LETTERS PATENT APPEAL

Before Mehar Singh and Prem Chand Pandit, JJ.

NUSRAT ALI KHAN AND OTHERS,—*Appellants*

versus

TIRLOK CHAND SHARMA AND OTHERS,—*Respondents*

L.P.A. No. 60 of 1965

1965

October 27th

Punjab Municipal Act (III of 1911)—Ss. 4, 5 and 6—Limits of the local area of a Municipality already defined—Inculsion in and exclusion from such limits of some areas made by notification under S. 4, instead of Ss. 5 and 6—Election to the Municipal Committee held on the basis of fresh limits—No allegation of corrupt practice or lack of authority of law—Such election—Whether liable to be set aside on account of technical defect in the notification—Cantonments Act (II of 1924)—S. 3—Area under the control and possession of Military authorities but no notification issued under S. 3 of the Act—Whether constitutes military cantonment.

Held, that when the limits of the local area of a Municipality are already defined and for the purposes of inclusion of fresh areas and exclusion of existing areas, a notification is issued under section 4 instead of sections 5 and 6 of the Punjab Municipal Act, 1911, the election to the Municipal Committee on the basis of the new limits cannot be set aside on account of technical defect in the notification if there is no allegation of corrupt practice and the election is held according to law. The substance of the notification including an area in the limits of the local area of a municipality under section 5(1) and of a similar notification excluding certain area from such limits under section 6 is practically the same, but a notification under section 4(1) defining the limits of the local area of a municipality would obviously deal with the matter in a more comprehensive and detailed manner. However, the difference in the nature of the notifications is only a matter of degree. Whether proceedings are taken for inclusion of certain area, beginning with section 5(1), or exclusion of certain area beginning with section 6, in or from the defined limits of the local area of a municipal committee, or whether proceedings are taken beginning with section 4(1), for defining the limits of the local area of a municipality, but for the first notification in this respect,

what follows after such a notification is in substance exactly the same, and there is no difference of any consequence.

Held, that mere control and possession of an area by the Military authorities does not make it a Military Cantonment unless the area is defined and declared as such according to section 3 of the Cantonments Act.

Appeal under Clause 10 of the Letters Patent, against the judgment of the Hon'ble Mr. Justice A. N. Grover, dated 1st February, 1965, in Civil Writ No. 1097 of 1964.

H. L. SIBAL, B. R. AGGARWAL & S. K. AGGARWAL, ADVOCATES, for the Appellants.

D. S. NEHRA & K. S. NEHRA, ADVOCATES, for the Respondents.

JUDGMENT

Mehar Singh, J. MEHAR SINGH, J.—This judgment will dispose of two appeals under clause 10 of the Letters Patent, Nos. 60 and 142 of 1965, first by appellants Nasrat Ali Khan and others, and the second by appellant State of Punjab, to which both appeals respondents are Tirlok Chand Sharma and others, from the judgment, dated February 1, 1965, of a learned Single Judge, accepting a writ petition under Article 226 of the Constitution by Tirlok Chand Sharma, respondent and setting aside the whole of the election of the Municipal Committee of Malerkotla held on May 24, 1964, thus unseating all the members of that Municipality. The learned Judge has made no order in regard to costs. Against the judgment of the learned Judge there is, as stated, one appeal by the State of Punjab and the other appeal is by the unseated members of the Malerkotla Municipality.

The town of Malerkotla was the capital seat of the former Malerkotla State. Before the formation of PEPSU on August 20, 1948, into which Union the former Malerkotla State also merged, there was a Municipality in Malerkotla town constituted by the Ruler of Malerkotla State with its members nominated by him. After the formation of PEPSU, by notification No. 3 of January 9, 1951, Annexure 'A', Malerkotla town was delimited into seventeen municipal wards for the purposes of election. An election followed and a municipal committee was duly constituted. There was again election for the same municipal committee in 1955. On November, 1, 1956,

because of the reorganisation of States, PEPSU and Punjab States merged, forming the present Punjab State. In the former Patiala State the Punjab Municipal Act, 1911 (Punjab Act 3 of 1911), hereinafter to be referred as 'the Act', was in force as the statute of that State, and on the formation of PEPSU it became the law of the new State of PEPSU. After the reorganisation in 1956 this statute came to be applied as such to the Municipality of Malerkotla.

On January 27, 1960, the State Government issued a notification, Annexure 'B', delimiting the wards of that municipality as twelve in number, making one ward a double-member constituency. This was done under section 240 of the Act. Election was to be held in the same year but was deferred due to a stay order made by a civil Court in a suit questioning the legality of the notification. So far there has been no doubt or difficulty in regard to the legal existence of a municipal committee in Malerkotla town.

Some time later, so it appears, a doubt arose on that matter. It is stated in paragraph 7 of the return by the State Government that some time in 1962, such a doubt arose. The Assistant Director of Elections (Local Bodies) made enquiries on the spot, whereafter he made a report that any previous notification declaring and defining the municipal limits of this particular municipality was not traceable. Some time about October 12, 1962, it was then decided to issue a notification under section 4 of the Act defining those limits. The notification is Annexure 'C' of May 3, 1963. It demarcates the municipal limits of this particular municipality. There then followed a notification, copy Annexure 'D', of November 26, 1963, delimiting wards within those municipal limits for the purpose of holding an election for the municipality of Malerkotla. The effect of such definition and declaration of the municipal limits of this municipality and delimitation of the wards, when compared with the delimitation of the wards on January 27, 1960, according to Annexure 'B', is given in paragraphs 8 and 9 of the petition of Tirlok Chand Sharma, respondent, and the position can best be stated by the reproduction of those two paragraphs, which run thus—

> "8. That a perusal of the plan, and delimitations of the wards notified in 1963 and those of 1960 will

Nusrat Ali Khan and others
v.
Tirlok Chand Sharma and others

Mehar Singh, J.

clearly show that the Government has actually altered the boundaries of the Municipal Committee existing heretofore by including some area and excluding others. It may be mentioned in particular that the area comprised in (i) Nai Abadi Jamalpur, (ii) Chah Hariwala, (iii) Nai Abadi Qila Rehmatgarh, (iv) Railway Station, (v) Id-Gah and beyond Kothi Abdullah Shah, which includes Chah Kawatan and Chah Modianwala have been included in wards Nos. 14, 15, 16, 17, 18, and 1 and 3.

9. That similarly area comprising of (i) Dora Atma Ram, (ii) Bagh Pujwala, which were included in the earlier delimitations of wards No. 14 of 1951 notification and ward No. 1 of 1960 notification have been excluded in the delimitation of wards in 1963. No separate notification, as required under section 6 of the Municipal Act has been issued. The residents of these areas have been illegally disenfranchised and deprived of their right to exercise votes and contest the election to the Municipal Committee. The Government had no right to do so without complying with the mandatory provisions of the Act."

In his petition respondent Tirlok Chand Sharma challenged the legality, *vires* and validity of the notification (Annexure 'C') of May 3, 1963, declaring and defining the municipal limits of Malerkotla Municipality under section 4 of the Act. At the hearing before the learned Single Judge the challenge to the notification was confined to these three grounds—(1) that no notification could be issued under section 4 of the Act when the Municipal Committee had already been in existence since 1951, and the only course, which the Government could follow, was to act in accordance with the procedure in sections 5 and 6 of the Act; (2) that the notification (Annexure 'C') of May 3, 1963, contravenes restrictions contained in the proviso to section 4(1) of the Act by including the area comprised in the military cantonment; and (3) that certain areas of villages Jamalpur and Qila Rehmatgarh forming part of the Sabha under the Gram Panchayats and the Block Samiti, Malerkotla, which are rural areas, have been

illegally included in the municipal limits without the consent of the Panchayats, the Block Samiti and the Zila Parishad, and this is clearly in contravention of section 4 of the Gram Panchayat Act. These are the only grounds which were canvassed before the learned Single Judge.

On the first two grounds the learned Judge has found for respondent Tirlok Chand Sharma and on the third ground against him. The learned counsel for this respondent has not queried the conclusion of the learned Single Judge with regard to the third ground that it is without any basis. No argument has been addressed with regard to that ground and no more need be said on that account. In so far as the second ground is concerned, it is first stated at the end of paragraph 7 in the petition of respondent Tirlok Chand Sharma that "even the Military Cantonment area was included within the limits", and in paragraph 10(b) of the petition it has been stated that 'the notification contravenes the restrictions contained in the proviso to section 4(1) of the Act by including the area comprised in Military Cantonment'. In the return by the State Government, in paragraph 7, it is first stated that 'it is a fact that certain areas have been shown as military areas which are within the municipal limits, but have not been excluded from the municipal boundaries published in the *Punjab Government Gazette* mentioned above', and in paragraph 10(b) all that is stated is that 'the notification is legal, valid, *intra vires*, and in accordance with law'. In every Indian State before the independence certain troops were maintained and there was certain area occupied by them. There is no material on the record of this case that in the days of the former Malerkotla State, the area thus occupied by the military forces of that State was either declared a cantonment under an order of the Ruler of that State or that the Cantonments Act, 1924 (Act 2 of 1924), was ever part of the laws of that State and under section 3 of that Act such military area was declared and defined as a cantonment. Unless one of those two facts was proved or admitted, it cannot be concluded that there is a military cantonment in the area of former Malerkotla State and particularly as part of the Malerkotla town, for every area which is a military area or which is under the occupation of the military or defence forces, by that fact does not become a military cantonment. In the days

Nusrat Ali Khan and others
v.
Tirlok Chand Sharma and others

Mehar Singh, J.

of the former Malerkotla State, such an area could only become a cantonment either under the orders of the Ruler, or, if Act 2 of 1924 or a similar law was in force in the former Malerkotla State, by issue of a notification under section 3 of such Act declaring such area a military cantonment. No such evidence is available and the existence of no such evidence has even been alleged. No doubt, as has already been pointed out and as is admitted in the return by the State Government, there is a certain area, part of Malerkotla town or on the outskirts of Malerkotla town, which was occupied by the military forces of the former Malerkotla State. But it was not a military cantonment as that expression is used in the proviso to sub-section (1) of section 4 of the Act unless it was so declared in one of the two manners already stated. The statement in the return of the State Government in this respect, which has already been reproduced, does not show that any such order under any law was made in this respect. After the former Malerkotla State became part of the former PEPSU State, no such notification under Act 2 of 1924 has been referred to during the arguments. Subsequently in 1956, when the former PEPSU and Punjab States became one State of Punjab, ever since then there has been no notification under section 3 of Act 2 of 1924 declaring any area or any military area in or on the outskirts of Malerkotla town as a military cantonment. The learned Judge seems to have been impressed by a denial not having been given by the State Government to the averment of respondent Tirlok Chand Sharma in paragraph 10(c) of his petition that on April 14, 1960, an agreement was entered into between the Malerkotla Municipality and the Government of India, Military Authorities, for carrying out the conservancy work at the rate of Rs. 1,200 per annum so far as that area is concerned. It appears that the area which was in the possession of the Military in the former Malerkotla State came to the former PEPSU State and after the formation of the new Punjab State in 1956, or even before that, it passed on to the Government of India. It has, in the circumstances, probably come under the control and in the possession of the military authorities. But mere control and possession of an area by the military authorities does not make it a military cantonment. If the military authorities have come to an agreement with the Malerkotla Municipal Committee for

conservancy work on certain payment, that is no evidence of the area having been defined and declared a military cantonment according to section 3 of Act 2 of 1924. There is no evidence that what is described by the parties as military area in or on the outskirts of Malerkotla town is a military cantonment as that expression is used in the proviso to sub-section (1) of section 4 of the Act. This second ground taken in the petition by respondent Tirlok Chand Sharma is entirely without any basis whatsoever.

There remains for consideration then only the first ground. In paragraph 2 of this petition respondent Tirlok Chand Sharma has definitely averred that a municipality was constituted in Malerkotla town in the days of the former Malerkotla State and the members were nominated by the Ruler. After the formation of PEPSU State the municipality was given the status of second class municipal committee. In the return of the State Government in reply to this paragraph the averment of the respondent is admitted. The learned counsel for the appellants refers to paragraph 7 of the same return and points out that the State Government has there taken the position that 'the fact of the matter is that no notification fixing the limits of the municipality had been made previously which necessitated the issue of Punjab Government Notification No. 3501-CI-39CI-63/15215, dated 26th April, 1963, published in the *Punjab Government Gazette*, dated 3rd May, 1963, fixing the limits of the Municipality. This was done after the Assistant Director of Elections (Local Bodies), Punjab, Chandigarh, made on the spot enquiries and it appears that on his move a meeting was held on 12th October, 1962, and the then Minister Incharge, Local Bodies, ordered for the issue of notification under section 4 of the Punjab Municipal Act defining the municipal limits as the previous notification was not traceable.' The learned counsel has said that this is a denial of the averment of respondent Tirlok Chand Sharma in paragraph 2 of his petition. It has already been pointed out that in the former Patiala State Punjab Act 3 of 1911 was a part of its laws as a statute of that State. After the formation of PEPSU State of 1948, it became the law of that State. The Malerkotla Municipality could only have been given the status of second class municipal committee under sub-section (6) of section 4 of the Act. As this was not specifically denied, the

Nusrat Ali Khan and others
v.
Tirlok Chand Sharma and others

Mehar Singh, J.

learned Judge proceeded to come to the conclusion that there was a notification defining the limits of the local area of the Malerkotla Municipality under section 4 of the Act for obviously otherwise there could not have been a classification of that municipality in the second class under sub-section (6) of section 4 of the Act. The same respondent averred in paragraphs 3 and 4 of his petition that in the years 1951 and 1955, respectively, there were elections for the Malerkotla Municipal Committee, and those averments have been admitted in the return by the State Government. On this evidence before him the learned Single Judge has come to the conclusion of fact that there was a notification under section 4 of the Act defining the limits of the local area of Malerkotla Municipality. Even in paragraph 7 of the return by the State Government it is stated that the previous notification was not traceable, which does not mean a clear denial that there was no such notification. In paragraph 2 of the return it has been admitted that the Malerkotla Municipality was given the status of second class municipal committee in the former PEPSU State and in paragraph 7 it is stated that no notification to that effect or one defining the limits of the local area of this municipality was traceable. In considering all these facts and circumstances as a whole the learned Single Judge has reached the conclusions that in fact there must have been a notification under section 4 of the Act defining the limits of the local area of this municipality, otherwise obviously it could not have been given the status of a second class municipal committee and elections for such committee could not have been held, after due delimitation of wards, first in the year 1951, and then in the year 1955. Even in the notification of January 27, 1960, Annexure 'B', the wards were delimited, and that too is consistent with the conclusion reached by the learned Judge. On the material we are not disposed to take a view different on this question of fact from that taken by the learned Single Judge, even though we may have the power to do so in an appeal under clause 10 of the Letters Patent as the present appeals. So the consideration of the first ground must proceed on the basis that the conclusion of the learned Single Judge is unexceptional that there was a due notification defining the limits of the local area of Malerkotla Municipality and it was in the wake of that that the Municipality was given the status of a second class municipal

committee and it was in the wake of that that thrice wards were delimited in the years 1951, 1955 and 1960 for the purpose of holding elections to that municipal committee, and in fact during the first mentioned two years elections were actually held.

It is apparent now that the officers of the State Government were in a certain measure of doubt as appears from what is stated in paragraph 7 of the return by the State Government in regard to whether the limits of the local area of the Malerkotla Municipality had or had not been duly defined earlier according to law. In this state of the doubt they proceeded to issue the notification, Annexure 'C', of May 3, 1963, defining the limits of the local area of that municipal committee and this was followed by another notification, Annexure 'D', of November 26, 1963, delimiting the wards and defining the boundaries of the wards for the matter of elections to the municipal committee. All this was done under section 4 of the Act. Sub-section (1) of that section provides for a notification by the State Government proposing any local area to be a municipality under the Act. Sub-section (2) says that such notification must define the limits of such local area. According to sub-section (5) any inhabitant can, within six weeks from the date of publication of such notification, file objections, in writing, through the Deputy Commissioner to the State Government regarding the carrying out of such a proposal as in sub-section (1), and the State Government is enjoined to take such objections into consideration. In sub-section (6), after those six weeks and after the State Government has considered and passed orders on any such objections, if any, it is given power by a notification to declare the local area to be for the purposes of the Act, a municipality of the first, second or third class. Sub-section (7) provides for the application of rules made under the Act to such a municipality. These provisions apply when a municipality is constituted for the first time. Section 5 deals with a municipality that has already been constituted under section 4. Sub-section (1) of section 5 says that the State Government may by a notification declare its intention to include within a municipality any area in the vicinity of the same and defined in the notification. Sub-section (2) of this section provides exactly in the same words as sub-section (5) of section 4, an opportunity to

Nusrat Ali Khan and others
v.
Tirlok Chand Sharma and others

Mehar Singh, J.

any inhabitant to take objection to a notification under sub-section (1) of section 5 within six weeks. Sub-section (3) of section 5 is parallel to sub-section (6) of section 4 and sub-section (4) of section 5 substantially is in the same manner as sub-section (7) of section 4. Section 5 deals thus with the intention of the State Government to alter the limits of a municipality so as to include certain local area in it and thus to carry into effect such intention. The matter of exclusion of any local area already within the defined limits of the local area of a municipality is dealt with in section 6 and the State Government has to issue a notification of its intention to that effect. Sub-section (1) of section 7 provides an opportunity to any inhabitant within six weeks to object to any such exclusion and it is exactly in the same terms and on the same basis as sub-section (2) of section 5 and sub-section (5) of section 4. Sub-section (2) of section 7 then concerns the decision of the State Government on the objections and the final notification excluding any local area referred to in section 6. Section 8(1)(a) deals with the matter of cessation of the application of the Act and all notifications, rules, bye-laws, orders, directions and powers issued, made or conferred under the Act. It is thus immediately clear that section 4(1) corresponds to section 5(1) and section 6, section 4(5) corresponds to sections 5(2) and 7(1), section 4(6) corresponds to section 5(3) and section 7(2), and lastly, section 4(7) corresponds to section 5(4) and section 8(1)(a). The substance of a notification including an area in the limits of the local area of a municipality under section 5(1) and of a similar notification excluding certain area from such limits under section 6 is practically the same, but a notification under section 4(1) defining the limits of any local area of municipality would obviously deal with a matter in a more comprehensive and detailed manner. However, the difference in the nature of the notifications is only a matter of degree. After that the next step taken under sections 4(5), 5(2), and 7(1) is exactly the same, the third step under sections 4(6), 5(3) and 7(2) is also almost exactly the same, and the last step under sections 4(7), 5(4) and 8(1)(a) is in the three cases substantially the same. So that whether proceedings are taken for inclusion of certain area, beginning with section 5(1), or exclusion of certain area beginning with section 6, in or from the defined limits of the local area of a municipal

committee, or whether proceedings are taken beginning with section 4(1) for defining the limits of the local area of a municipality, but for the first notification in this respect, what follows after such a notification is in substance exactly the same, and there is no difference of any consequence. As pointed out, the difference in the notifications under sections 5(1) and 6 on the one side, and under section 4(1) on the other, is only a question of degree. In this particular case the notification under section 4(1), Annexure 'C', gives the defined limits of the Malerkotla Municipality and the next following notification, Annexure 'D', delimits the wards within those defined limits. So that when the contents of those two notifications are considered with the earlier notification delimiting the wards in 1960, the areas included in the defined limits of Malerkotla Municipality and the areas excluded from it become quite clear. In fact those are stated with succinct clarity in paragraphs 8 and 9 of the petition of respondent Tirlok Chand Sharma. The learned counsel for this respondent has explained that he was able to state that with clarity in those paragraphs after quite an application to the matter and an effort after preparation of a plan. He has said that no ordinary resident of the municipality could have done so. But he could have done so with some attention to the matter. There were already wards delimited under the notification of 1960. There were wards delimited under the notification of 1963, Annexure 'D'. On looking at both those notifications the change can very readily be seen. It shows what area has been increased and what area has been decreased from the defined municipal limits of this particular municipality. So that in this case, in practice, the relative degree of difference between a notification under section 4(1) and notifications under sections 5(1) and 6, is brought to the surface. The main object of the notifications is to give notice to the public concerned for an opportunity to object to the proposed changes and once that object is realised, it is merely a technical argument of inconvenience or rather relative inconvenience only to say that a notification under section 4(1) must be held to be illegal, invalid, and *ultra vires*, for what should have been done was that notifications under sections 5(1) and 6 should have been issued, though it has not been denied, and, as pointed out, it cannot be denied that the notification, Annexure 'C', purporting to be under section 4(1)

Nusrat Ali Khan and others
v.
Tirlok Chand Sharma and others

Mehar Singh, J.

in this particular case also serves the purpose of notifications under sections 5(1) and 6. So the argument is not one of substance but one merely of inconvenience. If two notifications under sections 5(1) and 6 regarding area included and area excluded were issued, it would have been more convenient to see the change than it has been to see it by comparing notifications, Annexures 'C' and 'D', with the earlier notification of 1960 delimiting the municipal wards in this municipality. This argument of inconvenience in this case also loses force, because from the wards in which change has taken place as listed in paragraphs 8 and 9 of the petition of respondent Tirlok Chand Sharma, there has been no complaint. Nobody has come forward from those wards to express any complaint why certain areas have been included in any of those wards or excluded from the same. Respondent Tirlok Chand Sharma is from ward 7 and there has been no change in that ward. Nobody has felt any inconvenience in understanding what has actually happened. It appears that even this respondent has not felt any such inconvenience. All that he has attempted to do is to stand on a technicality to nullify the effect of a completed election. The notification defining the limits of the Malerkotla Municipality was issued on May 3, 1963, followed by the notification, Annexure 'D', of November 26, 1963, delimiting the wards within those defined limits. On or immediately after November 26, 1963, the limits of the wards were known and the areas included within the municipal limits and those excluded from the same also became clear. Nobody ever made a complaint against that at that time or even after that. Election programme was publicised on March 28, 1964. Nobody, not even this particular respondent, approached this Court against the invalidity of the two notifications. This particular respondent did make a representation to the State Government of which the date of acknowledgement is April 6, 1964. The election was actually held and completed by May 24, 1964. Before the election, no approach was made to this Court to question the validity of the two notifications of 1963. It is only after the election was over that on June 10, 1964, the petition was filed by respondent Tirlok Chand Sharma. It is apparent that after the issue of the two impugned notifications nobody had a cause for complaint, nobody had a cause for complaint before or at the time of the announcement of the programme for

election, and nobody had any such complaint to make against those notifications to the very date of the election. After the election none from the wards affected by the change has had any complaint to make. None from those wards has come forward to support respondent Tirlok Chand Sharma. He has come to Court after a delay of about a year from the issue of the notifications. He did not move to question the validity of those notifications before the election. It is only after the completion of the election that he has done so. He is the solitary individual who is questioning the validity of the election on this hyper-technical ground of inconvenience only that two notifications under sections 5(1) and 6 should have been issued instead of one notification as Annexure 'C', followed by the wards delimitation notification, Annexure 'D'. This has inconvenienced him, but to what effect, for obviously, in the circumsances of the case, there has been no effect of that on the election itself. What the learned counsel for this respondent has contended is that as technically in the notification. Annexure 'C', of 1963, the mention is not of sections 5(1) and 6, but of section 4(1), so the notification is invalid, so as to alter the defined limits of Malerkotla Municipality even though nobody has at all been affected by this form of the issue of the notice. The learned Single Judge was conscious that an error of this type in the notification would not affect the substance of the matter, but he was of the opinion that because notifications under sections 5(1) and 6 have not been issued, those who wanted to object to the inclusion or exclusion of areas in or from the defined limits of the local area of the municipality have had no opportunity to make such objections, but this, as pointed out, cannot be true in the circumstances of this case. Such objections within six weeks of the notification, Annexure 'C', of 1963 could have been filed just as well as if instead of one notification two notifications under sections 5(1) and 6 had been issued. Besides, it would not be an invalid notification if one notification is issued covering the ground of both sections 5(1) and 6. This is what has in substance happened in the present case. The argument is not one of substance, as has been pointed out, but is one of mere inconvenience. The question then is whether in regard to such an argument the whole election of the municipality is to be declared illegal and set aside ? The learned counsel for respondent Tirlok Chand Sharma says

Nusrat Ali Khan and others
v.
Tirlok Chand Sharma and others

Mehar Singh, J.

that as the notification not being according to sections 5(1) and 6, is technically invalid being contrary to the statute, the delimitation of the wards, the preparation of the electoral roll, and the holding of the election are all invalid. The learned counsel then presses that such an election cannot be maintained, relying in this respect first on the *Chief Commissioner of Ajmer* v. *Radhey Shyam Dani* (1), but that was not a case of an argument of inconvenience but a case of substantial illegality in the roll. Their Lordships found that there was no roll according to law and that it followed that the election could not be maintained. On facts the case has no bearing so far as the present case is concerned. The second case to which reference has been made by the learned counsel is *Prabhudayal* v. *Chief Panchayat Officer, Jaipur* (2). But that was a case of notice announcing the form of the constituency not within the time prescribed by the rule, which was found by the learned Judges to have been mandatory inasmuch as it was to give the voters notice whether there was to be one constituency or a number of constituencies so that the electorate may be able to properly exercise their rights, and the candidates may canvass for support. Nothing of the like has happened in the present case. These two cases do not help advance the argument on the side of respondent Tirlok Chand Sharma. As I have already said, the question in this case then is whether on the ground of inconvenience as explained above the whole of the election is to be set at naught, though, if there was any substance in the ground urged on the side of respondent Tirlok Chand Sharma, it could well have been urged in a petition long before the election was held and, in any case, immediately after the election programme had been announced on March 28, 1964. A Full Bench of this Court in *Dev Prakash Balmukand* v. *Babu Ram-Rewti Mal* (3) has pointed out that an election is in its nature expensive and time-consuming process, and, if it is to be disturbed after the whole process has been gone through, there must be shown to have existed some material circumstance touching the substance of the election and not merely a technical breach of a technical rule. Everybody, of course, agrees that if the very foundation of the election, namely, the electoral roll

(1) A.I.R. 1957 S.C. 304.
(2) A.I.R. 1957 Raj. 95.
(3) I.L.R. 1961(2) Punj. 860=A.I.R. 1961 Punj. 429.

is illegal, no election on its basis can proceed or be allowed to stand, but that does not mean that any kind of defect in the roll, however technical in its nature, will suffice to reach such a conclusion. In the present case I have already pointed out that no material circumstance touching the substance of the election has been shown and all that has been shown is that it was rather somewhat inconvenient to know details of the variation of the defined limits of the local area of the Malerkotla Municipality to find out what was included in it afresh or what was excluded from it. It has been pointed out that that could be found out all the same with application and a little effort. Again in *Bhairulal Chunilal* v. *State of Bombay* (4), while delivering the judgment of a Division Bench of the Bombay High Court, Chagla, C.J., observed that "the Courts must always be reluctant to interfere with elections except on the clearest and strongest of grounds. An election is a luxury which a democracy cannot be expected to indulge in too frequently, and once the people have recorded their votes and expressed their confidence in their representatives, the Court should be loath to interfere with the decision of the people merely because some technicality has not been observed or some irregularity has been committed. The matter would be entirely different if the irregularity has resulted in the people not being able to express their views properly, or if there was any corrupt practice which has materially affected the result of the election. It might also be different if the election itself was held without any authority of law." In this case none of these matters has been alleged what to say of the same having been shown to exist. It has been nobody's case that the electorate have not been able to express their views properly. There has been no allegation of any corrupt practice affecting the result of the election materially. The election has not been held without any authority of law, in other words, it has been held according to law. So on the mere ground of inconvenience and the fact that instead of section 4(1) in the impugned notification sections 5(1) and 6 should have been mentioned, when in substance the result could not have been different, the election to the Malerkotla Municipality cannot be set aside.

(4) A.I.R. 1954 Bom. 116.

Nusrat Ali Khan and others v. Tirlok Chand Sharma and others

Mehar Singh, J. Pandit, J.

In the approach as above, the two appeals are accepted, the judgment of the learned Single Judge is reversed, and the petition of respondent Tirlok Chand Sharma is dismissed, leaving the parties to their own costs.

PREM CHAND PANDIT, J.—I agree.

K.S.K.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

SARWAN SINGH AND OTHERS,—*Petitioners*

versus

THE ADDITIONAL DEPUTY COMMISSIONER, PATIALA AND ANOTHER,—*Respondents*

Civil Writ No. 2612 of 1965

1965

October 28th

Punjab Gram Panchayat Act, 1952 (*IV of* 1953)—*S.* 102—*powers under—Whether can be exercised by Additional Deputy Commissioner.*

Held, that there are clear indications of the intention of the legislature that the authority given to the Deputy Commissioner under section 102 of the Punjab Gram Panchayat Act is to a specially designated person by virtue of his office and not to any person exercising the powers of a Deputy Commissioner. The word "Deputy Commissioner" is used in the section to designate only the particular Chief Officer of the district holding that office and not to include any other person who may be exercising the function of a Deputy Commissioner in a District. Hence, the powers exercisable by the Deputy Commissioner under the section cannot be exercised in any circumstances by the Additional Deputy Commissioner.

Petition under Article 226 of the Constitution of India praying that a writ of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the order dated the 30th September, 1965 of respondent No. 1.

A. M. SURI, ADVOCATE, for the petitioners.

L. D. KAUSHAL, SENIOR DENUTY ADVOCATE GENERAL, with JAGMOHAN SETHI, ADVOCATE, for the Respondents.

ORDER

Narula, J.

NARULA, J.—The only question which calls for decision in this writ petition is whether "Deputy Commissioner"