

males would mean the power of erection of the male organ and its full penetration and that the discharge of semen in the wife's body was not necessary for a complete coitus.

(10) Consequently there was no basis for holding that the husband was impotent at the time of the marriage and continued to be so till the institution of the proceedings and in this view of the matter I find no merit in the appeal and dismiss the same. The parties are, however, left to bear their own costs.

N. K. S.

CIVIL MISCELLANEOUS

Before H. R. Sodhi, J.

RAM SARUP BAWA,—Petitioner.

Versus

THE STATE OF PUNJAB, ETC.,—Respondents.

Civil Writ No. 1406 of 1971.

January 6, 1972.

Municipal Election Rules (1952)—Rule 68—Inquiry under—Nature of—Whether quasi-judicial—Rules of natural justice—Whether apply thereto.

Held, that rule 68 of Municipal Election Rules, 1952 is not intended to give unbridled, arbitrary or despotic power to the State Government to proceed in any manner it chooses while acting *suo motu* to direct an inquiry into the conduct of any election or to set aside an election on grounds other than those specified in Rule 63. Before proceeding under rule 68, it has first to be satisfied that there is reason to suspect that corrupt practice or material irregularity has been committed though it is its own satisfaction. As soon as the State Government is satisfied that an inquiry into an election is necessary it can act on its own and direct an inquiry. There are no rules in regard to an inquiry ordered under rule 68 but a plain reading of this rule leads to an irresistible conclusion that the obvious intention of the rule making authority is that the procedure adopted by a person directed to hold an inquiry under the rule must in substance conform to what is required, when an election is challenged by an election petition. An inquiry under

Ram Sarup Bawa v. The State of Punjab, etc. (Sodhi, J.)

rule 68, as in the case of an election petition, is a quasi-judicial proceeding and for that reason too the procedure adopted therein must conform to the well-established norms of natural justice and a reasonable opportunity to meet the allegations afforded. An opportunity will be illusory and not real if reasonable time is not given to the person proceeded against to prepare his defence and file a reply to the averments made against him.

(Paras 2 and 3)

Petition under Articles 226/227 of the Constitution of India praying that a writ in the nature of Certiorari, Mandamus, Prohibition or any other appropriate writ, order or direction be issued quashing the orders of Punjab Government No. 2201-5DLG-71/2951, dated 26th February, 1971, for holding enquiry under rule 68 and appointing respondent No. 4 as the Enquiry Officer, and further praying the respondents be directed to notify the petitioner's name in the official Gazette as the President of the Municipal Committee, Rampuraphul, and prohibiting the respondent Nos. 1 to 4 from interfering in the municipal administration of Municipal Committee, Rampuraphul, and the functioning of the petitioner as its President.

D. S. Nehra, Advocate and S. S. Mahajan, Advocates,—for the petitioner.

S. K. Jain, Advocate for Advocate-General Punjab.—for respondent No. 1.

JUDGMENT

SODHI, J.—(1) The petitioner was elected as President, Municipal Committee, Rampura Phul, District Bhatinda, and the proceedings of the meeting of April 6, 1970, in which the election took place, were quashed by the State Government respondent by an order dated June 23, 1970, purported to have been passed under section 236 of the Punjab Municipal Act, 1911 (hereinafter referred to as the Act). Civil Writ No. 2309 of 1970 preferred by the petitioner was allowed by a Division Bench of this Court and the notification annulling the said proceedings quashed. The State Government has in exercise of powers conferred on it by the Act, framed Municipal Election Rules, 1952 (described hereafter as the Rules). Election to any office in a Municipal Committee cannot as enjoined in rule 52 be called in question except by an election petition presented in accordance with the rules. A petition in this behalf must contain a statement in concise form of the material facts on which the petitioner relies to challenge the election and there are then some other procedural formalities required to be complied with, like deposit of security etc. Non-compliance with the rules could result in dismissal of the election petition. Rule 59 requires that an

enquiry shall be held in a place accessible to the public and that notice of the time and place of enquiry is given to the parties not less than seven days before the first day of the enquiry. The grounds for declaring election void are stated in rule 63 which is not necessary to reproduce for the purposes of the present writ petition. The State Government has by virtue of rule 68 been conferred a power to order an enquiry *suo motu* into the conduct of any election if there is reason to suspect that a corrupt practice or material irregularity has been committed. It will be useful to reproduce the said rule at this stage *in extenso* :—

“The Punjab Government may of its own motion direct an enquiry to be held into the conduct of any election if there is reason to suspect that a corrupt practice or material irregularity has been committed and the case shall be dealt with so far as may be in the manner prescribed in these rules.”

(2) To appreciate the origin and nature of the instant dispute which has a chequered history, it is necessary to state a few more facts. Elections to the Municipal Committee were held in October, 1967, and thirteen members were elected. The State Government at one stage nominated a President, but this nomination was quashed by an order of this Court made on April 3, 1970, in Civil Writ No. 3014 of 1969. A meeting was then held on April 6, 1970, to elect a new President to which office the petitioner successfully contested. The proceedings of the meeting were, however, considered by the State Government to be irregular and it annulled those proceedings under section 236 of the Act. When this action was impugned in a writ petition (Civil Writ No. 2309 of 1970) preferred by six of the Municipal Commissioners, an objection was taken that the correct course for the State Government to nullify the election of the President was to take action under rule 68, if so advised, and not to proceed under section 236 of the Act. No opinion was expressed by the Bench as to whether an action under rule 68 was competent since no such issue arose in that case. The writ petition was, however, allowed. The State Government respondent afterwards issued to the petitioner the impugned notice dated March 17, 1971 (Annexure 'H') calling upon him to appear in the office of the Municipal Committee, Rampura Phul, on the next day, i.e., March 18, 1971, at 10 A.M., and produce his defence about a complaint. A copy of the complaint was attached with the notice which purported to be on behalf of the Deputy Director, Local Government, who, as stated therein, had been

appointed as Election Commissioner under section 247 of the Act read with the aforesaid rule 68. The complaint had been addressed by some Municipal Commissioners to the Minister, Local Government, Punjab, in which a suggestion was made that the writ petition of the petitioner having been accepted and the order of the State Government annulling proceedings of the meeting of April 6, 1970, quashed, the Government should better take action under rule 68 as the petitioner was elected as President in a meeting characterised by them as illegal. No particulars of any irregularity are stated in this complaint, a copy of which has been appended to the writ petition as Annexure "H/I". It is not disputed that Annexures "H" and "H/I" are correct copies of the notice and the complaint respectively, as served on the petitioner and which formed the basis of the proposed enquiry under rule 68. Earlier at one hearing, learned counsel for the State, Mr. S. K. Jain, obtained an adjournment from this Court to verify if Annexure "H/I" was really the correct copy of the complaint, but when the case was taken up again he conceded that there is no other complaint on the record which could be said to have been served on the petitioner. Notice (Annexure "H") was received by the petitioner on March 16, 1971, and he addressed a communication to the Secretary, Local Bodies, protesting against the appointment of Inquiry Officer regarding his election. Amongst other objections, one related to short notice and it was specifically urged that the notice being too short he could not study the record or engage a counsel. Allegations were made against the Akali Government which was stated to be prejudiced against him as he belonged to the Congress party. Initiation of the action after the lapse of about one year of the election was alleged to be an indication of the *mala fides* of the Akali Government. It is common ground that the petitioner did not associate with the inquiry. He asked for time to enable him to get legal advice and it was further prayed by him that instead of the Deputy Director, from whom he did not expect justice, the inquiry be held by a Judicial Magistrate. Beyond dispute action had originally been taken against the petitioner under section 236 of the Act but the same having been found to be without jurisdiction proceedings under rule 68 of the Rules started and the impugned notice issued in pursuance of such action. There are admittedly two methods provided for setting aside election to an office in a municipality and they are, (1) by an election petition under rule 52, and (2) by the Government acting *suo motu* under rule 68. Rule 52 provides that "no election shall be called in question except by an election petition presented in accordance with these rules." The subsequent rules prescribe the method how the election is actually to be called in question.

The requirements of an election petition and the authorities who are competent to entertain it are stated in rule 53. Election petition against the return of the President or Vice-President, as in the case of other election petitions, has to be in writing signed by a person who was a candidate at the election or by not less than five electors. As to what should be the contents of such a petition, they are stated in rule 54, one of which is that it must contain a statement in concise form of the material facts on which the petitioner relies in order to challenge the election. After necessary scrutiny and compliance with certain other formalities like the deposit of security for costs that may become payable by the petitioner or petitioners, the State Government appoints an Election Commission to hold an inquiry into the allegations made in the election petition. The procedure of inquiry is stated in rule 59 and it is enjoined therein that the place of enquiry shall be such to which the public have free access and notice of the time and place of enquiry shall be given to the parties concerned not less than seven days before the first day of the enquiry. The grounds for declaring an election void are enumerated in rule 63. It will be useful to reproduce rule 63 for facility of reference and it reads as under:—

“63. Grounds for declaring election void—

- (1) Save as hereinafter provided in these rules if in the opinion of the Commission—
 - (a) the election of a returned candidate has been procured, or induced or the result of the election has been materially affected, by a corrupt practice, or
 - (b) any corrupt practice specified in sub-clause (i), (ii) or (iii) or (iv) of clause (a) of rule 51 has been committed, or
 - (c) there has been any material irregularity, or
 - (d) the election has not been a free election by reason of the large number of cases in which the corrupt practice specified in sub-clause (i) or (ii) of clause (a) of the rule 51 have been committed by a candidate or an agent of a candidate or a person acting with the connivance of a candidate or such agent or any person who is not a candidate or an agent of

such candidate or a person acting with the connivance of a candidate or such agent, the commission shall report that the election of the returned candidate shall be deemed to be void.

(2) If the Commission reports that a returned candidate has been guilty by an agent of any corrupt practice which does not amount to any form of bribery other than treating as hereinafter explained or to the procuring or abetment of personation, and if the Commission further reports that the candidate has satisfied it if that—

(a) no corrupt practice was committed at such election by the candidate and the corrupt practices mentioned in the report were committed contrary to the orders and without the sanction or connivance of such candidate, and

(b) such candidate took all reasonable means for preventing the commission of corrupt practices at such candidate, and

(c) the corrupt practices mentioned in the said report were of a trivial, unimportant and limited character and did not materially affect the result of the election, and

(d) in all other respects the election was free from any corrupt practice on the part of such candidate, then the Commission may report that the election of such candidate should not be deemed to be void.

Explanation.—For the purpose of this sub-rule “treating” means the incurring in whole or in part by any person of the expense of giving or providing any food, drink, entertainment or provision to any person with the object directly or indirectly of inducing him or any other person to vote or refrain from voting or as a reward for having voted or refrained from voting.”

(3) On the completion of the inquiry, the Commission submits a report to the State Government pointing out whether the returned

candidate has, in its opinion, been duly elected, and this report shall have regard to the provisions of rule 63. When the charge is of a corrupt practice, the Commission must in his report give a finding whether a corrupt practice is proved to have been committed and the names of all persons, if any, who have been proved at the inquiry to be guilty of any corrupt practice and the nature of such practice has also to be specified. Then comes rule 68 to which a reference has already been made above. This rule is not intended to give unbridled, arbitrary or despotic power to the State Government to proceed in any manner it chooses while acting *suo motu* to direct an inquiry into the conduct of any election or to set aside an election on grounds other than those specified in Rule 63. Before proceeding under rule 68, it has first to be satisfied that there is reason to suspect that a corrupt practice or material irregularity has been committed though it is its own satisfaction. As soon as the State Government is satisfied that an inquiry into an election is necessary it can act on its own and direct an inquiry. The case has to be dealt with afterwards as far as possible in the manner prescribed in the rules. The rules give procedure for an inquiry into an election petition and there are no other rules in regard to an inquiry ordered under rule 68. A plain reading of rule 68 leads to an irresistible conclusion that the obvious intention of the rule making authority is that the procedure adopted by a person directed to hold an inquiry under rule 68 must in substance conform to what is required when an election is challenged by an election petition. The broad features of such procedure are that a concise statement of material facts alleged against the elected person and on which reliance is placed, whether by the Government acting under rule 68 or by the person filing the election petition, must be communicated to him to enable him to rebut the same. He must also be provided adequate opportunity to furnish an explanation or, in other words, a return to what is stated against him. Notice in this regard must be given not less than seven days before the first day of the enquiry as stated in rule 59. An inquiry under rule 68, as in the case of an election petition, is a quasi-judicial proceeding and for that reason too the procedure adopted therein must conform to the well-established norms of natural justice and a reasonable opportunity to meet the allegations afforded. An opportunity will be illusory and not real if reasonable time is not given to the person proceeded against to prepare his defence and file a reply to the averments made against him. The inquiry officer must also be one who is acting without bias. It is equally well-understood that no material or evidence

can be used against a person about which he did not have a reasonable opportunity to show cause.

(4) In the instant case, I have given my careful thought to the matter and am firmly of the view that the action under rule 68 and the impugned notice issued by the Inquiry Officer in pursuance of such action did not satisfy the requirements of law and the notice is violative of the rules of natural justice, apart from being contrary to the spirit and substance of the rules. A complaint, translation whereof is Annexure "H/I", was handed over to the Minister, Local Government Department, by a few persons claiming to be members of the Municipal Committee. All that is stated therein is that the Punjab and Haryana High Court had quashed the order of the State Government passed under section 236 and that because the election was made in an illegal meeting, action under rule 68 be taken. No details or particulars of any irregularity are stated in the complaint. The State Government directed the Deputy Director, Local Government Department, to hold an inquiry under the said rule and he issued a notice dated 17th March, 1971 (Annexure "H"), with a copy of the complaint appended to that notice, calling upon the petitioner to appear before him in the office of the Municipal Committee, Rampura Phul, on 18th March, 1971, at 10 A.M. and produce his defence about the complaint. It passes one's comprehension as to what could be said to have been stated in the complaint to which any defence could possibly be produced. No facts are stated. All that is mentioned is that the petitioner was elected in an illegal meeting. Again, not even twenty-four hours were given to the petitioner to present his case against the most vague and indefinite allegation. When the petitioner asked for time to enable him to engage a lawyer who could study the case and get prepared a proper statement, no opportunity was allowed to him. He pointedly requested in his letter that the notice was too short and that in the ends of justice he should be given time. He also protested against the inquiry being held by the Deputy Director who was an officer under the Akali Government as it has been his case that he had been elected as President on the Congress ticket and Akali Party were not tolerating him. The Deputy Director was performing a quasi-judicial function in holding an inquiry into the conduct of election of the petitioner and he was duty bound to act in accordance with the rules of natural justice. There was, in my opinion, not even semblance of fair play and just approach with a desire to sift truth. Action under rule 68 had to be in conformity with the Rules and they too require a notice of at least one week under rule

59. When the charge levelled against a person is vague, there is on the face of it a denial of reasonable opportunity as no one can defend himself against an allegation which is shrouded in mystery. The manner in which notice was given and inquiry sought to be conducted do create an impression on my mind that the State Government was already pre-determined and its action under rule 68 was not *bona fide*.

(5) For the foregoing reasons, the writ petition is allowed with costs and the impugned notice on which the inquiry is to be conducted against the petitioner quashed. The petitioner is entitled to continue in office as President of Municipal Committee, Rampura Phul, till removed therefrom in accordance with law. The costs are assessed at Rs. 150/-.

B. S. G.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

SARBJIT SINGH ETC.,—Petitioners.

Versus

M/S Nankana Sahib Transport Company (Private) Limited,
Ludhiana,—Respondents.

Civil Writ No. 3340 of 1971.

January 12, 1972.

Industrial Disputes Act (XIV of 1947)—Sections 17, 17-A and 20(3)—Industrial Tribunal—Whether has jurisdiction to entertain an application for setting aside an ex parte award—Time upto which such an application can be made—Stated—Commencement of the ex parte award not stayed during the pendency of the application—Period of 30 days after the publication of the award expiring—Jurisdiction of the Tribunal to decide the application—Whether taken away.

Held, that an Industrial Tribunal appointed by the State Government under the Industrial Disputes Act, 1947, has the jurisdiction to entertain an application for setting aside an ex parte award made by it. (Para 5)