

the agreement embodied in the resolution. That agreement being of the kind envisaged by sub-section (1) of section 10-A of the Lands Act, the *non obstante* clause is at once attracted thereto and the impugned order rendered illegal to the extent that it interferes therewith.

(8) The result is that the impugned order is illegal and without jurisdiction whether it is viewed as having been passed under the provisions of section 10-A of the Lands Act or is deemed to be one under section 97 of the Panchayat Act. It must, therefore, be and is hereby quashed. The petitioner will have his costs of the proceedings from respondents Nos. 1 and 3. Council's fee Rs. 100.

K. S. K.

MISCELLANEOUS CIVIL

Before Bal Raj Tuli, J.

BALDEV RAJ SHARMA,—Petitioner.

*versus*

THE STATE OF PUNJAB AND ANOTHER —Respondent.

**Civil Writ No. 2290 of 1969.**

November 16, 1971.

*Punjab Municipal Act (III of 1911)—Section 236—State Government ordering the annulment of a resolution passed by a Municipal Committee—Person affected by such annulment—Whether entitled to notice and hearing before such annulment.*

*Held*, that sub-section (2) of section 236 of the Punjab Municipal Act, 1911, authorises the State Government to annul or modify any proceeding of a Municipal Committee which it considers to be not in conformity with law or with rules as are in force. Before passing the order, no notice has to be issued to the Municipal Committee concerned or to any person who is affected by that resolution or annulment order. The Municipal Committee whose resolution is annulled may have a grievance but the person, to whom that resolution relates, has no right to urge that he has not been given any notice or hearing before annulling that resolution.

(Para 4)

Baldev Raj Sharma v. The State of Punjab and another (Tuli, J.)

---

*Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari, or any other appropriate writ order or direction be issued, quashing the order of respondent No. 1, dated May 12, 1969 and that of respondent No. 2, dated January 8, 1969, respectively.*

G. R. Majithia, Advocate, for the petitioner.

R. C. Setia, Advocate for Advocate-General, (Punjab), H. S. Doabia and T. S. Doabia, Advocates, for respondent No. 2.

### JUDGMENT

TULI, J.—The petitioner was appointed as a Fireman by the Fire Officer, Punjab, on May 21, 1963, for the Municipal Committee, Ludhiana, as the Punjab Government had taken over the Fire Brigade Service of that Committee with effect from January 16, 1963, under the Defence of India Rules, 1962. The petitioner was sent for Sub-Fire Officer Course at Nagpur National Fire Service College in August, 1965, which course he successfully completed on February 12, 1966. On return from Nagpur College, he was again posted as Fireman in the Ludhiana Municipal Committee. He was promoted as Sub-Fire Officer by the Fire Officer, Punjab, by order, dated September 20, 1966, against a post temporarily created. That post was made permanent by the Fire Officer, Punjab, by order, dated May 26, 1967.

(2) The Punjab Government, by its order, dated July 12, 1967, revoked the earlier order dated January 16, 1963, taking over the Fire Brigade Service of Municipal Committee, Ludhiana, with effect from July 15, 1967. The result was that the petitioner became an employee of the Municipal Committee, Ludhiana. That Committee, by its resolution, dated August 17, 1967, ordered the confirmation of the petitioner with effect from April 1, 1967, against a permanent post of Sub-Fire Officer. No intimation of this order was given to the petitioner. A complaint was made to the Punjab Government by Shri A. K. Tewari, a colleague of the petitioner, stating therein that the resolution confirming the petitioner passed by the Municipal Committee, Ludhiana, was not in accordance with the rules. The enquiry into the matter was made by the Deputy Director, Local Government, and it was found that the petitioner had been appointed as Deputy Fire Station Officer,—*vide* resolution No. 751/13, dated November 15, 1966, on probation for one year. The probation period was to expire on November 14, 1967, but petitioner was confirmed before the expiry of

that period by resolution dated August 17, 1967, with effect from April 1, 1967. This resolution was thus considered to be against the spirit of note 3 to rule 2.49 of the Punjab Civil Services Rules, Volume 1, Part I. Another reason for the annulment of that resolution stated by the Deputy Director, Local Government, was that the seniority of Shri A. K. Tewari, who had been appointed as Deputy Fire Station Officer, with effect from September 11, 1963, had not been considered and thus the resolution of the Municipal Committee ignoring Shri Tewari and confirming the petitioner—the juniormost officer—was against the fundamental instructions provided in the Punjab Civil Services Rules and was, therefore, liable for annulment under section 236 of the Punjab Municipal Act, 1911. Accepting this recommendation of the Deputy Director, Local Government, the impugned order was passed reading as under:—

“In exercise of the powers conferred by section 236 of the Punjab Municipal Act, 1911, the Governor of Punjab is pleased to annul resolution No. 336/I-I, dated 17th August, 1967, passed by the Municipal Committee, Ludhiana, confirming Shri Baldev Raj and Shri Sachida Nand as Deputy Fire Station Officers.”

This order was passed on May 12, 1969. From the record produced by respondent 1, it is evident that up to that date the resolution of the Municipal Committee dated August 17, 1967, had not been implemented. The petitioner has also not alleged in his petition that that resolution had been given effect to or that any communication about it was given to him. The present petition has been filed for the quashing of the order of the Punjab Government dated May 12, 1969, annulling the resolution of the Municipal Committee, Ludhiana, dated August 17, 1967, confirming the petitioner.

(3) Written statement has been filed by respondent 1 but no written statement has been filed by respondent 2.

(4) The first point for consideration is whether the petitioner has the right to complain about the irregularity or illegality of the impugned order. That order has been passed under section 236 of the Punjab Municipal Act, 1911 (hereinafter called the Act), which reads as under:—

“236(1) The State Government and Deputy Commissioners, acting under the orders of the State Government, shall be

Baldev Raj Sharma v. The State of Punjab and another (Tuli, J.)

---

bound to require that the proceedings of committee shall be in conformity with law and with the rules in force under any enactment for the time being applicable to Punjab generally or the areas over which the committee have authority.

- (2) The State Government may exercise all powers necessary for the performance of this duty, and may, among other things by order in writing, annul or modify any proceeding which it may consider not to be in conformity with law or with such rules as aforesaid, or for the reasons which would in its opinion justify an order by the Deputy Commissioner under section 232.
- (3) The Deputy Commissioner may, within his jurisdiction for the same purpose, exercise such powers as may be conferred upon him by rule made in this behalf by the State Government."

Sub-section (2) of section 236 of the Act authorises the State Government to annul or modify any proceeding of a Municipal Committee which it considers to be not in conformity with law or with rules as are in force. It does not expressly state that before passing the order notice has to be issued to the Municipal Committee concerned or to any person who is affected by that resolution or annulment order. It is only the Municipal Committee whose resolution is annulled that can be said to have a grievance and the person to whom that resolution relates, has no right to urge that he has not been given any notice or hearing before annulling that resolution. There is no direct authority on the point but this view of mine is supported by the observations of their Lordships of the Supreme Court in *Shri Subhash Chandra and others v. Municipal Corporation of Delhi and another* (1), which concerns section 235 of the Act. Their Lordships observed :—

"Since section 235 does not require an opportunity to be given to parties affected by the order other than the Municipality, the petitioners are not entitled to say that the order is bad."

The learned counsel for the petitioner submits that under section 235 of the Act, the Deputy Commissioner is to forward a copy of his order passed under section 232 or section 233 or section 234 along with a statement of the reasons for making it and with such explanation, if any, as the committee may wish to offer and it is in that context that

---

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

their Lordships held that only the Municipal Committee was entitled to a notice or opportunity of being heard. This distinction is of no avail because under section 236, there is no provision made that any notice or opportunity of being heard will be given to the Municipal Committee whose proceedings or resolution has to be annulled or modified. It follows that no other person has the right to be heard while taking action under section 236 of the Act. There is, therefore, no merit in the submission of the petitioner that the impugned order passed by the Punjab Government is invalid because he was not given an opportunity of hearing before passing that order. In my opinion, he has no right to challenge that order. If at all, that right vests in the Municipal Committee, Ludhiana, which has made no complaint about it. In this view of the matter, I do not feel the necessity of determining whether the impugned order was in conformity with the provisions of section 236 of the Act or not.

(5) For the reasons given above, I hold that the present petition is not maintainable and is, therefore, dismissed but the parties are left to bear their own costs.

---

B. S. G.

APPELLATE CIVIL

*Before Prem Chand Pandit and Gopal Singh, JJ.*

SHIV LAL—Appellant.

*versus*

PT. ISHAR DAS,—Respondent.

**Regular First Appeal No. 361 of 1973.**

November 18, 1973

*Code of Civil Procedure (Act No. V of 1908)—Order 9, rules 8 and 9—Suit for rendition of accounts dismissed in default under rule 8—Application for restoration under rule 9 pending—Parties entering into agreement referring all disputes to arbitration—Application for restoration withdrawn—Arbitration agreement superseded on account of misconduct of arbitrators—Fresh suit filed for rendition of accounts thereafter—Such suit—Whether barred under rule 9.*