MISCELLANEOUS CIVIL

Before A. D. Koshal, J.

UDE SINGH,—*Petitioner.*

versus

THE STATE OF HARYANA, ETC.,—*Respondents.*

Civil Writ No. 2714 of 1971.

November 26, 1971.

Punjab Gram Panchayat Act (IV of 1953 as amended by Haryana Act XIX of 1971)—*Section* 5(5)(*g*)—*Punjab Co-operative Societies Act (XXV of* 1961)—*Section* 41—*Punjab General Clauses Act (X of* 1897)—*Section* 2(30)—*Employee of a registered co-operative society—Whether a "whole-time salaried servant of any local authority"—Such person—Whether disqualified for contesting panchayat election.*

Held, that under clause (g) of sub-section (5) of section 5 of Punjab Gram Panchayat Act, 1952 as in force in the State of Haryana, no person who is a "whole-time salaried servant of any local authority or State" is entitled to stand for panchayat election. The expression "local authority" is not defined in this Act. Its definition as given in section 2(30) of the Punjab General Clauses Act, 1897 will govern its interpretation. According to this definition "local authority" means any authority legally entitled, or entrusted by the Government with, the control or management of a municipal or local fund. The word "authority" according to its dictionary meaning embraces only constitutional or statutory authorities on whom powers are conferred by law. Private institutions are excluded from its purview. A co-operative society registered under the Punjab Co-operative Societies Act is a private institution and not the creation of a statute. Its registration does not make it a statutory institution. Such a society is no doubt clothed with the power to make bye-laws and may also be given financial aid by the State Government but these factors do not clothe it with the character of a public or statutory institution. The mere fact that Government aid is available to a society does not show that it manages or controls a municipal or local fund. The words "local fund" are to be construed in a sense analogous to the expression "municipal fund" and it means a fund which pertains to a local Government unit, a fund which vests in or belongs to or is earmarked or available or is to be utilised for the affairs of a body which is a local governmental unit. Such a Governmental unit must have control or management of a fund which is set apart or is available and is to be utilized, either under the law of the land or by virtue of government entrustment, for the purpose of

administering the affairs of that authority in its capacity as a local governmental unit. A co-operative society does not function as a "local governmental unit" and does not control or manage any fund which is available and is to be utilized for the purpose of administering the affairs of such a unit. Hence an employee of a co-operative society registered under the Punjab Co-operative Societies Act cannot be regarded as a whole-time salaried servant of any local authority and he is not debarred from contesting panchayat elections under clause (g) of sub-section (5) of section 5 of Punjab Gram Panchayat Act.

Petition under Articles 226/227 of the Constitution of India praying that a writ of certiorari, or any other appropriate writ, order or direction be issued quashing the order of respondent No. 2 dated 6th July, 1971.

Surinder Sarup, Advocate, *for the petitioner.*

H. N. Mehtani, Assistant Advocate-General, Haryana, *for Respondents Nos.* 1 *to* 3.

P. S. Daulta and V. G. Dogra, Advocates, *for Respondents* 4 *to* 9.

JUDGMENT

KOSHAL, J.—(1) Ude Singh, the petitioner, was last elected as Sarpanch of the Gram Panchayat of his village named Gijhi in Tahsil and District Rohtak in the year 1963-64 and continued to hold that office right upto the 6th of July, 1971. According to a programme issued by the State of Haryana (respondent No. 1) for holding elections to the various Gram Panchayats under its control, the nomination papers of candidates for election to the Gram Panchayat of village Gijhi were to be filed, scrutinised and accepted or rejected on the 6th of July, 1971, while the polling was scheduled to be held on the next day. The petitioner and 13 others (including respondents Nos. 4 to 9) filed their nomination papers before Shri Balbir Singh, Sectional Officer, Department of Public Health, Gohana (respondent No. 2) who was the returning officer, on the 6th of July, 1971, but on an objection raised by respondent No. 4 to the effect that the petitioner was disqualified for contesting the election by reason of the provisions of clause (g) of sub-section (5) of section 6 of the Punjab Gram Panchayat Act (hereinafter referred to as the Panchayat Act) inasmuch as he was salaried manager of the Sampla Co-operative Marketing Society, Limited; Sampla, District Rohtak (hereinafter called the Society), the nomination papers of the petitioner were rejected by respondent No. 2 on

the same date by means of order which is appended to the petition as Annexure "B" and runs thus:

> *"Shri Ude Singh*
>
> Your nomination paper is rejected being you are a whole-time salaried servant of local authority, i.e. Marketing Society, Sampla."

(2) The election was duly held on the 7th of July, 1971, and, as a result thereof, respondents Nos. 4 to 9 were elected to the Gram Panchayat of village Gijhi.

(3) In the petition various grounds were put forward by the petitioner in support of the prayer that the order of respondent No. 2 quoted above was illegal and void but before the Motion Bench Mr. Surinder Sarup, learned counsel for the petitioner, limited his attack against that order only to one contention, namely, that an employee of a co-operative society registered under the Punjab Co-operative Societies Act (hereinafter referred to as the Societies Act) could not be regarded as a "whole-time salaried servant of any local authority" within the meaning of that expression as used in clause (g) above mentioned. On merits, therefore, that is the only contention requiring determination.

(4) Two preliminary points have been raised on behalf of the respondents. The first is that the petition deserves dismissal as another appropriate remedy by way of the institution of an election petition was available to the petitioner who failed to have recourse to it. In the special circumstances which obtain in this case I am of the opinion that the point has no substance. It is not disputed that a petition under Article 226 of the Constitution of India is not barred by any provision thereof if it relates to questions concerning an election to a Gram Panchayat. Normally, however, this Court, in the exercise of its discretion, refuses to entertain such a petition when the alternative remedy of an election petition has not been availed of. But what has happened in the present case is that the petition has not only been entertained but during its pendency the petitioner has lost his remedy of instituting an election petition, by efflux of time. If the petition is now dismissed on the ground that the petitioner should have availed of the alternative remedy of an election petition before he came to this Court asking for the exercise by it of its extraordinary powers under

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Article 226 of the Constitution of India, he would be left without a remedy and it appears to me that this result is a sufficient reason why this Court should not exercise its discretion so as to throw out the petition at this stage. This view is in conformity with that of their Lordships of the Supreme Court in *L. Hirday Narain* v. *Income-tax Officer* (1). In that case an order under section 35 of the Income-tax Act was made by an Income-tax Officer against one Hirday Narain who challenged the order in a petition under Article 226 of the Constitution of India before the High Court of Allahabad. A Single Judge of the High Court entertained the petition and rejected it not only on merits but also for the reason that Hirday Narain had not availed of the alternative remedy which was open to him in the form of a petition for revision of the order of the Income-tax Officer by the Commissioner under section 33-A of the Act. The view taken by the learned Single Judge was upheld by a Division Bench in an appeal. A second appeal was taken by Hirday Narain to the Supreme Court in allowing which their Lordships observed:—

> "An order under Section 35 of the Income-tax Act is not appealable. It is true that a petition to revise the order could be moved before the Commissioner of Income-tax. But Hirday Narain moved a petition in the High Court of Allahabad and the High Court entertained that petition. If the High Court had not entertained his petition, Hirday Narain could have moved the Commissioner in revision, because at the date on which the petition was moved the period prescribed by Section 33-A of the Act had not expired. We are unable to hold that because a revision application could have been moved for an order correcting the order of the Income-tax Officer under Section 35, but was not moved, the High Court would be justified in dismissing as not maintainable the petition, which was entertained and was heard on the merits."

(5) The facts of that case are very similar to those with which we are here concerned and I conclude that there is no justification for the petition to be dismissed at this stage as not maintainable, when it has not only been entertained and heard on merits but the alternative remedy in question has itself become time-barred.

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(1) A.I.R. 1971 S.C. 33.

(6) I now advert to the second preliminary objection. It is to the effect that the petitioner not having asked for a setting aside of the election of respondents Nos. 4 to 9 but having prayed merely that the order of respondent No. 2 rejecting his nomination papers be quashed, an acceptance of the petition would not provide to the petitioner any real relief and would, on the other hand, amount to the issuance of an ineffective mandate which the Court ought not to issue. This objection is also without force. The petitioner has no doubt claimed in express terms only the issuance of a writ of certiorari quashing the order of respondent No. 2 rejecting the petitioner's nomination papers and has not specifically prayed that the election of respondents Nos. 4 to 9 be also set aside. He has, however, in clause (c) of paragraph 15 of the petition made a prayer that:

> "any other appropriate writ, order or direction which in the circumstances of the case this Hon'ble Court may deem fit and proper, be issued;"

(7) This prayer is no doubt couched in general terms but is no hurdle in the way of this Court issuing a writ which is called for according to the circumstances of the case. Reference may in this connection be made to *Charanjit Lal Chowdhury* v. *The Union of India and others* (2), wherein their Lordships observed that Article 32 of the Constitution gave them very wide discretion in the matter of framing their writs to suit the exigencies of particular cases and that a petition under that Article could not be thrown out simply on the ground that therein a proper writ or direction had not been prayed for. Article 32 is no doubt restricted to the issuance of writs, etc., for the enforcement of fundamental rights, but then the power conferred on the High Courts under Article 226 of the Constitution is certainly as wide as that conferred on the Supreme Court by the Article first mentioned and there is no reason why a High Court should not frame its writs "to suit the exigencies of particular cases" wherein a proper writ or direction has not been prayed for. Thus if the petitioner is found to be entitled to have the election of respondents Nos. 4 to 9 set aside as a consequence of the impugned order being held illegal, the Court would be fully justified in issuing a writ setting aside the election.

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(2) A.I.R. 1951 S.C. 41(53).

(8) Now I come to the merits of the case. Clause (g) of sub-section (5) of section 6 (now section 5) of the Panchayat Act states—

"6. * * * * * *

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(5) No person who is not a member of the Sabha and who—

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(g) is a whole-time salaried servant of any local authority or State or the Union of India; or

* * * * * *

shall be entitled to stand for election as, or continue to be, Sarpanch or Panch:

* * * * * *."

The nomination paper was rejected on the ground that the Society was a "local authority" within the meaning of clause (g) above extracted. The expression "local authority" is not defined in the Act but section 2(30) of the Punjab General Clauses Act (hereinafter called the Clauses Act) defines it thus :

"2. In this Act in all Punjab Acts unless there is anything repugnant in the subject or context,—

* * * * * *

(30) 'local authority' shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund :"

(9) This definition will govern the expression "local authority" as used in clause (g) extracted above. It is not disputed that the Society

is not a municipal committee, district board or a body of port commissioners. It is the case of the respondents, however, that it is an "authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund." On their behalf my attention has been drawn by their learned counsel to the provisions of sections 2(h), 4, 8, 24, 40, 41 and 57 of the Societies Act and of rule 8 of the Rules made thereunder and it is urged that the Society which is a Co-operative Society registered under the Societies Act, is not an institution carrying on a commercial venture but is a Government Department entrusted with the control and management of Government funds (which, according to the learned counsel, are local funds) and having the power to make bye-laws. It is argued that such an institution must be held to be a local authority as contemplated by section 2(30) of the Clauses Act. It is also contended on behalf of the respondents that the Society is a "State" as contemplated by the said clause (g). In this connection reliance is placed on Article 12 of the Constitution which states :

> "In this Part, unless the context otherwise requires, 'the State' includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."

(10) It is urged that even if the Society is not a local authority, it is one of the "other authorities" mentioned in Article 12.

(11) Arguments for and against these contentions have been addressed to me at length and after a careful consideration thereof I find that these contentions are without force and that the Society cannot be regarded as a local authority within the meaning of clause (g) extracted above.

(12) The first question which arises for determination is as to whether the Society is at all an "authority". The word "authority" is not defined in the Panchayat Act and must, therefore, be given its dictionary meaning. It is to be noted that the expression "local authority" is defined by section 3(31) of the General Clauses Act (Central Act No. X of 1897) in exactly the same terms as comprise its definition in section 2(30) of the Clauses Act. The General Clauses Act, No. X of 1897, applies to the interpretation of the Constitution and the expression "local authority" occurring in Article of the Constitution

must, therefore, be read in the light of the definition given in section 3(31) just above mentioned. Again, that definition and the one given in section 2(30) of the Clauses Act being in the same terms may well be construed in the same sense. The result is that the word "authority" occurring in section 2(30) of the Clauses Act will have the same meaning as attaches to it when used in Article 12 of the Constitution. While interpretting the word as occurring in Article 12 their Lordship of the Supreme Court in *Rajasthan State Electricity Board* v. *Mohan Lal and others* (3), observed :

> "The doctorine of *ejusdem generis* could not, therefore, be applied to the interpretation of the expression 'other authorities' in this article.
>
> "The meaning of the word 'authority' given in Webster's Third New International Dictionary, which can be applicable is a public administrative agency or corporation having quasi-governmental powers and authorised to administer a revenue producing public enterprise. This dictionary meaning of the word 'authority' is clearly wide enough to include all bodies created by a statute on which powers are conferred to carry out governmental or quasi-governmental functions. The expression 'other authorities' is wide enough to include within it every authority created by a statute and functioning within the territory of India, or under the control of the Government of India; and we do not see any reason to narrow down this meaning in the context in which the words 'other authorities' are used in Article 12 of the Constitution."

Their Lordships also relied on the following observations of Ayyangar, J., made in *Smt. Ujjam Bai* v. *State of Uttar Pradesh* (4), in relation to the interpretation of the expression "other authorities" in Article 12:

> "Again, Art. 12 winds up the list of authorities falling within the definition by referring to 'other authorities' within the territory of India which cannot obviously be read as *ejusdem generis* with either the Government and the Legislatures or local authorities. The words are of wide amplitude and capable of comprehending every authority created under a

(3) A.I.R. 1967 S.C. 1857.
(4) A.I.R. 1962 S.C. 1621.

statute and functioning within the territory of India or under the control of the Government of India. There is no characterisation of the nature of the 'authority' in this residuary clause and consequently it must include every type of authority set up under a statute for the purpose of administering laws enacted by the Parliament or by the State including those vested with the duty to make decisions in order to implement those laws."

Reference was further made by their Lordships to the following interpretation of Article 12 arrived at by them in *K. S. Ramamurthy Reddiar* v. *The Chief Commissioner, Pondicherry* (5).

"Further, all local or other authorities within the territory of India include all authorities within the territory of India whether under the control of the Government of India or the Governments of various States and even autonomous authorities which may not be under the control of the Government at all."

(13) The conclusion arrived at by Bhargava, J., who delivered the judgment of the majority, was:

"These decisions of the Court support our view that the expression 'other authorities' in Article 12 will include all constitutional or statutory authorities on whom powers are conferred by law. It is not at all material that some of the powers conferred may be for the purpose of carrying on commercial activities. Under the Constitution, the State is itself envisaged as having the right to carry on trade or business as mentioned in Article 19(1)(g). In Part IV, the State has been given the same meaning as in Article 12 and one of the Directive Principles laid down in Article 46 is that the State shall promote with special care the educational and economic interests of the weaker sections of the people. The State, as defined in Article 12, is thus comprehended to include bodies created for the purpose of promoting the educational and economic interests of the people. The State as constituted by our Constitution, is further specifically empowered under Article 298 to carry on any trade or business. The circumstance that the Board

(5) A.I.R. 1963 S.C. 1464.

under the Electricity Supply Act is required to carry on some activities of the nature of trade or commerce does not, therefore, give any indication that the Board must be excluded from the scope of the word 'State' as used in Article 12. On the other hand, there are provisions in the Electricity Supply Act, which clearly show that the powers conferred on the Board include power to give directions, the disobedience of which is punishable as a criminal offence. In these circumstances, we do not consider it at all necessary to examine the cases cited by Mr. Desai to urge before us that the Board cannot be held to be an agent or instrument of the Government. The Board was clearly an authority to which the provisions of Part III of the Constitution were applicable."

(14) Shah, J., in a separate judgment agreed that the Rajasthan State Electricity Board was "the State" within the meaning of Article 12. This was so according to his Lordship, because the Board was invested by statutes with certain sovereign powers of the State. His Lordship was unable to agree with the view of the majority that every constitutional or statutory authority on whom powers were conferred by law was "other authority" within the meaning of Article 12. In the opinion of his Lordship :

"The expression 'authority' in its etymological sense means a body invested with power to command or give an ultimate decision, or enforce obedience, or having a legal right to command and be obeyed."

(15) The observations quoted above by me from the judgment leave no room for doubt that even though the word "authority" occurring in Article 12 was held by their Lordships to have been used in a very wide sense, it was found to embrace only constitutional or statutory authorities on whom powers were conferred by law. By implication private institutions were excluded from its purview and it appears to me that the meaning of the word cannot be enlarged any further so as to include within its ambit any private institution.

(16) *The Praga Tools Corporation* v. *Shri C. A. Imanual and others* (6), leads to the same result. In that case the question was whether a writ of mandamus could be issued by a High Court in

(6) 1969 (1) S.C.C. 585.

exercise of its powers under Article 226 of the Constitution against a company incorporated under the Companies Act. The company in question was the Praga Tools Corporation in which the Union Government and the Government of Andhra Pradesh between them held 56 per cent and 32 per cent of its shares respectively at the material time, the balance of 12 per cent shares being held by private individuals. The Union Government being the largest share-holder had the power to nominate the company's directors. It was held by their Lordships that being registered under the Companies Act and governed by the provisions of that Act the company was a non-statutory body on which no statutory or public duty had been imposed by the statute in respect of which enforcement could be sought by means of a mandamus. Following this dictum, Tuli, J., held in *Dharam Pal Soni* v. *State of Punjab* (7), that a society registered under the Societies Act was also a non-statutory body on which no statutory or public duty had been imposed by a statute such as could be enforced by a writ of mandamus.

(17) In the instant case also the Society is a private institution registered under the Societies Act. It is not the creation of a statute. Its share-holders were at liberty not to have brought it into being and its registration does not make it a stautory institution. The provisions of the Societies Act and the rules framed thereunder relied upon by learned counsel for the respondents do not advance their case on the point. Section 2(h) of the Societies Act merely states that "officer" means the president, vice-president, chairman, managing director, secretary, etc. (of a co-operative society). Section 4 days down that a society, which has its object the promotion of the economic interests of its members in accordance with co-operative principles, or a society established with the object of facilitating the operations of such a society, may be registered under the Act with or without limited liability. Section 8 deals with the conditions on satisfying himself about which the Registrar may register a society. According to section 24, a general meeting of a co-operative society must be held once a year for certain specified purposes. Section 40 provides for giving fianancial assistance by the Government to co-operative societies. Section 41 prohibits the division by way of bonus or divident of the funds of a co-operative society. Section 57 makes provision for winding up of co-operative societies. Rule 8 of the Punjab Co-operative Societies Rules, 1963, framed under the Societies Act makes provision for framing of bye-laws by a co-operative society.

(7) 1969 S..LR. 349.

(18) These provisions whether considered collectively or individually do not indicate that a co-operative society registered under the Societies Act will be either a public or statutory body or a Government department entrusted with Government funds. Nor can it be said that such a society cannot be regarded as an institution carrying on commercial activities. Such a society is no doubt clothed with the power to make bye-laws and may also be given financial aid by the State Government but these factors cannot clothe it with the character of a public or statutory institution.

(19) Learned counsel for the respondents cited certain authorities in support of a contrary proposition and the same may now be examined. In *P. M. Bramadathan Nambooripad* v. *Cochin Devaswom Board* (8), it was held that the Cochin Devaswom Board constituted under the Travancore-Cochin Hindu Religious Institutions Act could not be considered to be a local authority within the meaning of Article 12 of the Constitution, but that it clearly fell within the ambit of "another authorities" mentioned therein. It is true that in coming to this conclusion the Full Bench was mainly influenced by the consideration that the Cochin Devaswom Board had the power to issue rules, bye-laws or regulations, but then that Board was the creation of a statute so that the rules, bye-laws or regulations framed under it had the force of law. The case is, in my opinion, of no assistance to the respondents inasmuch as the Society is not a statutory or public body and the bye-laws framed by it cannot be considered to be law or to have the force of law. The matter is concluded by the dictum of their Lordships of the Supreme Court in *Co-operative Central Bank Ltd. and others* v. *Additional Industrial Tribunal* (9), wherein the bye-laws of 25 Co-operative Central Banks in the State of Andhra Pradesh, being societies registered under the Andhra Pradesh Co-operative Societies Act, were held to be in the nature of Articles of Association of a company incorporated under the Companies Act, in these words:

> "We are unable to accept the submission that the bye-laws of a co-operative society framed in pursuance of the provisions of the Act can be held to be law or to have the force of law. It has no doubt been held that, if a statute gives power to a Government or other authority to make rules, the rules so framed have the force of statute and are to be

(8) A.I.R. 1956 Tra. Co. 19(F.B.).
(9) A.I.R. 1970 S.C. 245.

deemed to be incorporated as a part of the statute. That principle, however, does not apply to bye-laws of the nature that a co-operative society is empowered by the Act to make. The bye-laws that are contemplated by the Act can be merely those which govern the internal management, business or administration of a society. They may be binding between the persons affected by them, but they do not have the force of a statute."

(20) *Dukhooram Gupta-Hari Prasad Gupta* v. ***Co-operative Agricultural Association, Ltd.*** (10), which lays down a proposition to the contrary and on which reliance was placed by learned counsel for the respondents must be held to have been overruled by ***Co-operative Central Bank Ltd.** and others* v. *Additional **Industrial Tribunal*** (9) (supra).

(21) For the respondents reliance was next placed on ***Ochhaylal*** *Jethalal Desai and others* v. *The State of Gujarat **and another*** (11). In that case the question was whether a market committee constituted under the Bombay Agricultural Produce Markets Act (XXII of 1939) was a local authority within the meaning of section 3(31) of the General Clauses Act. Far from supporting the proposition put forward by learned counsel for the respondents before me, the following observations made in the case go in favour of the stand taken by the petitioner :

"In order that such an authority may be a local authority, it is necessary that it must have control or management of a municipal or a local fund. Broadly speaking, it is not likely that an authority which is in control or management of a municipal or a local fund will not be a unit of local administration. Under the circumstances, in our judgment, in order that an authority may be a local authority, it is not enough that it should exercise some power or perform a duty, but, it is necessary that it should administer some governmental functions in a local area. In other words, in order that an authority may be a local authority, it is necessary that it should operate within a pre-determined or defined locality and must discharge functions which are exercisable by the State and which functions would

(10) A.I.R. 1961 M.P. 289.
(11) 1967 Gujrat Law Reporter 359.

naturally come to be assigned or delegated to it by a statute or some other legal instrument. In other words, the expression, 'authority' means a legally constituted body which discharges the functions of a local government—a body which is authorised to perform the whole or part of the Governmental functions in regard to a specified, pre-determined or defined locality. Therefore, in order that the Market Committee may be an authority within the meaning of the expression 'local authority', it is necessary that it should have authority to perform all or some of the governmental functions in regard to a specified locality. In other words, the expression 'the other authority' means a local administrative unit and is a species of local government."

Clearly the Society does not fulfil the qualifications of a local authority as contemplated in these observations.

(22) In *Umesh Chandra Sinha* v. *V. N. Singh and others* (12), which was another case relied upon for the respondents, the petitioner was an applicant for admission to the Patna Medical College which is an institution under the control of the Patna University. He was not selected for admission and filed a petition under Article 226 of the Constitution for a declaration, that some of the provisions of an Ordinance made by the said University for admission of students to the medical course were unconstitutional and for the issue of an appropriate writ against the concerned authorities directing them to reconsider his case. The Full Bench held that the University was a State within the meaning of Article 12 of the Constitution and in doing so observed that the only reasonable conclusion that could be drawn from the majority judgment of the Supreme Court in *Rajasthan State Electricity Board* v. *Mohan Lal and others* (3), (supra) was that any public authority created by a statute on whom powers were conferred by law must be held to be a State irrespective of the fact whether the functions of that authority were sovereign functions or non-sovereign functions such as spread of education, etc. I do not see how this case advances the cause of the respondents. As already indicated by me, the Society is not the creation of a statute and the criteria laid down by the Supreme Court and applied by the Full Bench in the Patna case can be of no assistance to them.

(12) A.I.R. 1968 Pat. 3 (F.B.).

(23) Another case cited by learned counsel for the respondents was *Mohinder Singh* v. *Union of India* (13), in which the facts were these. The Lawrence School, Sanawar, was originally owned, controlled and managed by the Government of India. On June 26, 1952, the Government in the Ministry of Education passed a resolution for carrying on the administration of the School through a society to be formed under the Societies Registration Act, 1860. The Memorandum of Association and the Rules and Regulations of the society were to be approved by the Government before being filed with the Registrar of the Joint Stock Companies. On the registration of the society the administration of the School was to vest in the society. With the approval of the Government the Memorandum of Association and Regulations of the society were filed with the Registrar of Joint Stock Companies. The management of the affairs of the society was entrusted to a Board. The employees of the School ceased to be Government servants and became employees of the Board, provided they agreed to serve the Board and the latter agreed to continue them. The properties of the School were also transferred to the Board. The petitioner, who was originally on the permanent staff of the School, continued to be retained by the Board. He was subsequently dismissed after due notice by the Headmaster with approval of the Board in terms of the Regulations. In a petition under Article 311 and 226 of the Constitution it was held that the society and the Board were not a Department of the Government. But it was contended that still a writ could be issued for quashing the order of the Headmaster of the School by which he terminated the petitioner's services, as statutory obligations imposed on the society which was a statutory body, were contravened. It was urged that the society could be regarded as "the State" for purpose of Article 12 of the Constitution, being an "authority" within the territory of India or under the control of the Government. The School Rules were contended to be statutory in character, having been framed as required by section 2 of the Societies Registration Act, and, therefore, to be covered by the definition of "law" as given in Article 13(3) of the Constitution. It was held by a Division Bench consisting of Jagjit Singh and S. N. Shankar, JJ., that the society controlling and administering the school could be regarded as an "authority" created under a statute on whom some powers were conferred by law and which functioned within the territory of India. The conclusion arrived at cannot be said to lay down any general principle, but must be held to be confined to the

(13) A.I.R. 1969 Delhi 170.

particular facts of the case in which the school was, for all practical purposes, a Government organisation. I cannot, however, help remarking, with the utmost respect to the learned Judges, who decided the case, that the society controlling the School could not be regarded as the creation of a statute in view of the dictum of their Lordships of the Supreme Court in *The Praga Tools Corporation* v. *Shri C. A. Imanual and others* (6) (supra). It may also be observed that the said conclusion is in the nature of an *obiter dictum* and the decision of the case went against the petitioner therein for the reason that the School Rules were not held to be statutory in character nor to amount to have the force of law. The case, therefore, furnishes no real guidance for the decision of the point with which we are here concerned.

(24) To sum up the above discussion, the Society cannot be regarded as an "authority" within the meaning of section 2(30) of the Clauses Act, which furnishes the key to the interpretation of clause (g) of sub-section (5) of section 6 of the Panchayat Act, or as a State within the meaning of Article 12 of the Constitution and, therefore, of that clause.

(25) The second requirement which must be fulfilled before an institution can be regarded as a local authority within the meaning of section 2(30) of the Clauses Act is also lacking in the case of the Society. That requirement is that it should be entitled to or entrusted by the Government with the management or control of any municipal or local fund. The mere fact that Government aid is available to the Society under section 41 of the Societies Act does not show that the Society manages or controls a municipal or local fund. It was conceded on behalf of the respondents that the funds of the Society could not be regarded as partaking the character of a municipal fund. Their learned counsel, however, raised the contention that those funds were "a local fund". Support for the proposition was sought from *Ochhaylal Jethalal Desai and others* v. *The State of Gujarat and another* (11) (supra) and *Bhikari Behara* v. *Sm. Dhanapatie Bentia* (14). The Gujarat case runs counter to the proposition enunciated on behalf of the respondents. Interpreting the words "local fund" occurring in section 3(31) of the General Clauses Act Miabhoy, C.J.,

(14) A.I.R. 1970 Cal. 176.

who delivered the judgment of the Division Bench in that case, observed :

> "Under the circumstances, in our judgment, the expression 'local fund' must be also construed in a sense analogous to the expression 'municipal fund'. It would mean a fund which pertains to a local governmental unit—a fund which vests in or belongs to or is earmarked or available or is to be utilized for the affairs of a body which is a local governmental unit. In our judgment, in order to satisfy the above definition, the authority, mentioned in the later part of the definition must have control or management of a fund which is set apart or is available and is to be utilized, either under the law of the land or by virtue of government entrustment, for the purpose of administering the affairs of that authority in its capacity as a local governmental unit."

The market committee in question was held to be entrusted with the control of a local fund and, therefore, to fulfil the above test which, however, is not the case here. It is impossible by any stretch of reasoning to hold that the Society is functioning as "local governmental unit" or that it controls or manages any fund which is available and is to be utilized for the purpose of administering the affairs of such a unit.

(26) In *Bhikari Behara* v. *Sm. Dhanapatie Bentia* (14), (supra) the point arose as to whether an employee of the Calcutta Dock Labour Board, which was created under a statute, was a servant of a local authority within the meaning of sub-rule (1) of rule 48 of Order 21 of the Code of Civil Procedure. It was found that the nucleus of the funds of the Board was supplied by registered employers upon whom a suitable levy had been imposed under the command of the statute. Bijayesh Mukherji, J., who decided the case, held that the funds were a local fund which the Calcutta Dock Labour Board was legally entitled and even entrusted by the State under the command of the statute to control and manage and that the Board was, therefore, a local authority. The case is distinguishable on two counts. Firstly, the Board, as already stated, was the creation of a statute which the Society is not. Secondly, the funds were the result of a statutory levy and could, therefore, be regarded as a tax imposed by the statute for a particular purpose, while the Society has no power to impose any levy.

C.P.H.

(27) For the reasons stated, I hold that the Society could not be regarded as a local authority nor the petitioner as a whole-time salaried servant of a local authority within the meaning of clause (g) of sub-section (5) of section 6 of the Panchayat Act. The rejection of his nomination paper is vitiated by illegality and must be struck down. Accordingly the impugned order (Annexure "B" to the petition) is quashed along with the election which was found without the petitioner being given an opportunity of participatng in it. In the circumstances of the case the parties are left to bear their own costs.

B. S. G.

CIVIL MISCELLANEOUS

Before R. S. Narula and Bal Raj Tuli, JJ.

NAZAR SINGH SARWAN SINGH,—*Petitioner.*

versus

THE STATE OF HARYANA, ETC. —*Respondents.*

Civil Writ No. 3336 of 1971.

November 29, 1971.

Punjab Passengers and Goods Taxation Act (XVI of 1952 as amended by Act XXI of 1952)—First proviso to section 4—Punjab Passengers and Goods Taxation Rules (1952)—Rule 9—Punjab Motor Vehicles Taxation Act (IV of 1924)—Section 7(A) (b)—Constitution of India (1950)—Article 304—Amending Act adding first proviso to section 4 introduced in Legislature without the previous sanction of the President—Such proviso—Whether invalid on that score—Option conferred by the proviso—Whether converted into a compulsion in view of section 7(A)(b) and liable to be struck down.

Held, that first proviso to section 4, Punjab Passengers and Goods Taxation Act, 1952 enacted by the Amendment Act 21 of 1952 without the previous sanction of the President is valid because no such sanction was necessary. The proviso does not in any manner interfere with inter-State trade or even intra-State, commerce and intercourse.

(Para 2)

Held, that clause (b) of Section 7A of Punjab Motor Vehicles Taxation Act, 1924 applies only to those cases which are covered by the proviso to section 4 of the Punjab Passengers and Goods Taxation Act, 1952 and by the