MISCELLANEOUS CIVIL

Before M. R. Sharma, J.

M/S. JAGATJIT COTTON TEXTILE MILLS LTD., PHAGWARA, ETC.,—*Petitioners.*

versus

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

C. W. No. 1560 of 1972.

January 18, 1973.

Constitution of India (1950)—*Article* 166—*Rules of business* 1971—*Rules* 8 *and* 9—*Notification under Article* 166—*Validity of*—*When can be challenged*—*Order passed by Minister-in-charge sought to be revised by his successor*—*Prior submission of the case to Governor*—*Whether necessary.*

Held, that under Article 166(2) of the Constitution of India, the validity of a notification which is expressed in the name of the Governor and duly authenticated, cannot be called in question on the ground that it has not been executed by the Governor. However, the existence of a condition precedent for the issuance of such a notification can always be agitated in a Court. Neither the Constitution nor the Rules of Business framed under Article 166(3) of the Constitution provide that each and every file containing the decision of an authority competent to act as Government should be signed by such an authority. The law requires that the matter should be considered by the Government and if the point at issue has received the consideration of the Government, the notification containing such decision cannot be called in question merely because the Minister or the other authority empowered to act as Government has not put its signatures on the official file. If, on the other authority invested with the powers of the Government did not actually decide the case, no immunity attaches to the notification issued in the name of the Governor.

Held, that a reading of Rules 8 and 9 of the Rules of Business 1971, shows that all those cases have to be submitted to the Governor in which orders passed by the Minister-in-charge are sought to be revised or modified by his successor of his predecessor-in-office. Where such a case is finally disposed of by the Secretary of the Government, the orders passed are invalid. The Secretary is bound under the relevant Rules of Business to submit the case to the Governor.

Petition under Articles 226 *and* 227 *of the Constitution of India praying that an appropriate writ order or direction be issued quashing the impugned orders contained in Annexures* P-1 *and* P-3, *dated* 23*rd December*, 1971, *and* 10*th March*, 1972, respectively.

J. N. Kaushal, Senior Advocate, *with* G. C. Mittal, D. N. Awasthy and Ashok Bhan, Advocates, *for the petitioners.*

R. K. Chhibbar, Advocate, *for respondents* 1, 2 and 6.

D. S. Nehra, Pawan Bansal and K. N. P. Singh, Advocates, *for respondent No.* 5.

Raj Kumar Aggarwal, Advocate, *for respondents* 3, 4 *and* 7.

JUDGMENT

SHARMA, J.—Petitioner No. 1 is a Public Limited Company (hereinafter called the Company) registered under the Indian Companies Act, 1953. It has established a textile mill in village Chachoki, tehsil Phagwara. On December 23, 1971, the State of Punjab issued a notification under sections 5 and 6 of the Punjab Municipal Act by which it invited objections from the affected persons regarding the proposed exclusion and inclusion of areas within the limits of Municipal Committee, Phagwara. The Company filed objections against the inclusion of its area within the limits of the Municipal Committee, Phagwara, in which it was, *inter alia*, stated that the town of Phagwara had extended more towards Hoshiarpur side which area was not being included, that the Company had large number of employees who had been paying taxes to the Gram Sabhas, that they would be burdened by double taxation, and that the Company had developed the area by constructing roads and residential quarters for its employees for providing them amenities which entailed an annual recurring expenses for over rupees two lacs, meeting of which would be beyond the financial resources of the Municipal Committee. These objections were filed through the Deputy Commissioner, Kapurthala, and it is alleged that the Deputy Commissioner retained the objections in her office till March 7, 1972. On that date, the Deputy Secretary, Local Government, Punjab, asked the Deputy Commissioner to expedite the report on the objections filed by the affected persons. In response to this request, the Deputy Commissioner sent her report on March 9, 1972, and the State Government issued the impugned notification on March 10, 1972. It is alleged that the undue haste with which the State Government issued the notification shows that it did not apply its mind to the objections filed by the Company. The other objection was that the State Government had laid down a policy that before any area under any Gram Sabha or Panchayat Samiti was to be taken out of the limits of these bodies and included in the limits of a municipal committee, the matter was to be referred to a Committee consisting of the Deputy Commissioner, the District Development and Panchayat Officer and the Senior Town Planner of the area. This Committee was supposed to consider the pros and

cons of the matter before submitting a proposal to the Government. In the instant case, this settled policy of the Government had also been departed from. The third objection was that on an earlier occasion, i.e. December 24, 1967, the State Government issued a notification indicating its intention to include certain areas and to exclude other areas from the limits of the Municipal Committee, Phagwara. The petitioner Company and many other persons including the Gram Sabha of Kot Rani and Chachoki filed objections against this notification. These objections were considered by the State Government and it was ultimately decided that the proposal contained in this notification should be dropped. The notification Exhibit P. 1 containing the tentative proposal regarding the reconsideration of the area of Municipal Committee, Phagwara, and the final notification Exhibit P. 3 in this behalf have been challenged. The grievance of the Company is that because of its inclusion within the limits of the Municipal Committee, Phagwara, it will have to pay octroi duty amounting to about Rs. 1,50,000 per year. The return on behalf of the Government has been filed by the Assistant Secretary to Government, Punjab, Local Government Department, Chandigarh. In this return, it has been stated that the matter in dispute was of an administrative nature and was not justiciable in the instant petition. The allegation regarding the issuance of a similar notification earlier and the decision of the Government to drop the proposal have not been expressly denied. Respondent No. 5, the Municipal Committee, Phagwara, has filed a detailed written statement. In this return, it has been stated that the report was sent by the Deputy Commissioner, Kapurthala, per special messenger and that the notification was issued by the State Government after a careful consideration of the objections. It was, however, admitted that on an earlier occasion, the Government had issued a notification recording its intention to extend the limits of the Municipal Committee, Phagwara, and that this matter was dropped by the Government *vide* its letter dated July 2, 1970. This was done by the Government "without observing the procedure prescribed by law and for ulterior reasons at a time when the then Local Government Minister Mr. Manmohan Kalia, representing the Jan Sangh party, had decided to withdraw from the Government along with his party colleagues. Obviously it was done to oblige his supporters, the Management of Textile Mills and to shelve the matter regarding the extension of municipal limits." It was also urged that the octroi limits of the Municipal Commitee Phagwara, were fixed by the sovereign rulers of Kapurthala State in the year 1984 B.K. These limits were further extended on September 2,

1953, when the Pepsu Government ordered the inclusion of certain areas within the municipal limits of Phagwara. The State of Punjab gave express recognition to the extension of these limits. At this stage, it would be worthwhile to mention another fact. On an earlier occasion, the Development Department of the State of Punjab held that the area that had now been included in the Municipal Committee, Phagwara, fell outside its limits. The Municipal Committee contested this position and filed a writ. This writ petition was later on withdrawn by the Municipal Committee. The petitioners contend that the withdrawal of this writ by the Municipal Committee positively prove that this area does not form part of the limits of the Municipal Committee. On the other hand, the Municipal Committee contends that it was not bound by the view taken by the Development Department of the Punjab Government and in any case when it was assured that justice would be done to it outside the Court it withdrew the civil action instituted by it. This litigation between the State Government and the Municipal Committee conferred no rights on the petitioners.

(2) I have heard the learned counsel for the parties at some length and have given my anxious consideration to the facts and circumstances of this case. The first point raised by the learned counsel for the petitioners does not deserve any serious notice. It has been argued that—

(i) the proposal regarding the extension of the limits of the Municipal Committee, Phagwara, was dropped in the year 1967 and no new circumstances warranting the extension of the limits of this Municipal Committee in 1972 were brought on record ;

(ii) the policy decision of the Government regarding consultation with the District Development and Panchayat Officer and the Senior Town Planner of the area had not been observed ; and

(iii) the Government did not apply its mind to the objections raised by the petitioner-Company and acted in a hurried manner because elections to the State Assembly were to be held on March 11, 1972.

(3) From these facts it was sought to be inferred that the Government did not take into consideration the objections filed by the petitioners which was a condition precedent for the issuance of

a notification under section 5 of the Punjab Municipal Act (hereinafter called the Act). Shri R. K. Chhibbar, the learned counsel for the respondents has placed before me the entire record of the case. A perusal of this record shows that the points raised by the petitioner-Company were properly discussed in the official notings. In the face of this circumstance, it cannot be held that the Government did not apply its mind before issuing the impugned notification. The report of the Deputy Commissioner was sent per special messenger on March 9, 1972. If it was promptly processed in the secretariat and placed before the Government, no fault can be found with the action of the Government. Prompt disposal of cases is a matter which should receive approbation from all concerned. The circumstance that the impugned notification was issued only a day earlier than the date on which elections to the State Assembly were to be held is also a wholly innocuous one and no inference of *mala fides* can be drawn against the Government on this score. A popular Government is expected to cater to the legitimate demands of its electorate. The demand of the inhabitants of Phagwara Municipal Committee that revenue fetching area should be included in the Municipal Committee was in the nature of a political demand. The acceptance of this demand did not benefit any particular person connected with the Government. In a democratic set up, it is not unusual for the electorate to press such demands at the time of elections. When such a request is acceded to by the Government, it cannot be held by any stretch of imagination that its actions are vitiated by *mala fide* considerations.

(4) It was then argued by the learned counsel for the petitioners that the report sent by the Deputy Commissioner was considered by the Assistant Secretary to the Government, Local Self-Government Department, only and that the papers were not placed before the Secretary to the Government who exercised the powers of the Government under the Rules of Business because at that time the State of Punjab was being administered by the President of India. The official noting dated March 10, 1972, recorded by the Assistant Secretary to the Government shows that he discussed this matter with the Secretary to the Government on telephone and read out to him the recommendations of the Deputy Commissioner. The impugned notification was issued only after the Secretary to Government accorded his final approval to the matter on telephone. The notification is expressed in the name of Governor and is duly authenticated. Under Article 166(2) of the Constitution, the validity of such a notification cannot be called in question on the ground that it has

not been executed by the Governor. It is, however, true that the existence of a condition precedent for the issuance of such a notification can always be agitated in a Court. Neither the Constitution nor the Rules of Business framed under Article 166(3) of the Constitution provide that each and every file containing the decision of an authority competent to act as Government should be signed by such an authority. The law requires that the matter should be considered by the Government and if evidence is available that the point at issue has received the consideration of the Government, then the notification containing such a decision cannot be called into question merely because the Minister or the other authority empowered to act as Government has not put its signatures on the official file. As already noticed, the Assistant Secretary discussed this matter with the Secretary to the Government on telephone and recorded a note in this behalf. Under these circumstances, it cannot be said that the authority invested with the powers of the Government had not taken a decision before the issuance of the impugned notification.

(5) The last submission made by the learned counsel for the petitioners is worthy of serious consideration. It has been alleged in the petition that on an earlier occasion a similar proposal for extending the limits of this very Municipal Committee was dropped by the Government. In the written statement filed on behalf of respondent No. 5, it has been alleged that the decision to drop this matter was taken by Mr. Manmohan Kalia, the then Local Government Minister. These facts are also borne out from the official record produced by Mr. Chhibbar, the learned counsel appearing for respondent No. 1. According to Mr. Kaushal, even under the Rules of Business which were in force on March 10, 1972, the case had to be submitted to the Governor for obtaining proper orders because the earlier proposal regarding the extension of the limits of the Municipal Committee, Phagwara, had been shelved under the orders of the Minister concerned. The relevant portion of the Rules of Business framed by the Governor on August 11, 1971, runs as follows :—

> "Rule 8 : The following classes of cases shall be submitted to the Governor by the Secretaries through the Adviser for orders, namely :—
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> (a) cases, which under the Rules of Business of 1969 were required to be submitted to the Governor or the Chief Minister ;
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"Rule 9 : The following class of cases shall be submitted to the Adviser by the Secretaries and the Adivser will be competent to dispose of them unless the Governor requires the prior submission to him of any case or class of cases or the Adviser himself considers it necessary to obtain Governor's orders in any case, namely :—

(i) cases in which orders passed by Ministers are sought to be revised or modified ;

* * * * *

* * * * *".

(6) A reading of these Rules shows that all those cases which were otherwise required to be submitted to the Chief Minister under the Rules of Business promulgated in 1969 had to be submitted to the Governor and that the cases in which orders passed by the Ministers were sought to be revised or modified had also to be submitted to the Governor. Rule 28(xix) of the Rules of Business promulgated on February 17, 1969, lays down that where the successor Minister wishes to modify the orders of his predecessor-in-office, the case will have to be submitted by the Minister-in-charge to the Chief Minister and the Governor. As already noticed, the proposal to extend the limits of the Municipal Committee, Phagwara, was earlier dropped under the orders of Mr. Manmohan Kalia who was the then Minister-in-charge of this Department. So, this case had to be submitted to the Governor under rule 8 of the Rules in force at the material time or atleast to the Adviser under rule 9(i) of the Rules of Business promulgated in 1971. The record shows that this case was finally disposed of under the orders of the Secretary to the Government. Even if it is assumed that the Secretary to the Government enjoyed the status of a Minister at the time when the State was being administered by the President of India, it cannot be denied that the Secretary was seeking to revise the orders of his predecessor. In doing so, he was bound under the relevant Rules of Business to submit the case to the Governor. *In M/s. Bijoya Lakshmi Cotton Mills Ltd.* v. *State of West Bengal and others* (1), while upholding a decision of the Division Bench of the Calcutta High Court, the Supreme Court observed as follows :—

"The learned Judges are perfectly correct in their view that what the authentication makes conclusive, under Article

(1) A.I.R. 1967 S.C. 1145.

166(2), is that the order has been made by the Governor. But the further question as to whether, in making the order, the Governor has acted in accordance with law, remains open for adjudication."

(7) Under our Constitution, all executive action of the Government of a State has to be expressly taken in the name of Governor. The action taken in this manner tentamounts to one taken by the Governor himself. If it is proved that the Governor or other authority invested with the powers of the Government did not actually decide the case, then no immunity attaches to the notification issued in the name of the Governor. In this view of the matter, the impugned notification dated March 10, 1972, Annexure P. 3 to the writ petition, deserves to be quashed.

(8) Faced with this situation, Shri Chibbar, the learned counsel for the respondents, brought to my notice a note on the official file which runs as follows :—

"A deputation from Phagwara has met the Governor today and requested that the municipal limits of Phagwara should be extended so as to include the Jagatjit Textile Mills etc., as once proposed in 1967. Governor has desired that preliminary notification should issue at once, if necessary."

(9) On the basis of this note, it has been argued that the Governor was seized of the matter and the preliminary notification was issued under his express orders, It was suggested that under these circumstances, it should be held that the orders passed by Shri Manmohan Kalia, ex-Minister, Local Self-Government Department, stood modified and that it was not necessary to re-submit the case to the Governor. *Prima facie,* this argument appears to be attractive but a slight probe into its merits would show that it is not tenable. Some of the representationists did wait on the Governor and the representation submitted by them also appears on the record. I have no doubt in my mind that the Governor gave a hearing to the representationists and desired that their grievance should be redressed in accordance with law. It was precisely for this reason that the Governor expressed a desire for the issuance of a preliminary notification. When a preliminary notification under section 5(1) of the Act is issued it entitles all concerned to file their objections and these

objections have to be taken into consideration before the Government issues a final notification. Unless these objections could be anticipated, they cannot be taken into consideration. By passing the above mentioned orders, the Governor did not take a final decision in the matter. Such a decision could only be taken after the points raised in the objections had been duly considered. After all it was the final decision of Mr. Manmohan Kalia, ex-Minister-in-charge of the Local Self-Government Department, which was being revised and when the case reached the final stage it was never submitted to the Governor. Revision or modification of an earlier order means that such an order should be modified, annulled or superseded. A mere desire to take preliminary steps which may ultimately lead to the modification of the order cannot be regarded as its revision. If the orders passed by the Governor were to be interpreted as a final decision to change the limits of the Municipal Committee, Phagwara, then there was no point in observing the empty formality of inviting objections etc. Besides, under our Constitution, with regard to most of the matters regarding the governance of a State, the Governor enjoys the same position as it enjoyed by the King of England. As the constitutional Head of the State, he is entitled to receive the greatest respect from all concerned. The orders emanating from the constitutional Head of Government even in case of ambiguity are so interpreted as may appear to be in consonance with law. In the instant case, the orders passed by the Governor are quite clear on the subject and even if there was any ambiguity in these orders they would have to be interpreted in such a manner that they fall squarely within the ambit of the statute under which the action was proposed to be taken. In cases where the statute requires something else to be done in the nature of hearing objections etc. before the final orders can be passed, the case must of necessity be submitted to the Governor at the final stage for getting a lawful revision of the orders passed by the earlier Minister. This principle is not an empty formality and is based on sound public policy. In a democratic set up, orders passed by a Minister have to be respected by all concerned and an officer subordinate to a Minister cannot be allowed to tinker with his orders. The observations made by the Governor do not tentamount to a final revision of the orders passed by Shri Manmohan Kalia as the Minister-in-charge of the Department of Local Self-Government. I am of the considered view that the earlier orders passed by the Minister on December 24, 1967, and published in the Government gazette dated January 5, 1968, were not modified or revised in accordance with the Rules of Business applicable to the present case. Since the condition precedent for the issuance of the notification dated 10th March, 1972

under Article 166 of the Constitution has not been satisfied, the notification is nonest in the eyes of law.

(10) For the reasons mentioned above, this petition deserves to succeed and I order accordingly. There shall be no order as to costs.

N.K.S.

REVISIONAL CRIMINAL.

Before M. R. Sharma, J.

GURBAX SINGH ETC.,—*Petitioners.*

versus

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

Cr. Re. No. 891 of 1971.

January 22, 1973.

Code of Criminal Procedure (Act V of 1898)—Section 545(b)—Magistrate convicting an accused person for causing injuries in a cognizable case and granting compensation to the injured—Accused acquitted in appeal—Injured complainant—Whether has a right to be heard in such appeal—Order of acquittal—Whether can be set aside in revision simply on the ground of the non-hearing of such complainant by the appellate Court.

Held, that in cognizable cases, it is the State, which is the aggrieved party and the Criminal Procedure Code does not provide that a private complainant should be heard in appeal arising out of the trial of such cases. A criminal court while recording conviction of an accused has the discretion to grant compensation for any loss or injury caused by the offence, under section 545(b) of the Code, but a private complainant, who is injurned has no right to insist, that compensation must under all circumstances be awarded to him. When compensation is awarded to a complainant, it is always subject to the right of appeal which vests in the convict. This grant of compensation cannot be regarded as a vested right. When an accused files an appeal against his conviction, the entire case is re-opened in appeal. The effect of the judgment of acquittal passed by an appellate Court is that the conviction recorded by the trial Magistrate becomes non-existent in the eyes of law. In other words, when a conviction is set aside, the effect which flows out of such a conviction, namely the award of compensation to a complainant, also disappears. In a suitable case it may be proper for an appellate Court to hear