He expressed the dissent of the court from the decision in *Jatindra Nath Gupta's case*. - The result therefore is that the power to extend an Act to other areas or to extend all or some of the provisions of an Act to other areas or to extend the duration of an Act or to bring the Act into force *Attar Singh v. State* (64) A.A. 339 is not void for impermissible delegation of legislative power.

18. In dealing with this matter it is important to bear in mind the following observations made by O'Connor J. of the High Court of Australia in the case of *Baxter v. Ah Way* 8 C.L.R. 626, which were quoted with approval by Mukherjea J. in delivering judgment of the Court in *The Edward Mills Co. Ltd., Beawar and Others Vs. The State of Ajmer and Another*, :

The aim of all legislatures is to project their minds as far as possible into the future, and to provide in terms as general as possible for all contingencies likely to arise in the application of the law. But it is not possible to provide specially for all cases and, therefore, legislation from the very earliest times, and particularly in modern times, has taken the form of conditional legislation, leaving it to some specified authority to determine the circumstances in which the law shall be applied, or to what its operation shall be extended, or the particular class of persons or goods to which it shall be applied.

19. Of late the Courts have noticed increasing tendency on the part of the legislatures in this country to delegate power to an outside authority and in some cases delegation made has been struck down as unconstitutional. The dangers inherent in such delegation by the legislature have been pointed out in *Vasanlal Manganbhai's case*, AIR 1961 S.C. wherein it was observed that the Constitution confers a power and imposes a duty on the legislature to make laws and the essential legislative function of determining the legislative policy and its

formulation as a rule of conduct cannot be abdicated by the legislature in favour of another. At the same time, it was recognised that in view of the multifarious activities of a welfare State a legislature may not be able to work out all the details to suit the varying aspects of a complex situation and it must necessarily delegate the working out of the details to the executive or another agency. This aspect of the matter was present to the mind of the learned Judges in *re Delhi Laws Act, 1912, etc.*, (9) wherein Mukherjea J. observed as follows at page 997 of the Report:

It cannot be said that an unlimited right of delegation is inherent in the legislative power itself. This is not warranted by the provisions of the Constitution and the legitimacy of delegation depends entirely upon its being used as an ancillary measure which the Legislature considers to be necessary for the purpose of exercising its legislative powers effectively and completely. The legislature must retain in its own hands the essential legislative functions which consist in declaring the legislative policy and laying down the standard which is to be enacted into a rule of law, and what can be delegated is the task of subordinate legislation which by its very nature is ancillary to the statute which delegates the powers to make it.

20. On examining the impugned Act in the light of the various decisions discussed above, we find that the legislature has exercised its judgment as to the "place, persons, laws and powers" and the legislation on the subjects with which it deals is complete in all respects. What was left to the State Government is to appoint a date for its coming into force and the authority to extend it to any Municipality in the Punjab. In making this provision the legislature has in no way parted with any of its essential legislative functions and the authority conferred on the State Government is merely ancillary to the main provisions of the statute. The legislature in its wisdom thought it expedient to leave it to the State Government to determine the date of its enforcement and the Municipal Committees to which its application is considered necessary. This has never been considered as a delegation of legislative functions. The apprehension that the authority conferred on the Executive to apply the Act to a Municipality of its choice may be abused is no ground for holding that the power conferred is unconstitutional. Such a notification would, however, be struck down on proof of *mala fides*. In fact even in this case though the plea of *mala fide* was raised, yet neither before the learned Single Judge nor in the course of appeal before us was any material placed to support that plea or even to indicate that the extension of the Act to the Appellant Municipal Committees was not warranted.

21. In agreement with the learned Single Judge, we further find no merit in the plea that the authority conferred on the State Government for extending the provisions of the Act to any Municipal Committee is unguided. As has been observed in *Commissioner of Income Tax, Punjab, Jammu and Kashmir and Himachal Pradesh, Simla Vs. Ram Sarup*, , it is well-settled by now that it is legitimate to take into consideration for the purpose of interpretation of a statute

the evil which was sought to be remedied. In its preamble it is stated that this Act is to provide for the appointment and powers of Executive Officers in municipalities in Punjab. Why it was considered necessary to have such a legislation is explained in its statement of Objects and Reasons. After pointing out that the administration of large Municipal Committees involved supervision of staff and enforcement of many provisions of the Punjab Municipal Act, 1911, and the rules and bye-laws made thereunder, it is stated therein that a whole-time salaried Executive Officer with ample statutory powers to perform the duties for which a President cannot find time and a Secretary does not possess sufficient powers, is needed. It was made clear in the statement of Objects and Reasons that the power of taxation, of making bye-laws, and of dictating policy in general will remain with the Committee but the duty of assessing and collecting taxation, of enforcing bye-laws and putting into execution the policy approved by the Committee will be imposed upon the Executive Officer.

22. The scheme and the various provisions of the Act are fully consistent with the objects of this legislation. On extension of the Act to a Municipal Committee, the Executive Officer is not straightaway appointed by the State Government, but as provided in Section 3 of the Act the appointment has to be made by the Municipal Committee itself. It is only where the Committee fails to make the appointment that the State Government is empowered to appoint an Executive Officer for a renewable period not exceeding five years. From Section 4 of the Act it is apparent that the Executive Officer is invested with the executive power for the purpose of carrying on the administration of the municipality in accordance with the provisions of the Act and the Rules framed thereunder and the Municipal Act. The various powers that can be exercised by him are specified in Schedule I to the Act. Schedule I to the Act gives the powers which he can exercise u/s 4(b) of the Act. From the various provisions of the Act it is abundantly clear that it is only some of the executive functions that have to be performed by the Executive Officer and the powers of taxation and the formulation of policy in general still vest in the Municipal Committee. It is thus apparent that there is sufficient guidance for the Government to enable it to decide whether the Act needs extension to any Municipal Committee.

22. In view of the above discussion, I find no merit in these appeals and would dismiss both of them with costs.

Harbans Singh, C.J.

23. I agree.