

## CIVIL MISCELLANEOUS

*Before H. R. Sodhi and Bal Raj Tuli, JJ.*

THE MUNICIPAL COMMITTEE, KHARAR,—Petitioner,

*versus*

THE STATE OF PUNJAB ETC.,—Respondents.

**Civil Writ No. 3537 of 1968**

April 21, 1972.

*Punjab Municipal Act (III of 1911)—Section 237—Scope of—Order of Municipal Committee dismissing its employee set aside by State Government under section 237—State Government—Whether to afford an opportunity of hearing to the Municipal Committee before passing the order—Rules of natural justice—Whether attracted.*

*Held*, that section 237 of the Punjab Municipal Act, 1911 affords a wide scope to the State Government to interfere in order to reverse, modify or set aside any order of its officers passed or purported to have been passed under the Act if it considers the same to be not in accordance with the Act or the Rules made thereunder or for any reason, inexpedient. It is indeed intended to confer powers of superintendence and control by permitting interference in any of the orders made or purported to have been made under the Act. No limitations about the nature of the order sought to be modified or reversed are laid down with the result that orders, both administrative and quasi-judicial, are liable to be interfered with by the State Government in the exercise of its supervisory control. Whether an order sought to be reversed is administrative or quasi-judicial depends on the facts and circumstances of a particular case keeping in view the nature of the powers exercised by the officer and the circumstances surrounding the exercise of that power. (Para 2).

*Held*, that the Municipal Committee is a corporate body and a juristic person having a completely independent entity of its own. It performs the functions of the State over a specified area declared to be a Municipal Committee by or under the Act, irrespective of the extent of control exercisable over it by the State or its officers. It is the right of the Committee to have employees of its choice and it alone is the judge whether a person is desirable to be employed or retained in service subject to any rules with regard to disciplinary action. The order of dismissal of an employee by the Municipal Committee under the rules after an enquiry is quasi-judicial. The State Government, in the exercise of its powers of control in such matters under section 237, must equally be deemed to be performing quasi-judicial functions and the order reversing that of the Committee has to be made in a fair and just manner with a judicial approach. The rules

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of natural justice are beyond doubt attracted in such a case and it would be highly arbitrary if an employee is imposed on a Committee without giving it an opportunity to place its view point before the State Government. Hence the State Government has to afford an opportunity of hearing to the Municipal Committee before setting aside the order of the Committee dismissing one of its employees. (Paras 2 and 3).

*Case referred by Hon'ble Mr. Justice H. R. Sodhi on 23rd July, 1971 to a larger bench for deciding an important question of law involved in this case. The Larger Bench consisting of Hon'ble Mr. Justice H. R. Sodhi and Hon'ble Mr. Justice Bal Raj Tuli finally decided the case on 21st April, 1972.*

*Petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of Certiorari, Mandamus, Prohibition or any other appropriate writ, order or direction be issued quashing the orders dated 5th July, 1968 of respondent No. 1 Punjab State and further praying that respondents be directed not to reinstate respondent No. 4. Shri Ram Dev as Octroi Superintendent of Municipal Committee, Kharar and also further praying that Shri Ram Dev Respondent No. 4 be not allowed to draw the arrears of his salary.*

C. L. Lakhanpal, Advocate, for the petitioner.

Mohinderjit Singh Sethi, Advocate for Advocate-General (Punjab).  
D. N. Aggarwal, Advocate, with B. N. Aggarwal, Advocate for Respondent No. 4.

#### JUDGMENT

Judgment of the Court was delivered by:—

SODHI, J.—The sole question that requires determination in this writ petition is whether a Municipal Committee should be afforded an opportunity to be heard by the State Government before an order of the former dismissing its employee is set aside in exercise of the powers conferred on the latter under section 237 of the Punjab Municipal Act, 1911, as amended up to date, and referred to hereinafter as the Act.

(2) Facts leading to the petition have been stated in detail in my order of reference, dated July 23, 1971, and all of them need not be recapitulated. Suffice to mention that Ram Dev Sharma, respondent 4, was an Octroi Superintendent in Municipal Committee, Kharar (described hereinafter as the Committee). There were 18 charges of embezzlement of funds, gross negligence and indiscipline, etc., against him. The Committee was under suspension and the Administrator

after an enquiry found almost all the charges proved. Respondent 4 was consequently dismissed from service on July 18, 1967, and an appeal preferred by him before the Deputy Commissioner under rule 4 of the Punjab Municipal General Rules framed under section 240 of the Act (referred to hereinafter as the Rules) met with no success. It is provided in rule 5 that an order passed on appeal filed under rule 4 is final. Respondent 4, then moved the State Government by a representation and the Minister Incharge sent for the records. By the impugned order passed by the Governor of Punjab, the representation/appeal of respondent 4 was allowed and he was directed to be reinstated in service from the date of his dismissal with full pay. It is common ground that no opportunity was given to the Committee to be heard by the State Government though the Committee had earlier defended the order of the Administrator before the Appellate Authority. The Committee did not reinstate respondent 4 in spite of the aforesaid order and passed a resolution authorising two of its members to invoke extraordinary jurisdiction of this Court under Articles 226/227 of the Constitution of India for getting the order of the State Government quashed. The Government purported to act under the powers exercisable under section 237 of the Act, which reads as under:—

“Notwithstanding anything in this Act, the State Government shall have the power of reversing or modifying any order of any officer of the State Government passed or purporting to have been passed under this Act, if it considers it to be not in accordance with the said Act or the rules or to be for any reason inexpedient, and generally for carrying out the purposes of this Act the (State) Government shall exercise over its officers all powers of superintendence, direction and control.”

This section affords a wide scope to the State Government to interfere in order to reverse, modify or set aside any order of its officers passed or purported to have been passed under the Act if it considers the same to be not in accordance with the Act or the Rules made thereunder or for any reason inexpedient. It is indeed intended to confer powers of superintendence and control by permitting interference in any of the orders made or purported to have been made under the Act, if the State Government considers any of the said orders to be for any reason inexpedient. No limitations about the nature of the order sought to be modified or reversed are laid down with the result that orders,

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both administrative and quasi-judicial, are liable to be interfered with by the State Government in the exercise of its supervisory control. Whether an order sought to be reversed is administrative or quasi-judicial depends on the facts and circumstances of a particular case keeping in view the nature of the powers exercised by the officer and the circumstances surrounding the exercise of that power. Whatever be the amplitude of the powers, they cannot, however, in a society governed by rule of law, be permitted to be exercised in a manner so as to adversely affect the rights of any person without complying with the rules of natural justice. The rules of natural justice are a part of the law of this country and, as observed by their Lordships of the Supreme Court in *A. K. Kraipak and others v. Union of India and others* (1), "they do not supplant the law of the land, but supplement it". It is equally well-settled that a statute should be interpreted to operate in a manner consistent with such rules unless their applicability is expressly or impliedly barred by it. There is, however, nothing to show that section 237 is not to be interpreted consistent with the rules of natural justice. What is half-heartedly contended on behalf of the State is that comparison of sections 235 and 237 would disclose the intention of the Legislature that the applicability of these rules is impliedly barred under the latter provision. The argument is that if the Legislature had thought it necessary to hear the Committee before any action is taken under section 237, it would have so provided therein as it did in the case of section 235. This contention is, to our mind, wholly misconceived and it does not take notice of the fact that it is because of the omission in section 237 that we are called upon to decide whether rules of natural justice are attracted. It may be that in certain types of cases falling within the ambit of this section, furnishing of an opportunity to the Committee or any other person, to be heard may not be necessary, but it would depend on the facts of each case. Section 235, however, deals with an entirely different situation where an explanation of the Committee is most essential in every case in the nature of things and that is why a specific provision to that effect is made. Under section 232, a Deputy Commissioner has power to suspend a resolution or order of the Committee and section 233 gives extraordinary powers to him in cases of emergency. Section 234 enables a Deputy Commissioner to perform the duties of a Municipal Committee in a case

(1) A.I.R. 1970 S.C. 150.

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where it commits default in regard thereto. Whenever a Deputy Commissioner exercises his powers under any of these sections, he has to forward to the State Government a statement of reasons for the exercise of its administrative control. In these circumstances the Committee is required to be offered an opportunity to show if it defaulted in the discharge of its duties and why it became necessary for the Deputy Commissioner to exercise his extraordinary powers. It is the default of the Committee that is the subject-matter of scrutiny and the view point of the delinquent committee has, therefore, got to be obtained before any further action is taken. There is no analogy between these provisions and the exercise of powers by the State Government under section 237 which, as already stated, gives powers of supervisory nature. A Municipal Committee is a corporate body and a juristic person having a completely independent entity of its own. It performs the functions of the State over a specified area declared to be a Municipal Committee by or under the Act, irrespective of the extent of control exercisable over it by the State or its officers. Except for a few statutory posts with regard to the filling up of which the State Government has an authority to interfere in the manner prescribed under the Act, the Committee alone is empowered to employ officers and servants under section 39 and it alone has power to suspend, remove, dismiss or otherwise punish the officers and servants so appointed. The Committee can discharge any of its employees on serving one month's notice unless there is a contract between the parties to the contrary. The authority to contract is also with the Committee and the State Government has nothing to do with it.

(3) The upshot of the whole matter, therefore, is that it is the right of the Committee to have employees of its choice and it alone is the judge whether a person is desirable to be employed or retained in service subject to any rules with regard to disciplinary action. Rule 4 gives the right to appeal to an employee if he is dismissed from service. An appeal so preferred is decided by the appellate authority on an objective data. It cannot be gainsaid that the order of dismissal passed under the rules after an inquiry is quasi-judicial and the same must be held to be true of an order of the appellate authority. The State Government, in the exercise of its powers of control in such matters under section 237, must equally be deemed to be performing quasi-judicial functions and the order reversing that of the Committee or of the appellate

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authority has to be made in a fair and just manner with a judicial approach. The rules of natural justice are beyond doubt attracted in such a case and it would be highly arbitrary if an employee is imposed on a Committee without giving it an opportunity to place its view point before the State Government.

(4) In the instant case, there has been a grave violation of the rules of natural justice in reversing the order of the Administrator and of the Deputy Commissioner on appeal without affording an opportunity to the Committee to be heard in support of those orders.

(5) For the foregoing reasons the writ petition is allowed with costs and the impugned order, Annexure "B", passed by the State Government, whereby respondent 4 was reinstated in service of the Municipal Committee, Kharar, quashed. The costs will be paid by the State to the petitioner. Counsel's fee is assessed at Rs. 200.

N. K. S.

REVISIONAL CIVIL

Before Harbans Singh, C.J. and Gurdev Singh, J.

THE DIVISIONAL PERSONNEL OFFICER, DELHI DIVISION NORTHERN  
RAILWAY, NEW DELHI, ETC.—Petitioners.

versus

JASWANT RAI ETC.,—Respondents.

Civil Revision No. 389 of 1969

April 27, 1972.

*Payment of Wages Act (IV of 1936)—Section 15—Authority under—  
Whether has jurisdiction to go into the legality of the order of the punishing authority resulting in the deduction of wages.*

*Held*, that the Authority under section 15 of the Payment of Wages Act, 1936, dealing with the claims arising out of deductions made in the payment of wages can go into the question as to whether the authority imposing punishment resulting in the deduction of wages had the jurisdiction and that its order is not in violation of any mandatory provision of law. If the order of the punishing authority on the face of it is valid and is *prima facie* not contrary to any provision of law or relevant