

Before M.M. Kumar & T.P.S. Mann, JJ.

BAKSHI RAM ARORA AND OTHERS,—Petitioners

versus

STATE OF PUNJAB AND OTHERS,—Respondents

C.W.P. No. 6038 of 2002

25th April, 2008

Punjab Town Improvement Act, 1922—S. 103—Constitution of India, 1950—Arts. 14 and 226—Dissolution of Trusts—Challenge thereto—Powers of State u/s 103 of 1922 Act—Exercise of—Legislative in nature—Power cannot be regarded to have been exercised u/s 72-F of 1922 Act—Constitutional validity of Section 103 conferring power on Government to dissolve Trust upheld—Petition dismissed.

Held, that the power exercised under Section 103 of the Trust Act does not contemplate that an order has to be passed in respect of an individual. The decision has been reached by the then Government on the basis of general rule of conduct. It is different matter that on dissolution the Chairman and Trustees are discontinued by virtue of provisions of Section 103(2)(c) of the Trust Act. It is also evident that issuance of notification dated 4th April, 2002 has put in motion a number of other statutory provisions, which does not concern the interest of an individual but seemingly relates to public in general or concerns a general direction. It also lays down future course of action. The aforementioned test fully apply to the facts of the present case and the issuance of notification dated 4th April, 2002 under Section 103 of the Trust Act must be regarded as a legislative function.

(Para 24)

Further held, that once it is held that power exercised in pursuance to Section 103 of the Trust Act is legislative in character then the principles of natural justice would not be available. The fundamental principle underlying the exclusion of principles of natural justice is that when legislature undertook the process of framing law

then it is not supposed to grant hearing to the masses, especially in our country where the Assembly or Parliament are constituted by those who have directly elected by the people. Such representatives are to translate the aspirations of the people presumably by framing legislation conducive to their interests. What is true about primary legislation, must also be accepted in respect of secondary legislation. Therefore, the Constitution has reposed immense confidence in legislature which include even the secondary legislation.

(Para 25)

M.L. Sarin, Senior Advocate, with Hemant Sarin, Advocate, P.S. Dhaliwal, Advocate, Dheeraj Jain Advocate, *for the petitioner(s)*.

Charu Tuli, Sr. D.A.G., Punjab, Vishal Sodhi, for Arun Walia, Advocate, *for the respondent(s)*.

M.M. KUMAR, J.

(1) This order shall dispose of C.W.P. Nos. 6038, 6039, 6252, 6253, 6254, 6255, 6289, 6318 and 6320 of 2002. However, facts are being referred from C.W.P. No. 6038 of 2002, which has been filed by the then Chairman and the Trustees of Improvement Trust, Amritsar. These petitions filed by the Chairmen and/or Trustees of various Improvement Trusts of the State of Punjab are directed against dissolution of trusts in pursuance to power of the respondent State under Section 103 of the Punjab Town Improvement Act, 1922 (for brevity, 'the Trust Act'). The petitioners have claimed that since they owe allegiance to the Bharatiya Janta Party (BJP) or Shiromani Akali Dal (Badal), they have been victimised by the Congress Government and the dissolution of trusts after capturing power in the State of Punjab by the Congress is malicious.

(2) It is important to notice that the Trust Act postulates improvement and expansion of towns in Punjab and in that regard the respondent State has constituted Improvement Trusts for various towns to ensure proper and planned development. The Improvement Trust, Amritsar, was constituted under the provisions of Section 3 of the Trust

Act. As per Section 4(1) of the Trust Act, a trust consists of a Chairman and 9 other Trustees. Three officers serving under the State Government are appointed as Trustees, which include Town Planner, an Engineer not below the rank of Executive Engineer from the Building and Road Branch or Public Health of Public Works Department of the State Government and another officer not below the rank of Extra Assistant Commissioner. Three members of the Municipal Committee or the Corporation as the case may be are required to be the Trustees and then there is provision for three other persons. The Chairman and the Trustees as per Section 4(1) of the Trust Act are required to be appointed by the State Government by notification. Under Section 5 of the Trust Act, the term of the office of the Chairman of the Trust is to be fixed by the State Government but it must not exceed four years. Under Section 6 of the Trust Act, the term of every Trustee elected under clause (b) of Section 4(1) of the Trust Act is two years or until he ceases to be a member of the Municipal Committee or Corporation, whichever is less. The term of office of other Trustees appointed under clause (c) of Section 4(1) of the Trust Act is two years and the term of other trustees appointed under clause (a) of Section 4(1) of the Trust Act shall expire when such Trustees cease to hold office by virtue of which they were appointed.

(3) Petitioner No. 1 being elected Councilor of Municipal Corporation, Amritsar, was appointed as the Chairman of the Trust for a period of two years,—*vide* notification dated 24th April, 2000 (P-1). His term was extended on 6th December, 2001 (P-2) for a further period of two years with effect from the expiry of his earlier term of two years. It is claimed that petitioner No. 1 was to continue as Chairman of the Trust till 23rd April, 2004. Likewise, claim has been made in respect of other Trustees.

(4) A further claim by the petitioners has been made that the trust has the largest budget amongst all the Improvement Trusts in the State of Punjab and that the Trusts did not receive any grant or financial aid from the State Government, which are self-sustaining institutions and generate income by development, sale or leasing out of vacant and build up properties. Petitioner No. 1 has claimed that at the time of taking over as Chairman of the trust, its financial condition was deplorable

as loans of principal amount of Rs. 44 crores were due to be repaid, which after adding interest had swelled up to Rs. 67 crores. The petitioners have got executed many profitable development schemes resulting in increase of income of the trust, which has risen to Rs. 27 crores in 1996-97 and to Rs. 56 crores in 2001-02. The projected income of the trust for 2002-03 has been estimated at Rs. 50.73 crores. The trust has approximately Rs. 13.5 crores in FDRs and over Rs. 2 crores in its current account besides paying the principal loan amount of Rs. 44 crores. The petitioners have made endeavour to provide best amenities to the residents of Amritsar and a record number of open auctions were held with complete transparency. A reference has been made to various other auctions, execution of schemes and other profitable ventures in paras 10, 11 and 12. A reference has also been made to multi-storey parking lot on Lawrance Road, Amritsar at the approximate cost of Rs. 6 crores.

(5) On 4th April, 2002, the respondent State issued a notification under Section 103(1) of the Trust Act declaring that the trust stood dissolved (P-8). Similar notifications were simultaneously issued dissolving all the Improvement Trusts in the State of Punjab. On the same day the Deputy Commissioner of the district was appointed as Administrator of the Trust (P-9).

(6) In the written statement filed by respondent Nos. 1 and 2 the stand taken is that dissolution of the trust does not cause any stigma nor it leads to any penal consequences. The Chairman and the trustees are governed by the doctrine of pleasure. It is in this context that a distinction has been made by the respondents in Section 72-F of the Trust Act, which envisages issuance of a show cause notice, and Section 103 of the Trust Act, which does not provide for any such show cause notice, reply and hearing. It is claimed that no one has any vested right to continue as the Chairman or the Trustee or compelling the State to continue the working of the trust. In that regard, reliance has been placed on the judgment of Hon'ble the Supreme Court in the case of **State of Punjab versus Tehal Singh, (1)**. It has also been asserted that the legislature deliberately did not provide for compliance of principles

(1) (2002) 2 SCC 7

of natural justice when Section 103 of the Trust Act is invoked because wherever the intention of the legislature was to provide for such procedure it has expressly been provided as in Section 72-F of the Trust Act. On merit, the respondents have taken the stand that the petitioners are taking illegitimate credit for the efforts made by their predecessor who had made viable development schemes. The fruits of those schemes started pouring in during the tenure of the petitioners. In that regard reference has been made to repayment of loan pointing out that the loan taken from HUDCO in January, 1998 was to be repaid in 28 instalments by June, 2005. It was on account of unwise act of the petitioners that the loan has been paid by October, 2001. It has been alleged that the petitioners abdicated their duties to bring about imperative core area improvements and carry out vital development works concerning ongoing schemes, which was their primary task. There are further allegations made in paras 9, 10, 11, 12 and 14.

(7) The respondents have further taken the stand that an indepth investigation by the Deputy Commissioner showed that petitioner No. 1 has been found *prima faice* guilty of very serious irregularity while making the recruitments. The report has been quoted indicating the Chairman, which reads as follows :—

“I have carefully considered the facts as brought out on the file, and perused the replies of the concerned persons. It is clear that the whole recruitment process was carried out in unseemly haste, keeping in view the expectation that the elections can be announced at any time. The advertisement in the newspaper (DDL B, Amritsar has mentioned that the advt. was placed only in the Dainik Tribune dated 7th January, 2001, whereas Executive Officer has mentioned that it was placed in 3 newspapers though he has not specified which newspapers) was made on 7th December, 2001, and the date of the Interview was fixed for 18th December, 2001, i.e. only 11 days. Hence, it is not clear as to why 11 days were given. Normally, at least, 15 days time should be given so that the necessary preparations on the part of the candidates may be made. Then the interview was held on 18th December, 2001, by a Sub-committee, in which an Accountant-rank official took the place of

Deputy Controller (F&A). The Chairman, Improvement Trust, in his reply (Flag-B) dated 2nd February, 02 has mentioned that "After the exhaustive test and interview, the Sub-committee recommended the name of the persons". There is nothing on the record or in the report of DDLB, Amritsar to show what was the criterion on the so called exhaustive test and interview, and what were the marks scored by each of the candidates.

The appointment letters were then issued on 26th December, 2001. It is mentioned that the model code of conduct, due to the announcement of the schedule of the elections, came into force on 26th December, 2001. In the normal course, the appointment letters were to be sent to the home addresses of the candidates. It is mentioned that the selected candidates, Smt. Meenakshi belongs to Tehsil Dera Baba Nanak (Gurdaspur), and the other 2 to Amritsar. The appointment letters were issued at their home addresses,—*vide* No. AIT/DC/9955, 9957, 9959, dated 26th December, 2001. Very significantly, a copy of the appointment letters were also endorsed to Civil Surgeon, Amritsar, with a request that whenever these candidates approach him for medical, he may do so.

In violation of the Code of Conduct, and without seeking medical examination report of the Civil Surgeon, the said 3 candidates were shown as having joined service and submitting Attendance Report on 26th December, 2001 itself. It is apparent that undue favour was shown to them and the Improvement Trust authorities went well out of their way to favour the selected candidates by allowing them to join without medical examination even in clear violation of the Government rules. Moreover, no mention is there whether any sort of preliminary typing test was carried out, as the power to allow further time to pass the typing test is there only in case the candidate has appeared in a test and

failed, due to which he may be given another chance within a fixed time frame.

I feel it is amply clear that the Chairmen, Improvement Trust, Amritsar, has violated the model code of conduct by taking shelter behind the fact that all the necessary was done on 26th December, 2001, whereas from the above conspectus it is clear that undue favour for whatever reasons has been shown in the unseemly hasty manner in which the recruitment has taken place.....”

(8) The respondents have then taken the stand that on 25th March, 2002 the Government issued direction to the Director, Local Government to supply the latest and upto date information regarding the status of the services being rendered by the improvement trusts so as to take a considered view as to how to proceed to accomplish the object of reversing the tide of urban decay in Punjab. It was further directed that data concerning development expenditure be carefully analyzed from the budged documents of various trusts. Thereafter the Director, Local Government obtained information, which was analyzed by the Director, Local Government. It was after due application of mind with a free, fair and *bona fide* disposition that the respondents concluded that it was not expedient to continue the improvement trusts to exist. It was found that the trusts miserably failed to discharge their duties diligently. They virtually made no worthwhile and desirable efforts to promote the development despite having required funds at their disposal. As a result of the aforementioned factual position the respondents passed identical orders dissolving all trusts in the State of Punjab (P-8), which reads as follows :—

“GOVERNMENT OF PUNJAB

DEPARTMENT OF LOCAL GOVERNMENT

(LOCAL GOVERNMENT BRANCH-II)

Notification

4th April, 2002

No. 4/29/2002-4LGII/3448.—Whereas in the opinion of the State Government, it is expedient that the Amritsar Improvement Trust shall cease to exist.

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 103 of the Punjab Town Improvement Act, 1922 (Punjab Act 4 of 1922), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to declare that the Amritsar Improvement Trust shall stand dissolved on and with effect from the date of publication of this notification in the official gazette.

SARVESH KAUSHAL, I.A.S.,
Secretary to Government, Punjab,
Department of Local Government.”

(9) A separate written statement has been filed by respondent No. 3 in which similar stand has been taken stating that the Administrator had taken over the trust with effect from 5th April, 2002.

(10) Sarvshri M.L. Sarin, Hemant Sarin, P.S. Dhaliwal and Dheeraj Jain, learned counsel for the petitioners have argued that Section 103 of the Trust Act is liable to be declared as ultra vires of Article 14 of the Constitution because it confer on the State Government unbridled and arbitrary power to dissolve an Improvement Trust. They have argued that the notifications dissolving the trust, issued on 4th April, 2002 (P-8) and appointing the Deputy Commissioner as Administrator (P-9), are also vitiating because there is gross violation of principles of natural justice and the rule of *audi alteram partem*. It has then been contended that Section 72-F of the Trust Act contemplates issuance of show cause notice before suspension and supersession of trusts and no such safeguards are provided when the trust is to be dissolved under Section 103 of the Trust Act. According to the learned counsel, in the public perception supersession or dissolution of trusts has one and the same meaning. According to the learned counsel the order is otherwise stigmatic because general perception of the masses for dissolution of Trusts is that the petitioners are incompetent to perform their duties imposed by the Trust Act or that they had abused their powers. They have maintained that once this is the consequence then a stigma would attach to them and principles of natural justice requiring affording of opportunity of hearing must be read into the power exercisable under Section 103 of the Trust Act. They have argued that

in fact power should be deemed to be exercised under Section 72-F of the Trust Act as individual remarks against integrity and honesty have been made in the written statement. In support of their submissions they have placed reliance on a Division Bench judgment of this Court in the case of **Surjit Singh Sud, Chairman, Improvement Trust, Jullundur versus State of Punjab, (2)** and argued that Section 5 as it stood at the relevant time was held to have conferred on the State Government an unbridled, uncanalised and arbitrary power to remove a Chairman of the Trust because no guidelines were provided in accordance with the principles of Article 14 of the Constitution. The petitioners have also placed reliance on a judgment on Hon'ble the Supreme Court in the case **S.L. Kapoor versus Jagmohan, (3)** where principles of natural justice were held to be applicable when the Municipal Committee was superseded and a Constitution Bench judgment of Hon'ble the Supreme Court in the Case of **Delhi Transport Corporation versus D.T.C. Mazdoor Congress, (4)** and have argued that principles of natural justice must be read into any provision unless they are expressly excluded.

(11) The petitioners have also placed reliance on the judgment of Hon'ble the Supreme Court in **Tehal Singh's case (supra)**. It has been submitted that the power exercised by the respondent State cannot be regarded as legislative power because Section 103 of the Trust Act does not make a provision for legislative activity or making of legislative instrument or promulgation of general rule of conduct etc. It has been submitted that there is *mala fide* exercise of power because the Congress Government on assuming of office had publically declared that all the Chairmen and Trustees of the Improvement Trusts appointed by the previous Akali Dal/ BJP Government headed by Sardar Parkash Singh Badal would be removed. Even the statement made by the Minister for Local Bodies, who has been impleaded as respondent in some of the petitions has been referred. It has been pointed out that exercise of power in this manner suffers from legal malice because it proceeds on ulterior motive. Learned counsel for the petitioners have made a reference

(2) 1974 PLR 624

(3) AIR 1981 S.C. 136

(4) AIR 1991 S.C. 101

to a judgment of Hon'ble the Supreme Court in the case of **Krishna versus State of Maharashtra, (5)** and have pointed out that the expression 'at any time' has not been used either in Section 72-E/72-F nor in Section 103 of the Trust Act and same would exclude the pleasure doctrine. It has also been contended that after dissolution of the trusts under Section 103 of the Trust Act, even new Chairman and Trustees were appointed. In that regard our attention has been drawn by Shri Dheeraj Jain, Advocate, to the averments made in Amended C.W.P. No. 6254 of 2002, wherein the order appointing new Chairman and the Trustees have also been challenged.

(12) Ms. Charu Tuli, learned State Counsel has pointed out that Section 103 of the Trust Act contemplates issuance of a notification, which necessarily involve exercise of legislative power. According to the learned counsel once exercise of power is considered as legislative then no principles of natural justice would apply, as has been held by Hon'ble the Supreme Court in **Tehal Singh, case (supra)**. She has also submitted that the constitutional validity of Section 103 of the Trust Act, was challenged before this Court and the same stands upheld in the case of **Joginder Singh versus State of Haryana, (6)**. She has further argued that once a trust has been dissolved, the Chairman or the Trustees have no right to continue. She has also placed reliance on a Division Bench judgment of this Court in the case of **Avjinder Singh Sibia versus S. Parkash Singh Badal and others (C.W.P No. 10900 of 2007, decided on 29th October, 2007)**, upholding dissolution of the Market Committee by issuance of an Ordinance, which was later on enacted as Punjab Act No. 5 of 2007.

(13) In the light of the provisions of the Trust Act, facts of these cases and rival contentions raised by all the learned counsel for the parties, we are of the view that following questions of law have emerged for determination of this Court :—

- (A) Whether Section 103 of the Trust Act is violative of Article 14 of the Constitution for the reason that it confers unbridled, unguided and arbitrary power on the Government to dissolve Trusts ?

(5) (2001)2 SCC 441

(6) 1972 ILR 232 (P&H)

- (B) Whether the nature of power exercised in issuing impugned notifications under Section 103 of the Trust Act is legislative or administrative ?
- (C) Whether the impugned notifications dated 4th April, 2002 could be considered to have been issued under Section 72-F of the Trust Act ?

RE: QUESTION (A) :

(14) The only argument raised by the learned counsel for the petitioners is that Section 103 of the Trust Act confers unbridled, unguided and arbitrary power on the State Government to dissolve an Improvement Trust or to supersede it. However, nothing has been pointed out as to how the power conferred on the State Government is unbridled, arbitrary or without guidance. It is well settled that all official acts are presumed to be valid and consistent with Constitution unless shown otherwise. The heavy burden on the shoulders of the petitioners has not been discharged. A perusal of Section 103 of the Trust Act shows that after assessing the whole situation the State Government is to form an opinion as to whether it is expedient that the Trust shall cease to exist. Firstly, it is for the State Government to decide the question of expediency or that the continued existence of the Trust was unnecessary. It cannot be concluded that the language of the Section is such which may be misused or it may be regarded as arbitrary. There are sufficient guidelines disclosed in Section 103(1) of the Trust Act. The State Government has formed its opinion that the continued existence of the Trust was unnecessary or it is not expedient that the Trust shall continue. There is ample material on record to show that the opinion formed by the State Government was based on the aforementioned considerations and the report has been obtained by the Government from the Director, Local Government. Moreover, the question has already been considered by this Court in **Joginder Singh's case** (*supra*). In para 5, learned Single Judge while rejecting a similar contention has held as under :—

- “(5) The last contention of Mr. Wasu is that Section 103 of the Act is *ultra vires* of the Constitution inasmuch as it gives wide, unbridled and despotic power capable of abuse by

the State Government in the matter of abolition of a trust. It is thus urged that the power so given can be abused and exercised for extraneous reasons and that section 103 must, therefore, be struck down as unconstitutional. I am satisfied that there is no substance in the contention raised by the learned counsel. The creation of a trust or abolition thereof is purely an administrative act requiring no judicial approach. The Act is concerned with the preparation and execution of schemes for the improvement of a town and the State Government in exercise of its executive power, is alone the best judge to decide whether a trust be created or allowed to continue. It is not for this Court to sit in judgment over a decision of the State Government in this regard and direct that a trust be not abolished because it will entail removal of a Chairman or a member from his office. No legal right of a citizen is involved in the matter of creation, continuance or abolition of a trust and the question of abuse of authority by the State Government thereby prejudicially affecting any such right does not, therefore, arise. The judge of "expediency" is the State Government alone. In the instant case, we find, as stated by the petitioner himself, that several schemes had been prepared and none executed. The State, in its return, has made an averment that there were complaints against the working of the Trust. The mere fact that schemes are made and not executed is by itself sufficient for the State Government to abolish a trust. When a trust is abolished, the functions of the trust and the Chairman are taken over by the municipal committee and its President as envisaged in section 103(2)(c) of the Act. It is for the State Government thus to decide whether development of a town should be left to a municipal committee alone or an improvement trust be created."

(15) The argument of the learned counsel for the petitioners that exercise of power is *mala fide* and is colourable, has also not impressed us because once the exercise of power is regarded as legislative in character as would be evident from the discussion under Question

'B' & 'C' then there is no room to accept malice against legislation. In such cases, the theory of legislation backed by public opinion, would come in operation as discussed in Question 'B' & 'C'. Therefore, we have no hesitation to reject the aforementioned argument.

(16) As a sequel to the above discussion, we uphold the constitutional validity of Section 103 of the Trust Act. There is, thus, no room to interfere on that ground.

RE: QUESTIONS (B) & (C) :

(17) These questions are interconnected requiring consideration simultaneously, therefore, these questions are taken up together. In order to appreciate the rival contentions it would be apposite to make a reference to Section 72-F and 103 of the Trust Act, which reads thus :—

“72-F.Suspension and Supersession of Trusts.—(1) If, in the opinion of the State Government, a trust is not competent to perform, or persistently makes default in the performance of the duties imposed on it by or under this Act or any other law or exceeds or abuses its powers, the State Government may, by an order published, together with the statement of reasons thereof, in the Official Gazette, declare the trust to be incompetent or in default or to have exceeded or abused its powers, as the case may be, and suspend it for such period, not exceeding one year, as may be specified in the order.

(2) If, at any time after the expiry of the period of suspension, the trust again acts in the manner referred to in sub-section (1), the State Government may, by a like order, supersede the trust for such period as may be specified in the order.

(3) Before making an order of suspension or supersession, opportunity shall be given to the trust to show cause why such an order should not be made.

- (4) When a trust is suspended or superseded by an order under sub-section (1) or sub-section (2),—
- (a) in the case of an order of suspension, all trustees shall, from the date of order, cease to be trustees during the period of such suspension;
 - (b) in the case of an order of supersession, all trustees shall, from the date of the order, vacate their seats;
 - (c) all powers and duties of the trust may, till the trust remains suspended or is reconstituted, as the case may be, be exercised and performed by such person as the State Government may appoint in this behalf;
 - (d) all property vested in the trust shall, till the trust remains suspended or is reconstituted, as the case may be, vest in the State Government;
 - (e) before the expiry of the period of supersession, the trust shall be reconstituted by the State Government in accordance with the provisions of this Act.”

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“103. Ultimate dissolution of trust, and transfer of its assets and liabilities to the committee.—(1) When all schemes sanctioned under this Act have been executed or have been so far executed as to render the continued existence of the trust, in the opinion of the State Government, unnecessary, or when in the opinion of the State Government it is expedient that the Trust shall cease to exist, the State Government may by notification declare that the trust shall be dissolved from such date as may be specified in this behalf in such notification; and the trust shall be deemed to be dissolved accordingly.

- (2) From the date specified in the notification referred to in sub-section (1),—
- (a) all properties, funds and dues vested in or realisable by the trust and the chairman respectively shall vest in and be realisable by the State Government till they stand transferred to the municipal committee under sub-section (3);
 - (b) all liabilities which are enforceable against the trust shall be enforceable only against the State Government to the extent of the properties, funds and dues vested in and realised by the State Government; and
 - (c) for the purpose of completing the execution of any scheme sanctioned under this Act which has not been fully executed by the trust and of realising properties, funds and dues referred to in clause (a), the functions of the trust and the chairman under this Act shall be discharged by such class I officer of the State Government as may be appointed by it in this behalf.
- (3) After all functions referred to in clause (c) of sub-section (2) are duly discharged,—
- (a) the properties, funds and dues vested in or realizable by the State Government under clause (a) of sub-section (2) shall stand transferred to, vested in and be realisable by the municipal committee; and
 - (b) all liabilities enforceable against the State Government under clause (b) of that sub-section or incurred by it under this Act, shall be enforceable against the municipal committee.”

(18) A perusal of both the sections shows that Section 72-F of the Trust Act deals with individual cases of irregularity and misconduct and accordingly it has provided for issuance of show cause notice to

the person concerned about lapses etc. on his part. Accordingly it has to be held that the principles of natural justice of issuing a show cause notice, obtaining reply and hearing a delinquent has to be followed.

(19) A perusal of Section 103 of the Trust Act, however, shows that it does not deal with an individual case but provide for a situation of ultimate dissolution of trust and transfer of its assets/liabilities. Sub-section (1) of Section 103 of the Trust Act deals with various situations in which the ultimate step of dissolution could be taken. Firstly, in a case when all schemes sanctioned under the Trust Act have been executed then dissolution of the trust is permitted. Likewise, whatever schemes have been executed till the date of decision to dissolve, the Government has formed an opinion that the continued existence of trust is unnecessary then the dissolution is permitted. Another situation contemplated is when the State Government forms an opinion that the trust must cease to exist as it is expedient then it could dissolve the trust by issuance of notification. Sub-section (2) of Section 103 of the Trust Act deals with the vesting of properties, funds and liabilities after the dissolution.

(20) A significant question which has arisen before us is whether power under Section 103 of the Trust Act is legislative in character so as to exclude the application of principles of natural justice. The aforementioned question is not *res integra*. A Constitution Bench of Hon'ble the Supreme Court in **Shri Sitaram Sugar Company Limited versus Union of India**, (7) has held that when the orders are passed which are of general application in pursuance to statutory power conferred on the State then principles of natural justice are not required to be followed unless there is express provision. A reference has been made to judicial, administrative and legislative process, as is evident from the following paras :

“Courts, for practical reasons, have distinguished legislative orders from the rest of the orders by reference to the principle that the former is of general application. They are made formally by publication and for general guidance with reference to which individual decisions are taken in

(7) (1990)3 SCC 223

particular situations. However, what matters is the substance and not the form, or the name. The element of general application is often cited as a distinct feature of legislative activity. However, a statutory instrument (such as a rule, order or regulation) emanates from the exercise of delegated legislative power which is the part of the administrative process resembling enactment of law by the legislature. A quasi-judicial order emanates from adjudication which is the part of the administrative process resembling a judicial decision by a court of law. This analogy is imperfect and perhaps unhelpful in classifying borderline or mixed cases which are better left unclassified.”

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“If a particular function is termed legislative rather than judicial, practical results may follow as far as the parties are concerned. When the function is treated as legislative, a party affected by the order has no right to notice and hearing unless, of course, the statute so requires. It being of general application engulfing a wide sweep of powers, applicable to all persons and situations of a broadly identifiable class, the legislative order may not be vulnerable to challenge merely by reason of its omission to take into account individual peculiarities and differences amongst those falling within the class.”

(21) Again Hon’ble the Supreme Court in the case of **Rameshchandra Kachardas Porwal versus State of Maharashtra**, (8), considered a notification of the Government declaring that a certain place would be principal market yard for a market area. After such declaration a number of statutory provision would spring into action. It was held to be an act of legislative character not a judicial or quasi-judicial function obliging the State to observe the rules of natural justice because the rules of natural justice are not available in the sphere of

(9) (1981)2 SCC 722

legislation, primary or delegated. Similar observations have been made in the case of **Pune Municipal Corporation versus Promoters and Builders Association**, (9). However, a detailed test has been laid down in the case of **Tehal Singh** (*supra*) where a notification issued under Sections 3 and 4 of the Punjab Panchayati Raj Act, 1994, declaring territorial area of Gram Sabha were questioned. It was held that power exercisable under Sections 3 and 4 of the Punjab Panchayati Raj Act, 1994, is legislative in character and principles of natural justice are not required to be followed. In para 7 of the judgment three principles of law were extracted by their Lordships' to determine whether exercise of power in pursuance to statutory provisions could be regarded as legislative in character. Para 7 reads 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 action within which provide for certain consequences; (2) where the power to be exercised by the Government under provisions of a statute does not concern with the interest of an individual and it relates to public in general or concerns with a 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.”

(22) After applying the aforementioned principles to the notification issued in pursuance to power under Sections 3 and 4 of the Punjab Panchayati Raj Act, 1994, and holding that no individual rights were involved, Hon'ble the Supreme Court after placing reliance on **Rameshchandra Kachardas Porwal's case** (*supra*) held that principles of natural justice do not apply and observed as under :—

“10. In the present case, the provisions of the Trust Act do not provide for any opportunity of hearing to the residents before

any area falling under a particular Gram Sabha is excluded and included in another Gram Sabha. In the absence of such a provision, the residents of that area which has been excluded and included in a different Gram Sabha cannot make a complaint regarding denial of opportunity of hearing before issue of declarations under Sections 3 and 4 of the Trust Act respectively. However, the position would be different where a house of a particular resident of an area is sought to be excluded from the existing Gram Sabha and included in another Gram Sabha. There the Trust Action of the Government being directed against an individual, the Government is required to observe principles of natural justice. For the aforesaid reasons, we are of the view that no opportunity of hearing was required to be given before making declarations either under Section 3 or Section 4 of the Trust Act by the Government.”

(23) Similar principles were laid down in the case of **Tulsipur Sugar Co. Ltd. versus Notified Area Committee, Tulsipur**, (10) **Sundarias Kanvalal Bhatija versus Collector Thane Maharashtra**, (11) and **Sarkari Sasta Anaj Vikreta Sangh versus State of Madhya Pradesh**, (12).

(24) When we consider the notification dated 4th April, 2002, it emerges that the power exercised under Section 103 of the Trust Act does not contemplate that an order has to be passed in respect of an individual. The decision has been reached by the then Government on the basis of general rule of conduct. It is different matter that on dissolution the Chairman and the Trustees are discontinued by virtue of provisions of Section 103(2)(c) of the Trust Act. It is also evident that issuance of notification dated 4th April, 2002 has put in motion a number of other statutory provisions, which does not concern the interest of an individual but seemingly relates to public in general or concerns a general direction. It also lays down future course of action. The aforementioned test fully apply to the facts of the present case and

(10) (1980) 2 SCC 295

(11) (1989) 3 SCC 396

(12) (1981) 4 SCC 471

the issuance of notification dated 4th April, 2002 under Section 103 of the Trust Act must be regarded as a legislative function.

(25) Once it is held that power exercised in pursuance to Section 103 of the Trust Act is legislative in character then the principles of natural justice would not be available. The fundamental principle underlying the exclusion of principles of natural justice is that when legislature undertook the process of framing law then it is not supposed to grant hearing to the masses, especially in our country where the Assembly or Parliament are constituted by those who have directly elected by the people. Such representatives are to translate the aspirations of the people presumably by framing legislation conducive to their interests. What is true about primary legislation, must also be accepted in respect of secondary legislation. Therefore, the Constitution has reposed immense confidence in legislature which include even the secondary legislation. The argument of the learned counsel for the petitioners that stigmatic statements have been made in the written statement against the Chairman or the Trustee and it should be sufficient to read the order of dissolution as the one passed under Section 72-F of the Trust Act, does not require any detailed consideration because the consensus of dissolving the Trust has been reached after obtaining necessary reports in bulk in respect of all the Trusts in the whole State of Punjab. It is on the basis of policy decision taken by the respondents that such a course has been adopted. Moreover, the order dated 4th April, 2002 does not disclose any stigma requiring observance of the principles of natural justice. The notification dated 4th April, 2002 *ex facie* is an innocuous order. It is well settled that the order has to be attacked or justified in accordance with the reasons disclosed in it and not by the reasons which might be available elsewhere. In that regard reliance may be placed on the judgments of Hon'ble the Supreme Court in the cases of **Mohinder Singh Gill versus The Chief Election Commissioner, New Delhi, (13)** and **Smt. Maneka Gandhi versus Union of India, (14)**. Therefore, we do not find that the notification dated 4th April, 2002 is vitiated or it has to be regarded as notification issued under Section 72-F of the Trust Act. Therefore, the contention raised is hereby rejected.

(13) AIR 1978 SC 851

(14) AIR 1978 S.C. 597

(26) The Division Bench judgment in the case of **Avjinder Singh Sibia** (*supra*), on which reliance has been placed by the learned State counsel would not apply to the facts of the present case because that was a case of primary legislation, as Punjab Ordinance No. 2 of 2007 was issued whereby all Market Committees in the State of Punjab were superseded. The Ordinance was subsequently replaced by the Punjab Act No. 5 of 2007 by substituting Section 12 with a new inserted Section 12-A of the Punjab Agricultural Produce Markets Act, 1961. Therefore, it is distinguishable.

(27) As a sequel to the above discussion, the questions (B) and (C) are answered against the petitioners by holding that the power which emanates from Section 103 of the Trust Act as exercised by the respondents by issuing the impugned notification is legislative in nature. There is no scope for applying the principles of natural justice to such a notification. The power cannot be regarded to have been exercised under Section 72-A of the Act.

(28) For the foregoing reasons, we find no merit in these writ petitions and the same are accordingly dismissed.

R.N.R.

Before Jasbir Singh & Nirmal Yadav, JJ.

SHIMLA RANI AND OTHERS,—Petitioners

versus

STATE OF PUNJAB AND OTHERS,—Respondents

C.W.P. No. 15877 of 2005

17th September, 2007

Constitution of India, 1950—Arts. 243R(2)(b), 243G, 243S, 243ZG(b)—Punjab State Election Commission Act, 1994—Ss. 74, 76 and 87—Maintainability—Election to President and Vice President of a Nagar Panchayat/Municipality—Dispute with regard to post of President and Vice President of a Nagar Panchayat/Municipality— Whether writ petition is maintainable—Held, yes.