

LETTERS PATENT APPEAL

Before D. K. Mahajan and H. R. Sodhi, JJ.

STATE OF PUNJAB, ETC.,—Appellants.

versus

MUNICIPAL COMMITTEE, MORINDA, ETC.,—Respondents.

Letters Patent Appeal No. 119 of 1968.

July 21, 1971.

Punjab Municipal Act (III of 1911)—Section 235—Order under—Whether of quasi-judicial nature—Such order—Whether can be reviewed by the Government without affording an opportunity to the Municipal Committee of being heard.

Held, that an order under section 235 of Punjab Municipal Act is to be based on objective data, requires reasons to be recorded for the same and affects the rights of the Municipal Committee, should have a judicial approach on behalf of the State Government. Such an order cannot be styled as a purely administrative order not affecting the rights of any person or authority. A Municipal Committee, which is directly affected by any such order, has according to the well-established norms of natural justice, a right to be heard as it is that local authority which is likely to be affected by any order that may eventually be passed under section 235 of the Act. Hence an order under section 235 is quasi-judicial and it is not open to the State Government to review it without affording an opportunity to the affected Municipal Committee of being heard even if it be assumed that the power of review can be exercised. (Para 5)

Letters Patent Appeal under Clause X of the Letters Patent against the order of the Hon'ble Mr. Justice A. N. Grover, passed in Civil Writ No. 2217 of 1966, on 4th December, 1967.

G. S. CHAWLA, ADVOCATE, FOR ADVOCATE-GENERAL, PUNJAB, for the appellant.

H. S. WASU, SENIOR ADVOCATE, WITH L. S. WASU, ADVOCATE, for the respondents.

JUDGMENT

Judgment of this Court was delivered by :—

SODHI, J.—(1) This is a letters patent appeal filed by the State of Punjab against the judgment of a learned single Judge who while

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accepting Civil Writ No. 2217 of 1966 preferred by the Municipal Committee, Morinda, District Ambala, quashed an order of the State Government passed under section 235 of the Punjab Municipal Act, 1911, hereinafter referred to as the Act.

(2) Facts are not in dispute and can be stated in a narrow compass.

(3) Krishan Parkash Garg, respondent No. 2, in this appeal had been appointed as Tax Clerk (temporary) by the Municipal Committee. The Committee by its resolution No. 31, dated 23rd January, 1962, terminated the services of this respondent on account of financial stringency and in fact abolished the post of the Tax Clerk and also one other post. Krishan Parkash represented against the termination of his services to the Deputy Commissioner who by his order dated 15th March, 1962, suspended the execution of the resolution as he thought the same to be against public interest and likely to cause loss to the municipal funds since in his opinion collection of tax was likely to be retarded in the absence of a Tax Clerk. The Governor of Punjab subsequently by an order dated 9th January, 1963, rescinded the order of the Deputy Commissioner with the result that the resolution of the Committee abolishing the post of Tax Clerk was restored. During President's rule, Krishan Parkash submitted a memorial to the Government of Punjab and the matter was reconsidered. By an order dated 22nd July, 1966, the President of India recalled the earlier order of the State Government and held the resolution of the Committee to be invalid. The reasons for the order as they appear therein are that Krishan Parkash was a permanent employee of the Committee and abolition of the post with the necessary consequence of termination of his services, when juniors to him were still in service, amounted to an order of dismissal and that the statutory rules framed under section 240 of the Act, regarding procedure to be followed before dismissing a municipal employee had not been complied with. Reliance was placed on section 19 of the Punjab General Clauses Act, 1898, for rescinding the previous order of the State Government. A declaration was also given in the impugned order that Krishan Parkash stood restored to the service with effect from the date his services were terminated and that he was entitled to full pay and allowances. It is this order (appended as Annexure 'E' with the writ petition) the validity of which was challenged by the Municipal Committee in the writ petition.

(4) The learned Single Judge relying on two judgments of this Court, one in *Hardyal Rai v. The State of Punjab and others* (1), and the other reported as *Karnail Singh v. The State of Punjab and others* (2), held that it was not within the competence of the State Government to recall in the name of the President, after a lapse of about four years, the previous order passed under section 235 of the Act.

(5) The only point urged before us by Mr. G. S. Chawla, appearing for the State, is that the facts in the cases of *Hardyal Rai* (1) and *Karnail Singh* (2) (supra), are distinguishable inasmuch as orders there were passed under section 238 of the Act, whereas the order reviewed in the instant case by the President of India was passed under section 235. It is urged that functions under section 236 are of a quasi-judicial nature and an order passed under that provision of law may not be amenable to review except in special contingencies but an order under section 235 is purely of an administrative nature and that the same could be reviewed any time. In order to appreciate the argument of the learned State counsel, it is necessary to state the scheme of control as envisaged in Chapter XII exercisable by the State Government and its officers over the affairs of a Municipal Committee so far as it is relevant for the purposes of the present appeal. Section 231 authorises the Deputy Commissioner or any other officer or person authorised in this behalf by the State Government by a general or special order to enter on, inspect and survey, or cause to be entered on, inspected and surveyed, any immovable property occupied by any committee. The Secretary of the Committee can be directed to produce any books or documents in his possession or control for inspection of the Deputy Commissioner or such authorised person. The Secretary can be ordered also to furnish statements, accounts, reports, etc. An inquiry generally into the affairs of the committee by the Deputy Commissioner or such authorised person is permissible to ascertain whether a municipality is being satisfactorily administered. The Deputy Commissioner has, under section 232, power by an order in writing to suspend the execution of any resolution or order of a committee or prohibit the doing of any act which is about to be done or is being done in pursuance of or under cover of the Act, if in his opinion, the resolution order or act is in excess of the powers conferred by law or contrary to the

(1) C.W. No. 1084 of 1962 decided on 26th August, 1964.

(2) 1966 P.L.R. 890.

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interests of the public or likely, to cause waste or damage of municipal funds or property, or the execution of the resolution or order, or the doing of the act, is likely to lead to a breach of the peace, to encourage lawlessness or to cause injury or annoyance to the public or to any class or body of persons. There then comes section 233 which gives extraordinary powers to the Deputy Commissioner to act in cases of emergency in the matter of execution of any work or the doing of any act which a committee is empowered to execute or do, and the immediate execution or doing of which is, in his opinion, necessary for the service or safety of the public, and he may direct that the expense of executing the work or of doing the act shall be forthwith paid by the committee. Powers are given under section 234 to the Deputy Commissioner to provide for performance of duties of the Committee in case of default by the latter. He can by an order in writing, fix a period for the performance of any of the duties of the Committee and if they are not performed within the period so prescribed, he can appoint some person to perform the same with a direction that the expense thereof is to be borne by the Committee. Any action taken by the Deputy Commissioner under the aforesaid provisions of law is required to be reported by the Deputy Commissioner to the State Government under section 235. A perusal of the provisions of section 235 indicates that the Deputy Commissioner is required to record his reasons for making any order under sections 232, 233 or 234 and submit them to State Government. Before submitting his report, including reasons, he must obtain an explanation of the Committee as well which implies that the State Government must have before it view points of both the Deputy Commissioner and the affected Municipal Committee before it decides to affirm, modify or rescind the order of the Deputy Commissioner. An order which is to be based on objective data requires reasons to be recorded for the same and affects the rights of the Municipal Committee, should have a judicial approach on behalf of the State Government and any order passed by the latter on a consideration of the material before it must be held to be quasi-judicial in nature. Such an order cannot, therefore, be styled as a purely administrative order not affecting the rights of any person or authority. An order of the Deputy Commissioner under the preceding sections, 231 to 234, may be administrative but the same is not true of the order passed by the State Government under section 235. A Municipal Committee, which is directly affected by any such order, has, according to the well-established norms of natural justice, a right to be heard as it is that

local authority which is likely to be affected by any order that may eventually be passed under section 235. Their Lordships of the Supreme Court had an occasion to consider the provisions of section 235 in a case reported as *Shri Subash Chandra and others v. Municipal Corporation of Delhi and another* (3), and it is useful to quote the following observations *in extenso* :—

“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.”

(6) In the instant case, the Municipal Committee was heard by the Deputy Commissioner (appellate authority) whose decision was upheld by the State Government. It was much later after about four years that acting under section 19 of the Punjab General Clauses Act, 1898, the President of India, on a memorial submitted by respondent 2, reviewed the earlier order of the State Government and re-imposed on the Municipal Committee its dismissed employee without affording it an opportunity to be heard as regards the propriety or legality of the action proposed to be taken. The said section 19 is not intended to give a power of review in such cases as held by a Division Bench of this Court in *Hardyal Rai's case* (1), where too the question involved was of termination of the services of an employee of a Committee. To the same effect are the observations of another Division Bench in *Karnail Singh's case* (2). It must thus be held that in view of the conclusion arrived at by us that an order under section 235 of the Act is quasi-judicial, it was not open to the President of India to review that order without affording an opportunity to the Municipal Committee to be heard, even if it be assumed that the power of review could be exercised.

(7) For the foregoing reasons, the Letters Patent Appeal which has no merit must fail. There is, however, in the peculiar circumstances of this case, no order as to costs.

K.S.K.

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