
(1974) 01 P&H CK 0009

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 522 of 1971

Surjit Singh Sud

APPELLANT

Vs

The State of Punjab etc.

RESPONDENT

Date of Decision : 21-01-1974

Acts Referred:

Commissions of Inquiry Act, 1952 — Section 3
Constitution of India, 1950 — Article 14
Income Tax Act, 1922 — Section 5(7A)
Penal Code, 1860 (IPC) — Section 21
Punjab Municipal (Executive Officer) Act, 1931 — Section 3(7)
Punjab Municipal Act, 1911 — Section 14, 41
Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 — Section 5
Punjab Town Improvement Act, 1922 — Section 10, 103, 11, 11(1), 12
Slum Areas (Improvement and Clearance) Act, 1956 — Section 19

Citation : (1974) 1 ILR (P&H) 708

Hon'ble Judges : Rajendra Nath Mittal, J; R.S. Narula, J

Bench : Division Bench

Advocate : Kuldip Singh, Bar-at-law, S.P. Jain and I.S. Sidhu, for the Appellant;
Mohinderjit Singh Sethi, for A.G., for the Respondent

Final Decision : Allowed

Judgement

Rajendra Nath Mittal, J.—This Letters Patent Appeal has been filed against the judgment of a learned Single Judge, dated October 8, 1971, by which writ petition of the Petitioner was dismissed.

2. The facts of the present appeal are that the Appellant, who was a practising Advocate at Jullundur, was appointed as a whole time Chairman of the Improvement Trust, Jullundur, for a period of three years with effect from the date he assumed charge of the office, by a notification dated June 4, 1971. He took charge of the office of the Chairman on June 7, 1971. He was given a fixed salary of Rs. 1,000 per mensem plus dearness pay/allowances at Government rates by another notification, dated June 14, 1971. There was a condition that he would give up his practice as a lawyer. He, on August 22, 1971, came to know

from a news published in a daily newspaper that orders for his removal from the office of Chairman of the Trust had been passed. He at once filed a writ petition in this Court challenging the order of his removal from the office of Chairman of the Trust on various grounds. The writ petition was contested by the Respondents. The learned Single Judge dismissed the petition.

3. The first contention of the learned Counsel for the Appellant is that Section 5 of the Punjab Town Improvement Act, 1922 (hereinafter referred to as "the Act") under which the order of removal was passed, was ultra vires Article 14 of the Constitution of India. He urges that the Chairman is one of the trustees of the Trust and that for removal of trustees which includes a Chairman, provision has been made in Section 10 of the Act. A separate provision has also been made in Section 5 for his removal. Both the provisions cover the same field though one is more drastic than the other. The second ground of attack is that Section 5 does not contain any guidance as to in what circumstances a Chairman can be removed. It gives arbitrary and unbridled powers to the Government. He argues that in the circumstances, it is hit by Article 14 of the Constitution of India. In order to appreciate the first argument, it will be necessary to notice some sections of the Act. Section 4 relates to the constitution of the Trust, Section 5 to term of office of Chairman, Section 6 to terms of office of other trustees, Section 7 to resignation of trustees, Section 8 to filling up of casual vacancies, Section 9 to remuneration of Chairman and trustees and Section 10 to removal of trustees. The first question that will arise for consideration is as to whether a Chairman is a trustee and liable to removal u/s 10 of the Act. It is a settled principle of law that the word which occurs at various places in the same Act should be given the same meaning unless the context shows that the Legislature used the word to express different meaning at a particular place. In this view, I am fortified by *Bhogilal Chunilal Pandya Vs. The State of Bombay*, wherein it has been observed that the words are generally used in the same sense throughout in a statute unless there is something repugnant in the context. The learned Counsel for the Appellant also referred to *Harkisandas Bhagvandas and Others Vs. Bai Dhanu*, *Shri Nath v. Purnan Mal* and *Anr. AIR 1942 All. 19 (F.B.)*, *Punit Lall Saha Vs. The State of Bihar*, and *Gulraj Singh Vs. Mota Singh*, in support of the aforesaid proposition. The learned Counsel for the Respondents has not seriously contested the aforesaid contention of the learned Counsel for the Appellant. He, however, urges that Section 10 is restricted to the removal of trustees whereas Section 5 is applicable in the case of removal of a Chairman. The relevant sections which will be helpful in interpreting as to whether Section 10 will be applicable to a Chairman or not are as follows:

4. (1) The trust shall consist of seven trustees, namely,-

(a) a Chairman,

(b) three members of the municipal committee, and

(c) three other persons.

2. The Chairman and three persons referred to in Clause (c) of Sub-section (1) shall be appointed by the State Government by notification.

3. The members of the municipal committee referred to in Clause (b) of Sub-section (1) shall be elected by the municipal committee.

4. If the municipal committee does not by such date as may be fixed by the State Government elect a person to be trustee, the State Government shall, by notification, appoint a member of the municipal committee to be a trustee, and any person so appointed shall be deemed to be a trustee as if he had been duly elected by the municipal committee.

5. Of the persons referred to in Clause (c) of Sub-section (1) not more than one shall be a servant of the Government.

5. The term of office of the Chairman shall be such period not exceeding three years, as the State Government may fix in this behalf, but when the trust ceases to exist the said term of office shall be deemed to expire on the date of the dissolution of the trust. He shall be eligible for reappointment, and he may be removed from office by the State Government at any time.

6. The term of office of every trustee elected under Clause (b) of Sub-section (1) of Section 4 shall be three years or until he ceases to be a member of the Municipal Committee, whichever period is less, and the term of office of every trustee appointed under Clause (c) of the said Sub-section shall be three years, but when the trust ceases to exist the said term of office shall be deemed to expire on the date of the dissolution of the trust.

7. (1) Any trustee may at any time resign his office, provided that his resignation shall not take effect until accepted by the trust.

(2) The term of office of appointed and elected trustees shall commence on such date as shall be notified in this behalf by the State Government.

(3) A person ceasing to be a trustee by reason of the expiry of his term of office shall, if otherwise qualified, be eligible for re-election or reappointment.

8. The Chairman shall receive such salary and each other trustee shall receive such salary or remuneration as may be sanctioned by the State Government.

4. A reading of Section 4 shows that a Trust consists of seven trustees which includes a Chairman. The term of office of a Chairman has been provided in Section 5 whereas that of other trustees mentioned in Clauses (b) and (c) of Section 4, has been given in Section 6 of the Act. A trustee can resign his office under Sub-section (1) of Section 7. There is no specific clause for resignation by the Chairman. Sub-section (2) of Section 7 says that the term of office of appointed and elected trustees shall commence on such date as shall be notified in this behalf by the State Government. There is also no separate clause regarding the commencement and termination of the office of a Chairman. Sub-section (3) of Section 7 makes a trustee, who ceases to be so by reason of

expiry of his term of office, eligible for re-election or reappointment. The learned Counsel for the Respondents has vehemently urged that Sub-section (3) of Section 7 of the Act is not applicable in the case of a Chairman as a separate provision has been made for his reappointment u/s 5 of the Act. According to Section 5, the Chairman is eligible for reappointment when he ceases to be so on account of the fact that the Trust has ceased to exist. The two sections cover different fields. It cannot be the intention of the Legislature that a trustee can be reappointed in case his term of office expires whereas the Chairman after expiry of his term cannot be so appointed. On reading Section 7, the irresistible conclusion is that it applies to Chairman as well as other trustees. Section 9 says that Chairman shall receive such salary and each other trustee shall receive such salary or remuneration as may be sanctioned by the State Government. In Section 9, the Legislature clearly distinguishes a Chairman from a trustee. Section 9 supports the contention of the learned Counsel for the Appellant that wherever the Legislature wanted that Chairman should not be included in the trustees, it used a different phraseology. Section 10 enumerates various reasons for which the trustees can be removed. It cannot be said that the trustees appointed under Clauses (b) and (c) of Sub-section (1) of Section 4 can only be removed u/s 10 of the Act and not the Chairman. Under Sub-section (a) of Section 10, a trustee can be removed if he refuses to act, or becomes, in the opinion of the State Government, incapable of acting or has been declared an insolvent, or has been convicted of any such offence or subjected by a Criminal Court to any such order as implies in the opinion of the State Government, a defect of character which unfits him to be a trustee. In other Sub-sections, certain other disqualifications on account of which a trustee can be removed, have been given. It cannot be imagined that a trustee can be removed for becoming an insolvent or having been convicted by a Criminal Court but not a Chairman. There may be some clause in the section which from the context shows that it is not applicable in the case of a Chairman who is a whole-time office-holder of the Trust, yet on reading Section 10, the only conclusion is that it applies in the case of Chairman as well as other trustees. Section 11 speaks of disabilities of trustees removed u/s 10 and when they can be reappointed. According to sub-section (1) of Section 11, a trustee removed under Clause (a) of Section 10 shall not be eligible for re-election or reappointment for a period of three years from the date of his removal. Under Sub-section (2), a trustee removed under any other provision of Section 10 shall not be eligible for re-election or reappointment until he is declared by the State Government to be so eligible. On reading the aforesaid section, it is clear that the section applies in the case of a Chairman also along with the trustees. Section 12 deals with the meetings of the trust. In the section wherever a Chairman has been distinguished from a trustee, it has been specifically stated so. Committees are constituted in the Trust u/s 14. A provision has been made for the meetings of the committees u/s 15. Sub-section (1) of Section 14 which deals with the constitution and functions of committee, reads as follows:

14. (1) The trust may from time to time appoint committees of the trust consisting of such persons of any of the following classes as it may deem fit, namely:

(i) trustees;

(ii) persons associated with the trust u/s 13;

(iii) other persons whose services, assistance or advice the trust may desire as members of such committees.

5. In Sub-section (2) of Section 15, it has been provided that the Chairman may attend any meeting of a committee appointed u/s 14 whether he is a member of such committee or not, and shall preside at every such meeting at which he is present. On reading the said Sub-sections, it is clear that a trustee includes a Chairman as he can be appointed a member of the committee. Under Sub-section (2) of Section 15, a Chairman has been authorised to attend any meeting of a committee even if he is not a member thereof. Section 16 says that trustees and associated members of the Trust or committees are not to take part in proceedings in which they are personally interested. In the section only the word "trustee" has been used. It does not appear to be the intention of the Legislature that a trustee who suffers from certain disqualification for attending a particular meeting, cannot attend the same but a Chairman who suffers from similar disqualification, can attend that meeting and preside over it. The word "trustee" in the said section includes a Chairman. Section 93 says that every trustee, and every officer and servant of the Trust, and every member and officer and servant of the Tribunal, shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code. Section 94 relates to contributions by Trust towards leave allowances and pensions of servants of the Government employed as Chairman, or as an officer, or servant of the Trust. A reading of Section 93 also supports the contention of the learned Counsel for the Appellant that the Chairman is included in trustee as it could not be the intention of the Legislature that the trustees, the officers and servants of the Trust, will be public servants whereas the Chairman is not. In Section 94, the Legislature has specifically used the word "Chairman" because it does not apply to other trustees. A notice is to be served before filing a suit against the Trust, any trustee or any person, associated with the Trust u/s 13 or any member of a committee appointed u/s 14 or any officer or servant of the Trust, or any person acting under the direction of the Trust or of the Chairman or of any officer or servant of the Trust, in respect of an act purporting to be done under the Act. It appears that in the section, a trustee includes a Chairman otherwise fantastic result will follow. Under the section, no suit can be instituted against a trustee and officers of the Trust and the persons who are acting under the orders of the Chairman without a notice. The section shows that trustee includes a Chairman otherwise it is not applicable to him. A review of all the aforesaid sections shows that the word "trustee" includes "Chairman" unless the context of the section shows otherwise. Therefore, Section 10 is also applicable in the case of a Chairman as in the case

of other trustees. Thus there are two sections in the Act for removal of a Chairman. Kirpal Singh, Chairman, Improvement Trust, Amritsar, was removed by the State Government u/s 10 of the Act. He challenged the order of the State Government in Civil Writ No. 549 of 1969, which was allowed by this Court on January 16, 1969.

6. The next question that will arise is as to whether the two sections cover different fields or not. Section 5 provides that the term of a Chairman shall be such period not exceeding three years as the State Government may fix in this behalf. It is further stated in the section that he may be removed from office by the State Government at any time. The section is a general one and does not say that for what reasons he can be removed. u/s 10, the State Government can remove him for certain reasons. It has not been stated under what circumstances, Section 5 will come into operation. A Chairman can be removed u/s 5 for the reasons given in Section 10. Thus both the sections operate in the same field. Section 5 is more drastic than Section 10 and the Government can resort to any of the sections for removing a Chairman in its discretion.

7. Mr. Mohinderjit Singh Sethi has brought to our notice Sections 12, 15, 18, 19, 20, 21, 39, 53, 90, 94, 96 and 103, wherein the word "Chairman" has been specifically used and urged that wherever Legislature wanted that the provision was applicable to a Chairman, it has specifically stated so therein. He further argues that if the word "trustee" has been used in a particular section and not "Chairman" that section will not apply to a Chairman. We regret our inability to subscribe to that view. The word "trustee" in the Act includes "Chairman" unless the context shows otherwise.

8. It is not necessary to go into the scope of Article 14 of the Constitution of India as it has been considered and explained in a number of cases by the Supreme Court. It will be sufficient for the purposes of this case to refer to some of the observations of their Lordships of the Supreme Court in *Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another*, . In that case vires of Section 5 of Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959, which provided that if after giving the person in possession of public premises a reasonable opportunity of being heard and considering the cause and evidence, the Collector was satisfied that he was in unauthorised occupation thereof, he might make an order of his eviction. Section 7 empowered the Collector to recover rent in arrears and damages from him. After discussing various cases, their Lordships observed that the principle which emerges from those decisions is that discrimination would result if there are two available procedures one more drastic or prejudicial to the party concerned than the other and which can be applied at the arbitrary will of the authority. Their Lordships further observed as follows:

Assuming that persons in occupation of Government properties and premises form a class by themselves as against tenants and occupiers of private owned properties and that such classification is justified on the ground that they require

a differential treatment in public interest, those who fall under that classification are entitled to equal treatment among themselves. If the ordinary law of the land and the special law provide two different and alternative procedures, one more prejudicial than the other, discrimination must result if it is left to the will of the authority to exercise the more prejudicial against some and not against the rest. The procedure u/s 5 of the Punjab Act 31 of 1959 is obviously more drastic and prejudicial than the one under the Code of Civil Procedure. There can be no doubt that Section 5 confers an additional remedy over and above the remedy by way of suit and that by providing two alternative remedies to the Government and in leaving it to the unguided discretion of the Collector to resort to one or the other and to pick and choose some of those in occupation of public properties and premises for the application of more drastic procedure u/s 5, that section has lent itself open to the charge of discrimination and as being violative of Article 14. In this view, Section 5 must be declared to be void.

9. In the present case, if a Chairman has to be removed u/s 5, no reasons whatsoever need be given whereas if he is removed u/s 10, the Government has to state under what clause his case falls. If the Government wants to remove a Chairman under any of the clauses of Section 10, it can remove him u/s 5 and thereby need not state the reasons as required u/s 10. Thus no guidance has been laid down as to in what circumstances Sections 5 and 10 will be applicable. In view of the aforesaid reasons, we find that the contention of the learned Counsel for the Appellant has great force and the portion of Section 5 which authorises the State Government to remove the Chairman from his office is ultra vires Article 14 of the Constitution of India.

10. The next question that arises for consideration is whether unfettered, uncontrolled and unguided powers have been given to the State Government u/s 5 to remove a Chairman and whether it contravenes Article 14 of the Constitution of India on this ground. A reading of Section 5 shows that no guideline has been provided as to when a Chairman can be removed under that section of the Act. The learned Counsel for the Respondents has argued that sufficient guideline can be inferred from the preamble of the Act wherein it is stated that the provisions have been made for the improvement and expansion of towns in the Punjab. He further argues that in case the State Government finds that the removal of the Chairman of a Trust is necessary in the interest of improvement and expansion of towns, it can do so u/s 5. In our view, the preamble does not provide a sufficient guideline for removal of a Chairman of a Trust u/s 5. The State Government at its whim can remove a Chairman. The learned Counsel for the Respondents has not been able to refer to any other section in the Act from which it can be found out in what circumstances a Chairman can be removed. In view of the said facts, the question for revision is whether the part of the section which authorises the State Government to remove the Chairman suffers from vice of uncertainty and is liable to be struck down. It has been observed in *The State of West Bengal v. Anwar Ali Sarkar* (1952) 3 S.C.R. 284, that it cannot be said that an Act does not contravene the equality rule laid down by Article 14 simply because it confers

unregulated discretion on officers or administrative bodies. It is further observed that the true position is that if the statute itself is not discriminatory the charge of violation of the article may be only against the official who administers it, but if the statute itself makes a discrimination without any proper or reasonable basis, it would be void for being in conflict with Article 14. A similar matter came up for consideration in *Kathi Raning Rawat v. The State of Saurashtra* (1952) 3 S.C.R. 435, wherein it was observed as follows:

It is a doctrine of the American Courts which seems to me to be well-founded on principle that the equal protection clause can be invoked not merely where discrimination appears on the express terms of the statute itself, but also when it is the result of improper or prejudiced execution of law. But a statute will not necessarily be condemned as discriminatory, because it does not make the classification itself but, as an effective way of carrying out its policy, vests the authority to do it in certain officers or administrative bodies.

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In my opinion, if the legislative policy is clear and definite and as an effective method of carrying out that policy a discretion is vested by the statute upon a body of administrators or officers to make selective application of the law to certain classes or groups of persons, the statute itself cannot be condemned as a piece of discriminatory legislation. After all the law does all that is needed when it does all that it can, indicates a policy... and seeks to bring within the lines all similarly situated so far as its means allow (*Buck v. Bell*, 274 U.S. 200)" In such cases, the power given to the executive body would import a duty on it to classify the subject-matter of legislation in accordance with the objective indicated in the statute. The discretion that is conferred on official agencies in such circumstances is not an unguided discretion; it has to be exercised in conformity with the policy to effectuate which the direction is given and it is in relation to that objective that the propriety of the classification would have to be tested. If the administrative body proceeds to classify persons or things on a basis which has no rational relation to the objective of the legislature, its action can certainly be annulled as offending against the equal protection clause. On the other hand, if the statute itself does not disclose a definite policy or objective and it confers authority on another to make selection at its pleasure, the statute would be held on the face of it to be discriminatory irrespective of the way in which it is applied.

11. The learned Counsel for the Appellant has referred to *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, , wherein Section 3 of Commissions of Inquiry Act, 1952, was challenged. S.R. Dass, C.J., who delivered the judgment, after perusing the decisions of the Court, observed that a statute which may come up for consideration on a question of its validity under Article 14 of the Constitution may be placed in one or the other of five classes. The learned

Chief Justice then gave all the five classes in which a statute can fall. The present case falls within class (iii) of the aforesaid classes which is as follows:

A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the Court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the Court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situated and that; therefore, the discrimination is inherent in the statute itself. In such a case the Court will strike down both the law as well as the executive action taken under such law, as it did in *State of West Bengal v. Anwer Ali Sarkar* (supra), *Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others*, , and *Dhirendra Kumar Mandal Vs. The Superintendent and Remembrancer of Legal Affairs to The Government of West Bengal and Another*, .

12. Again, the matter was considered in *Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi*, , wherein the vires of Section 19 of the Slum Areas (Improvement and Clearance) Act, 1056, was questioned. Their Lordships of the Supreme Court after reviewing the case law summarised all the decided Supreme Court cases on different lines. Clause (2) of the summary applies to the present case wherein it was observed that the enactment or the rule might not, in terms, enact a discriminatory rule of law but might enable an unequal or discriminatory treatment to be accorded to persons or things similarly situated. It is further observed that that would happen when the Legislature vests a discretion in an authority, be it the Government or an administrative official acting either as an executive officer or even in a quasi-judicial capacity by a legislation which does not lay down any policy or disclose any tangible or intelligible purpose, thus clothing the authority with unguided and arbitrary powers enabling it to discriminate. It is also observed that the very provision of law which enables or permits the authority to discriminate, offends the guarantee of equal protection afforded by Article 14. In *Ram Dial and Others Vs. The State of Punjab*, , the vires of Section 14(e) of the Punjab Municipal Act, 1911, which provides that notwithstanding anything in the foregoing sections of that chapter, the State Government may at any time for any reason which it may deem to affect the public interests, or at the request of a majority of the electors, by notification, direct that the seat of any specified member, whether elected or appointed, shall be vacated on a given date, and in such case, such seat shall be vacated

accordingly, notwithstanding anything in that Act or in the rules made thereunder had been challenged. The Supreme Court struck down the aforesaid Sub-section being violative of Article 14. Mudholkar, J., who gave different reasons for the aforesaid conclusion, observed as follows:

The powers conferred by Section 14 can be exercised by the State Government (i) for any reason which it may deem fit to affect the public interest or (ii) at the request of the majority of the electors. The expression "public interest" is of wide import and what would be a matter which is in the public interest would necessarily depend upon the time and place and circumstances with reference to which the consideration of the question arises. But it is not a vague or indefinite ground, though the Act does not define what matters would be regarded as being in the public interest. It would seem that all grounds set out in Section 16, which confers upon the State Government the power to remove any member of a Committee and sets out a number of grounds upon which this could be done, would be in the public interest. Section 14, however, apart from the fact that the power it confers upon the State Government is not limited to matters set out u/s 16, confers upon the Government the power to determine not merely what is in the public interest but also what "for any reason which it may deem to affect the public interest". This would suggest that the power so conferred would extend to matters which may not be in the public interest. For, that would be the effect of introducing the fiction created by the words "for any reason which it may deem". There is no guidance in the Act for determining what matters, though not in public interest, may yet be capable of being deemed to be in the public interest by the State Government. In the circumstances it must be held that the power which conferred upon the State Government being unguided is unconstitutional. For this reason, Section 14 in so far as it confers powers on the State Government "to require a seat of a member of a Committee to be vacated for any reason which it may deem to affect public interest is violative of Article 14 of the Constitution and, therefore, unconstitutional.

13. In Civil Writ No. 187 of 1966, decided on February 24, 1967, reported as S. Ajit Singh v. State of Punjab and Anr. (1967) 9 S.C.N. 119, vires of Sub-clause (v) of proviso to Clause 2 of the Punjab Milk Products Control Order, 1966, was challenged, by which the Milk Commissioner had been authorised to give exemption to certain persons from the provisions of that Act. It was observed by their Lordships of the Supreme Court as follows:

Clause (v) of the proviso conferred upon Milk Commissioner subject to such terms and conditions as he may by order, specify, power to authorize the manufacture, sale, service or supply of khoa, rubree, or sweets in the preparation of which milk or any of its product is used, prima facie, confer uncanalised power upon the Milk Commissioner which may be arbitrarily used to extend the scope of exemption granted by the order under Clauses (i) to (v). It was stated by the Milk Commissioner that he has exercised the power under Clause (v) in favour of only one body, namely, the National Dairy Research

Institute, Karnal authorising that Institute to manufacture certain milk products for teaching or research and not for commercial purposes. Whether the power under Clause (v) has been exercised for a purpose which is beneficial and has not been arbitrarily exercised is wholly immaterial in considering the validity of the clause. In our view, the Order does not lay down any principles which are to guide the Milk Commissioner in exercising the power and confers upon him authority which is capable of being exercised arbitrarily. Held Clause (v) as framed cannot be sustained.

14. Reliance has also been placed by the learned Counsel for the Appellant on the following observations in *Satwant Singh Sawhney Vs. D. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi and Others*, :

The doctrine of equality before the law is necessary corollary to the high concept of the rule of law accepted by Constitution of India. One of the aspects of rule of law is that every executive action, if it is to operate to the prejudice of any person, must be supported by some legislative authority. Secondly, such a law would be void, if it discriminates or enables an authority to discriminate between the persons without just classification. What a Legislature could not do, the executive could not obviously do.

15. On applying the aforesaid principles to the present case, it will be clear that the State Government has been given unbridled, uncanalized and arbitrary powers to remove a Chairman of a Trust u/s 5 of the Act. No guideline has been provided according to which the said principles can be applied. It is at the whim of the State Government either to retain the Chairman or to remove him. It does not matter that the power vests in the State Government as a Chairman can be discriminated even if such a power is given to the highest executive authority. The learned Counsel for the Respondents has argued that as the authority is vested in a high authority, therefore, it should be presumed that it cannot be misused. In support of his contention, he has placed reliance on *Pannalal Binjraj Vs. Union of India (UOI)*, wherein vires of Section 5 (7A) of the income tax Act, 1922, had been challenged. Under that Sub-section, it was provided that the Commissioner of income tax may transfer any case from one income tax Officer subordinate to him to another and the Central Board of Revenue may transfer any case from one income tax Officer to another. It is also provided in the said Sub-section that such transfer may be made at any stage of the proceedings and shall not render necessary the reissue of any notice already issued by the income tax Officer from whom the case is transferred. Their Lordships of the Supreme Court held the section to be intra vires. In that case, the purpose of the provisions which was administrative convenience for enabling assessments to be made in the manner indicated by the income tax Act, provided a sufficient guidance. The section on that score was held to be immune from attack. The facts of the present case are distinguishable from that of *Messrs Pannalal Binjraj and Ors.*" case (supra). In the circumstances, the aforesaid observations are not applicable to it. The learned Counsel for the Respondents has also placed reliance

on Jyoti's Pershad's case (12) (supra). In that case also, the Supreme Court after perusing various sections observed that sufficient guidance has been provided in the Act for interpreting Section 19 of Slum Areas (Improvement and Clearance) Act, the vires of which were in question. A perusal of the Act shows that there is no such guidance provided in it. Mr. Sethi had also drawn our attention to S. Arjan Singh S. Mehar Singh Vs. State of Punjab and Another, , wherein vires of Section 41 of the Punjab Municipal Act, 1911, were challenged. It is stated in that section that if any officer or servant of the Committee is found to be negligent in the discharge of his duties, in the opinion of the State Government, the Committee shall on the requirement of the State Government suspend, fine or otherwise punish him and if in the opinion of the State Government he is unfit for his employment, the Committee shall dismiss him. The Petitioner in that case was removed from service under that section. He challenged the order of removal by way of a writ petition. Therein he challenged the vires of Section 41. The learned Division Bench while disposing of the writ petition observed that there is reasonable nexus between the object to be achieved and the impugned provision of law. It is also observed that the object of Section 41 is to see that unfit persons are not retained in service by the municipal committee because or on account of ulterior or collateral motives, and for this reason if the State Government forms an opinion that an officer or an employee is unfit, the Government is empowered to direct his dismissal. It is also held that this being the genesis of the section, it is not unconstitutional. The section provided a guideline for the State Government to recommend that a Municipal employee should be removed from service and it was this that if he was unfit to be retained in service. In Section 5 of the Act, no criteria whatsoever has been laid down for removing a Chairman of a Trust. The aforesaid observation will not be helpful for construing Section 5 of the Act. In the circumstances, we are of the opinion that the power of the State Government u/s 5 by which it can remove a Chairman is discriminatory and is hit by Article 14 of the Constitution of India.

16. The second contention of the learned Counsel for the Appellant is that a Chairman of an Improvement Trust is an officer of the Trust and is governed by the Rules to regulate the employment, suspension, removal and conduct of officers and servants of the Punjab Improvement Trust in Punjab (hereinafter referred to as "the Employment Rules") and that he can be removed in accordance with the said Rules. He has referred to Rule 19 of the Employment Rules and submitted that the procedure prescribed in that rule has not been followed in passing an order of removal against the Appellant. In order to know whether the Rules apply to the Appellants, it is necessary to find out as to whether a Chairman is an Officer of the Trust or not. The Employment Rules have been framed under Clause (iii) of Sub-section (1) of Section 73, which is as follows:

73(1) In addition to the power conferred by Section 64, the State Government may make rules consistent with this Act and applicable to all trusts or any trust-

(i) * * *

(ii) * * *

(iii) as to employment, payment, suspension and removal of officers and servants of the trust, and the conduct of such officers and servants.

17. A Chairman is appointed u/s 5 of the Act wherein the term of his office is also provided. Section 17 relates to power of Trust to fix number and salaries of permanent servants and of appointment of temporary servants in cases of emergency, Section 18 to power of appointment etc., of officers and servants, Section 19 to control by Chairman of officers and servants of the Trust and Section 20 to delegation of certain Chairman's functions to any officer of the Trust. The aforesaid sections are as follows:

17. Subject to such rules as the State Government may make under Clause (iii) of Section 73 the trust may from time to time employ such servants as it may deem necessary and proper to assist in carrying out the purposes of this Act, and may assign to such servants such pay as it may deem fit.

18. Subject to the provisions of Section 17 and to any rules for the time being in force, the power of appointing, promoting and granting leave to officers and servants of the trust, and reducing, suspending or dismissing them for misconduct, and dispensing with their services for any reason other than misconduct, shall be vested-

(i) in the case of officers and servants whose maximum monthly salary does not exceed one hundred rupees- in the chairman, and

(ii) in other cases-in the trust.

Provided that any officer or servant, in receipt of a minimum monthly salary exceeding fifty rupees who is reduced suspended or dismissed by the chairman may appeal to the trust, whose decision shall be final.

19. The Chairman shall exercise supervision and control over the acts and proceedings of all officers and servants of the trust; and, subject to the foregoing sections, shall dispose of all questions relating to the service of the said officers and servants and their pay, privileges and allowances.

20.(1) The Chairman may, be general or special order in writing, delegate to any officer of the trust any of the chairman's powers, duties or functions under this Act or any rule made thereunder except those conferred or imposed upon or vested in him by Sections 12, 15, 21, 46 and 96, respectively.

20(2) The exercise or discharge by any officer of any powers, duties or functions delegated to him under Sub-section (1) shall be subject to such conditions and limitations (if any) as may be prescribed in the said order, and also to control and revision by the Chairman or the Trust.

18. On reading Sections 17 and 18, it emerges that the officers and servants of

the Trust are appointed by the Chairman in case their salary does not exceed Rs. 100 and in other cases by the Trust. Section 19 gives powers to the Chairman of supervision and control over the acts and proceedings of all officers and servants of the Trust. He has also been authorized to dispose of all questions relating to the service of the said officers and servants and their pay, privileges and allowances. As already stated, a Chairman is not appointed by the Trust but by the State Government. He is also liable to removal by it. The Trust has no authority either to appoint or remove a Chairman. In the case of servants and officers, the power to remove is not vested in the State Government but in the Chairman of the Trust or in the Trust as the case may be. Clause (iii) of Sub-Section 1 of Section 73 authorizes the State Government to make rules regarding the employment, suspension and removal of officers and servants of the Trust and the conduct of such officers and servants.

On reading Sections 18, 19 and 20 along with the said clause, it is clear that the Legislature never wanted that the officers and servants will include a trustee. In Section 20, the Chairman has been authorized to delegate his power to any officer of the Trust. The section clearly makes a distinction between a Chairman and an officer. Rule 19 says as to how an officer can be removed from service. The said rule is as under:

19(1) If it is sought to remove any officer or servant otherwise than-

(i) for misconduct,

(ii) by discharge during probation, or

(iii) by discharge at the expiry of the period for which he was engaged,

an order shall be recorded by the competent authority giving reasons for which it is proposed to take such action.

(2) A copy of this order shall be communicated to the officer or servant concerned and he shall be required within a reasonable time to offer his explanation, if any.

(3) It shall not be necessary to hold any detailed enquiry, but the explanation of the person concerned shall be taken into consideration before final orders are passed.

(4) In the absence of a written contract to the contrary, every officer or servant removed under this rule shall be entitled to one months notice before removal or to one month's wages in lieu thereof.

19. The aforesaid rule applies only to those officers and servants who are to be appointed either by the Chairman or the Trust and not to the Chairman who is to be appointed by the State Government. The learned Counsel for the Appellant has specifically referred to Rule 11B of the Employment Rules, which is as follows:

The Chairman of a Trust shall retire on or after attaining the age of 55 years, unless some stipulation requires it to happen earlier by cessation of his term of office, or unless the Government allows him to continue in office beyond the age of 55.

Note.-This rule does not in any way affect the provisions of Section 5 of the Punjab Town Improvement Act, 1922.

20. The learned Counsel further submits that incorporation of the rule in the Employment Rules clearly shows that the Government intended that the said rule shall apply to the Chairman of the Trust. In our opinion, that rule could not be incorporated in the Employment Rules under Clause (iii) of Sub-section (1) of Section 73 of the Act under which rules could be framed only for the officers and servants of the Trust. Merely because Rule 11B has been incorporated, it cannot be held that the Employment Rules have been made applicable to the Chairman of the Trust. The learned Counsel for the Appellant has then referred to the Punjab Town Improvement Trusts, Casual Leave Rules, 1950 (hereinafter referred to as "the Casual Leave Rules") and has drawn our attention to the note given under the appendix which is as follows:

The Chairman shall, ordinarily, obtain the previous sanction of the Trust to such leave, but when in special circumstances, previous sanction is not possible he shall obtain formal sanction in the next meeting of the Trust following the date(s) on which he avails of the leave.

21. In the appendix, the authorities competent to grant casual leave to the officers of the Trust have been stated. Merely because of the note regarding leave underneath the appendix, a Chairman cannot be held to be an officer of the Trust. The rules were framed for the employees of the Trust. In our view, this contention of the learned Counsel for the Appellant has also no substance.

22. In the end, the learned Counsel for the Appellant has drawn our attention to a letter of the Government, dated August 25, 1949, which is regarding grant of dearness allowance and permission to contribute to provident fund to the Chairman of the various Town Improvement Trusts in East Punjab. Some of the questions mentioned in the letter were considered by the Government and a decision thereon was given by it. The letter is as follows:

The following questions have been considered by Government:

- (1) Whether the Chairman of the Town Improvement Trusts in East Punjab are Government Officers or Officers of their respective Trusts,
- (2) Whether they can contribute to a Provident Fund, and
- (3) Whether they are entitled to receive dearness allowance.

2. It has been decided that:

- (1) These Chairmen cannot be regarded as Government servants because Trusts are local authorities. The Chairmen are Trustees and Officers of their respective

Trusts.

(2) Government will have no objection to the grant to Chairmen of dearness allowance at the rates to which they would have been entitled had they been Government Servants drawing the same salary, and

(3) At the time of advertising these posts, it was clearly stipulated that the Chairman will not be entitled to any provident fund or pensionary benefits. The matter has been reconsidered, and it has been decided that the Chairman may be permitted to contribute to a Provident Fund like other officers and servants of the Trusts where such a fund or funds exist.

The questions were posed for the purposes of contribution to the Provident Fund and regarding receiving dearness allowances by the Chairman. In reply, the Government has said that the Chairman or trustees are officers of their respective Trusts but it does not say that they are officers of the Trust. Moreover, they are considered officers of their respective Trusts for the aforesaid purposes. They do not become officers of the Trust under the Act. The interpretation which is put by the learned Counsel for the Appellant on the letter will not make the Chairman an officer of the Trust if the provisions of the Act do not warrant it. In the circumstances, this contention of the learned Counsel for the Appellant has also no substance.

23. For the reasons given above, we are of the opinion that a Chairman of the Town Improvement Trust is not an officer of the Trust within the meaning of Rule 19 of the Employment Rules.

24. The third contention of the learned Counsel for the Appellant is that no reasonable opportunity was given to the Appellant before passing an order of removal against him. He has further submitted that certain remarks were given on the file against him which were damaging. In case, he was not given, an opportunity to show cause against those remarks, his removal is illegal. He also submits that it may be possible that in case he is to be appointed again to some office by the Government, those remarks may be taken into consideration by it and he may not be considered fit for appointment to such Government office. He also urges that it was the duty of the Government to serve him with a show cause notice before his removal even in accordance with the principles of natural justice. We have heard the contention of the learned Counsel for the Appellant at considerable length but do not find force in it. u/s 5 of the Act, he can be removed from service by the State Government at any time. It has not been provided in Section 5 that any show cause notice will be served upon him before removal. A similar case came up before a Full Bench of this Court in *Prem Nath Bhalla v. State of Haryana and Ors.* I.L.R (1970) II Pb. and Hr. 772, wherein a similar provision in the Punjab Municipal (Executive Officer) Act, 1931, came for interpretation. According to Sub-section (7) of Section 3, an Executive Officer could be removed from office by the State Government at any time. While interpreting the section, it was observed by the learned Full Bench that it was not

necessary to give show cause notice before removing an Executive Officer. The relevant observations of the learned Full Bench are as follows:

Sub-section (7), of Section 3 of Punjab Municipal (Executive Officer) Act, 1931 governs the appointments made both under Sub-section (1) and (4), of Section 3 of the Act. An Executive Officer appointed under any of these Sub-sections can be removed at any time by the Government. His is not a tenure job. When an Executive Officer accepts the appointment, he is supposed to know that even though the Municipal Committee is appointing him for a fixed period, yet the Government is entitled to remove him at any time even after 15 days of his appointment. Under these circumstances, he cannot complain that he has a right to the post for the full period. If he knows that his services can be dispensed with at any time, then he cannot have any grievance if action is taken against him under Sub-section (7), by the State Government without giving him any show-cause notice. He cannot say as to why and on what ground he is being removed and precisely for that very reason he also cannot say that he should have been given a show-cause notice before he is removed from his office. He has no right to hold the post for the full period fixed at the time of his appointment. Principles of natural justice only come into play when somebody has got a right to a post and even though the terms of his appointment do not say that he will be given a show-cause notice before his services are terminated, still he should be given such a notice before he is asked to go out of office. In that situation, he is entitled to ask the Government as to why his services are being dispensed with. When he accepts the appointment, both he and the Government know that he has a right to hold that post and if it is a tenure job, then both the parties fully realise that he has to remain there for a particular period. But, on the other hand, if in the very beginning he is told that though he is being appointed for a fixed period, yet his services can be terminated at any time during that period by the Government, he cannot then complain as to why his services are being dispensed with earlier. Hence the State Government can u/s 3(7) of the Act remove an Executive Officer of a Municipal Committee appointed either under Sub-section (1), or Sub-section (4) of Section 3 of the Act before the expiry of the period of his appointment without complying with the rules of natural justice by affording him an opportunity to show-cause against such an action and the principles of natural justice are not implied in Section 3(7), of the Act.

25. The aforesaid ratio applies to the present case on all fours. If any adverse remark has been given against the Appellant in his file, that cannot be taken into consideration by the State Government if any question arises about his appointment as he has not been conveyed those remarks. In the circumstances, the contention of the learned Counsel for the Appellant is rejected.

26. Lastly, the learned Counsel for the Appellant has urged that the power to remove a Chairman exists if he is a reappointed Chairman but not in a case in which he has been originally appointed as such. We are unable to persuade

ourselves to accept the contention of the learned Counsel for the Appellant. The last sentence of Section 5 consists of two independent clauses. The former says that after the dissolution of the Trust, a Chairman is eligible for reappointment and the latter that he may be removed from office by the State Government at any time. Both the clauses are independent. "He" in the latter clause means "Chairman" and not "reappointed Chairman". This contention of the learned Counsel for the Appellant is, therefore, rejected.

27. For the reasons recorded above, we accept the appeal with costs and quash the impugned notification. Counsel's fee Rs. 200.