

Before S. S. Sandhwalia C.J. and Rajendra Nath Mittal J.

KARAM SINGH—Petitioner

versus

STATE OF PUNJAB and others—Respondents.

Civil Writ No. 3654 of 1970.

November 8, 1978.

*Punjab Municipal Act (III of 1911)—Sections 235 and 236—Resolution of a Municipal Committee annulled by the State Government under section 236—Opportunity of being heard to all affected persons before annulment—Whether required by the Act or the rules of natural justice—Hearing given to the affected Municipal Committee—Whether satisfies the requirement of section 236.*

Held, that the power conferred by the Punjab Municipal Act, 1911, on the State Government under sections 235 and 236 is closely similar if not identical. Whilst under the former section the State Government acts on reference made by the Deputy Commissioner but under the latter it has and exercises virtually the same power on its own motion. Section 235 requires the State Government to give an opportunity to the Municipality and to none else. If the rules of natural justice are not attracted under this section to require a notice to each and every person affected, then a *fortiori* the same principle would be equally applicable in the case of the exercise of power under section 236 (2). Furthermore, a resolution of the Municipality may sometime be of such a general application as to substantially or partially affect the whole of the citizenry within its jurisdiction. That before annulling or modifying the resolution an opportunity of being heard should be given to every one of the citizens of the Municipality would, other things apart, be impossible of practical application. Again, the rules of natural justice are not embodied rules and can be excluded either expressly or by necessary intendment. Section 235 itself provides for an explanation, if any, which the Municipality may wish to offer before or along with the papers forwarded to the Government. By necessary implication, therefore, the only authority to which the statute has thus chosen to give a reasonable opportunity of being heard is the Municipality whose order or resolution is to be affected and to no others. That being so, it would be a far cry indeed to say that not only notice should be given to the Municipality but to each and every person

likely to be affected by the annulment or modification of the resolution passed by the Municipality under section 236(2) as well.  
(Paras 5 to 8).

*Khushwant Rai v. State of Punjab and others* C.W. 2415 of 1968 decided on February 21, 1967.

*Municipal Committee Mukatsar v. State of Punjab and others* C.W. 852 of 1971 decided on October 4, 1972

Case referred by Hon'ble Mr. Justice Rajendra Nath Mittal on January 28, 1975 to a Division Bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia and Hon'ble Mr. Justice Rajendra Nath Mittal again returned the case to the learned Single Judge for decision on merits.

Amended Petition under Article 226 of the Constitution of India praying that :—

- (a) a Writ of Certiorari may be issued, quashing the order of the Deputy Commissioner and the order of the Punjab Government Local Department referred to above;
- (b) or such other Writ, Order or direction as may be deemed fit under the circumstances of the case be issued.
- (c) Costs of the Writ Petition be allowed in favour of the petitioner and against the respondents.

I. B. Bhandari Advocate, for the Petitioner.

I. S. Tiwana Additional A.G., Surjit Singh Advocate, for Respondent No. 2.

S. K. Heeraji Advocate for Respondent No. 4.

#### JUDGMENT

*S. S. Sandhawalia, C.J.—*

(1) Whether section 236(2) of the Punjab Municipal Act necessarily envisages the affording of an opportunity of being heard to all the persons likely to be affected by the annulment or modification of a resolution of the municipality under the aforesaid provision, is the significant question which falls for determination in this reference to the Division Bench.

Karam Singh v. State of Punjab & others (S. S. Sandhawalia, C.J.)

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2. For the limited purpose of the determination of the aforesaid legal issue a bare reference to the facts suffice. On the basis of a note recorded by its President, the Municipal Committee, Patiala, by its resolution No. 705, dated the 18th September, 1970, resolved that certain agricultural land situated in the revenue estate of Kheri Gujran be cultivated by Karam Singh petitioner in partnership with the Committee. In pursuance of the said resolution a partnership deed was executed betwixt the petitioner and the Committee and the possession of the land was delivered to the petitioner on the same day. One of the terms of the partnership deed was that it was for a fixed period of five years and could be extended with mutual consent of the parties. In order to further effectuate the partnership agreement, the Municipal Committee was contemplating to pass a further resolution. However, the Deputy Commissioner, Patiala, respondent No. 3 passed the order under section 232 of the Punjab Municipal Act directing the Committee not to consider the agenda regarding that resolution. Subsequently the Governor of Punjab by his order dated the 15th of October, 1970, annulled the above-mentioned resolution No. 705 dated the 18th September, 1970, passed by the Municipal Committee on the ground that the same was not in the interest thereof. The petitioner primarily seeks to challenge the aforesaid annulment of the resolution under section 236(2) of the Punjab Municipal Act.

3. When the matter first came up before my learned brother R. N. Mittal J., he noticed some conflict of authority within this Court on the point whether notice was necessary to every person prejudicially affected by the annulment of resolution. This has indeed necessitated the present reference.

4. In order to appreciate the rival contentions, the material provisions of the Punjab Municipal Act (hereinafter called the Act) which call for notice are firstly section 232 which empowers the Deputy Commissioner by order in writing to suspend any resolution or order of the Committee if the pre-requisites specified in the said section are satisfied. The succeeding sections 233 and 134 of the Act vest some extraordinary powers in the Deputy Commissioner in cases of emergency and for the performance of duties in cases of gross default by the Committee respectively. However, the material provisions of sections 235 and 236 deserve notice *in extenso*:—

“S. 235. When the Deputy Commissioner makes any order under section 232, section 233 or section 234 he shall forthwith forward to the State Government a copy thereof, with

a statement of the reasons for making it, and with such explanation, if any, as the Committee may wish to offer, and the State Government may thereupon confirm, modify or rescind the order;

- S. 236. (1) The State Government and Deputy Commissioner acting under the orders of the State Government, shall be bound to require that the proceedings of committees shall be in conformity with law and with the rules in force under any enactment for the time being applicable to Punjab generally or the areas over which the committee have authority.
- (2) The State Government may exercise all powers necessary for the performance of this duty and may among other things, by order in writing, annul or modify any proceeding which it may consider not to be in conformity with law or with such rules as aforesaid, or for the reasons, which would in its opinion justify an order by the Deputy Commissioner under section 232.
- (3) The Deputy Commissioner may, within his jurisdiction for the same purpose, exercise such powers as may be conferred upon him by rule made in this behalf by the State Government."

(5) It is evident from the above that both the vesting and the exercise of the power by the State Government under sections 235 and 236 is closely similar if not identical. Whilst under the former section the State Government acts on reference made by the Deputy Commissioner, under the latter it has and exercises virtually the same powers on its own motion. In view of this close analogy, it would be wasteful to examine the primary question before us on principle because it appears to be substantially covered by the binding precedent of their Lordships of the Supreme Court with regard to section 235. In the context of that section, it was categorically observed in *Shri Subhash Chandra and others v. Municipal Corporation of Delhi and another* (1) as follows:—

"This decision cannot afford any assistance to the petitioners before us as there is no provision in the Punjab Municipal Act analogous to the above provision requiring the Government to afford an opportunity to all the persons affected, to

(1) A.I.R. 1965 S.C. 1275.

offer an explanation. *Section 235 requires the State Government to give an opportunity to the municipality and to none else.* No grievance is alleged to have been made by the Committee of the omission by the Government to give it the opportunity contemplated by section 235. It has to be borne in mind that an order under section 232 takes effect immediately and its operation is not made dependent upon the action contemplated under section 235. Where an order is made thereunder by an authority other than the State Government that authority has to report to the State Government. But, though such authority is bound to make a report its order is not inoperative or inchoate. It has to be given effect to by the Committee. It is true that till the procedure set out in section 235 is complied with it cannot be regarded as final. But want of finality does not vitiate the order under section 232. The order is, unless modified or annulled by the State Government, legally effective and binding on the Committee. The Committee can, therefore, acquiesce in it and waive the non-compliance by the State Government with the provisions of section 235. *Since section 235 does not require an opportunity to be given to parties affected by the order other than the Municipality the petitioners are not entitled to say that the order is bad.*"

(6) As has been authoritatively held above, if the rules of natural justice are not attracted under section 235 to require a notice to each and every person affected thereby, then a *fortiori* the same principle would be equally applicable in the case of the exercise of power under section 236(2). It is of particular significance to recall that under section 235 reference is expressly made to section 232 which empowers the Deputy Commissioner to suspend any resolution of the Municipal Committee. Equally section 236(2) vests a similar power of annulling or modifying such a resolution in the State Government *inter alia* for the same reasons which would in its opinion justify an order by the Deputy Commissioner under section 232. It seems unnecessary to labour the point because it is more than evident that the powers vested in the State Government under sections 235 and 236 are analogous if needed not identical. Once that is so, then what has been said by their Lordships with regard to section 235 must apply *mutatis mutandis* to section 236(2) as well.

(7) Examining the matter *de hors* the precedent it appears to me that on principle also the view aforesaid seems to be the only reasonable one which can be taken. It is plain that a resolution of the Municipality may sometime be of such a general application as to substantially or partially affect the whole of the citizenry within its jurisdiction. That before annulling or modifying a resolution an opportunity of being heard should be given to everyone of the citizens of the Municipality would, other things apart, be impossible of practical application. Indeed the very purpose of the power under section 236(2) may be frustrated if so tortuous a process were to be followed or made obligatory by a process of interpretation. The argument *ab inconvenient i* is, therefore, plainly attracted to a construction requiring notice to each and everyone of the persons likely to be affected thereby.

(8) Again on the provisions of the statute itself it appears to me that the view canvassed on behalf of the petitioner cannot be sustained. As has been often repeated, the rules of natural justice are not embodied rules and can be excluded either expressly or by necessary intendment. In this context it is significant to recall that section 235 itself provides for an explanation if any which the Municipality may wish to offer before or along with the papers forwarded to the Government. By necessary implication, therefore, the only authority to which the statute has thus chosen to give a reasonable opportunity of being heard is the Municipality whose order or resolution is to be affected and to no others. The legislature appears to be fully conscious of the necessity or desirability of affording a notice to the parties and to whom such an opportunity is to be granted. Section 236 which immediately follows section 235 on the other hand makes no provision for notice. That being so it would indeed be a far cry to hold that not only notice should be given to the Municipality but to each and every person likely to be affected by the annulment or modification of the resolution passed by the Municipality under section 236(2) as well.

(9) In this Court the matter is not *res integra*. The issue first came up before Tuli, J. in *Khushwant Rai vs. The State of Punjab* (2). Therein, the petitioner who was a Municipal employee and was posted as an Octroi Inspector was promoted and appointed as Lands Officer by a resolution of the Municipal Committee which was later annulled by the Governor on a representation filed by one

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(2) C.W. No. 2415 of 1968 decided on 21st Feb., 1969.

Karam Singh v. State of Punjab & others (S. S. Sandhwalia, C.J.)

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Lachhman Dass who was already holding the said post. A further direction was given that the said Lachhman Dass be appointed as Lands Officer as he was senior and had a better right for the post. On the peculiar facts of that case, the learned Single Judge took the view that the State Government did not have any jurisdiction to set aside the promotion and appointment of Khushwant Rai petitioner as Lands Officer and further held that the respondent State had no power to issue a direction to the Municipality to appoint Shri Lachhman Dass without notifying the vacancy to the Employment Exchange. However, as an added reason it was observed that Khushwant Rai petitioner should have been given notice of the representation preferred against him by Shri Lachhman Dass and the failure to do so was a violation of the principles of natural justice.

(10) I am of the view that the observation with regard to the requirement of notice to Khushwant Rai petitioner made in the afore-said case is a typical example of a hard case making a bad law. Whilst allowing the writ petition on other grounds, this was merely an added reason to buttress the main challenge levelled on behalf of the petitioner. It appears to me that the matter was not adequately canvassed before his Lordship. The close analogy between sections 235 and 236 of the Punjab Municipal Act seems to have been missed. The attempt to distinguish the binding ratio of *Shri Subhash Chandra and others v. Municipal Corporation of Delhi and another* (1) (supra), does not appear to me valid.

(11) What, however, calls for significant and pointed notice herein is that later the identical issue again came up before the same learned Single Judge in *Shri Baldev Raj Sharma v. The State of Punjab and another* (3). Whilst construing this very statutory provision it was observed as follows:—

“Sub-section (2) of section 236 of the Act authorises the State Government to annul or modify any proceeding of a Municipal Committee which it considers to be not in conformity with law or with rules as are in force. It does not expressly state that before passing the order notice has to be issued to the Municipal Committee concerned or to any person who is affected by that resolution or annulment order. It is only the Municipal Committee whose resolution is annulled that can be said to have a grievance and

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(3) 1972 P.L.R. 144.

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the person to whom that resolution relates, has no right to urge that he has not been given any notice or hearing before annulling that resolution."

It is manifest from the above that the learned Judge later has himself veered over to what appears to me as the correct view. Whilst it is true that reference in the aforesaid case was not made to his own decision in *Khushwant Rai's case* (supra) it is equally plain that the ratio of the two cases cannot stand together.

(12) With the greatest respect to Tuli, J. I hold that both on principle and precedent, the observations made in *Khushwant Rai's case* to the effect that the person affected by the resolution is entitled to notice under section 236(2) are unsustainable. I would, consequently, over-rule the said judgment on this specific point.

(13) Equally necessary it is to notice that in *Municipal Committee, Muktsar v. The State of Punjab and others* (4), my learned brother R. N. Mittal, J., apparently followed *Khushwant Rai's case* (supra) which was cited before him to hold that notice was necessary to the individuals affected by the resolution. For the reasons recorded above, with regard to *Khushwant Rai's case* these observations also do not lay down the law correctly and have, accordingly, to be over-ruled.

(14) To conclude, my answer to the question posed at the very outset is in the negative and it is held that the petitioner herein was not entitled to any opportunity of being heard before the annulment or modification of the resolution of the Municipal Committee, Patiala, by the State Government.

(15) The question of law which necessitated this reference having been answered as above, the learned counsel for the parties are agreed that the case should now go back for decision on merits before the learned Single Judge.

(16) We direct accordingly.

Rajendra Nath Mittal, J.,—I agree.

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N.K.S.

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(4) C.W.P 852/71 decided on 4th October, 1972.