

(10) In the result, this appeal fails and is dismissed without any order as to costs.

R. S. NARULA, J.—I agree.

K. S. K.

APPELLATE CIVIL

Before Mehar Singh, C.J. & R. S. Sarkaria, J.

KARAM SINGH,—Appellant.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Lettres Patent Appeal No. 251 of 1968.

January 30, 1969.

Punjab Municipal Election Rules (1952)—Rule 7(g)—“Arrears”—Meaning of—Notice by the Municipal Committee mentioning some unascertained amount due from a person—Such notice—Whether constitutes a demand under Rule 7(g).

Held, that in Rule 7(g) of Punjab Municipal Rules, 1952, the term “arrears” appears to have been used to denote some outstanding pecuniary liability as distinguished from a mere liability to render accounts or any other non-pecuniary liability. It involves the existence of some default on the part of the debtor or the person against whom such liability is outstanding. Further the mere fact that some amounts remained unpaid, will not *ipso facto* make it “arrears” unless its payment has fallen due. The words “of any kind” immediately following the word “arrears” do not enlarge the meaning of the word “arrears” so as to cover liabilities other than pecuniary liabilities. These words are only descriptive of the classes of the monetary dues such as taxes, cesses, fees, debts or other sums due to the Municipal Committee.

(Para 9)

Held, that when a notice by a Municipal Committee to a person only mentions some liability in respect of some unascertained sums due from him, the notice would amount merely to an *intimation* of the outstanding and not a “demand”. No demand is made for the amount and a mere intimation by the Municipality to a person that something might be due from him without making claim for the payment of the sum, would not constitute a ‘demand’ within the meaning of clause (g) of rule 7 of the Rules which being a disabling provision, has to be construed strictly.

(Para 15)

Karam Singh v. The State of Punjab, etc. (Sarkaria, J.)

Letters Patent Appeal under Clause 10 of the Letters Patent of the Punjab High Court against the judgment and order of the Hon'ble Mr. Justice Shamsher Bahadur, dated the 13th March, 1968, passed in Civil Writ No. 2010 of 1967.

D. N. AGGARWAL, ADVOCATE, for the Appellant.

C. L. LAKHANPAL, I. S. VIMAL, ADVOCATES FOR ADVOCATE-GENERAL (PUNJAB),—for the Respondents.

JUDGMENT.

SARKARIA, J.—This judgment shall dispose of Letters Patent Appeals 251 and 252 of 1968, directed against the orders, dated March 13, 1968, of a learned Single Judge of this Court. They arise out of the following circumstances:

(2) Two writ petitions Nos. 2010 and 2011 of 1967 were instituted by Karam Singh and Bachan Singh, respectively, under Articles 226 and 227 of the Constitution raising identical questions. The petitioners in both these cases had been elected as members of the Municipal Committee, Kharar. The programme of the fresh election drawn up in accordance with Rule 3 of the Municipal Election Rules, 1952, (hereinafter referred to as the Rules), was issued and duly published by the Deputy Commissioner, Rupar. Karam Singh and Bachan Singh, Writ Petitioners filed their nomination papers before Respondent No. 2 on August 25, 1967, for election to the Municipal Committee from Wards Nos. 8 and 10, respectively. On September 2, 1967, the date fixed for the scrutiny of nomination papers, an objection was raised as to the eligibility of the petitioners for contesting the election on the ground that they had failed to pay up certain amounts due to the Municipality in spite of special demand notices, dated April 21, 1967, served upon them by the Municipal Committee.

(3) Both the petitioners were entrusted with certain amounts in connection with the construction of Octroi barrier-cum-octroi post. Karam Singh was given a sum of Rs. 1,765 which was partly advanced in December 1966 and partly in January 1967. Similarly, Bachan Singh petitioner was advanced for the same purpose, Rs. 1,250 on November 21, 1966 and a further sum of Rs. 739.25 on December 10, 1966. They did not render accounts with regard to these sums entrusted to them. Consequently, on April 21, 1967, the Municipal

Committee sent notices individually to Karam Singh and Bachan Singh, Writ Petitioners, the material part of which, being indential, reads as follow:—

“It has been brought to my notice that the sum of Rupees..... on account of advance for the construction of Morinda Road Barrier were received by you during the month of..... but the account of above advance does not appear to have been received in this office which may please be sent within two days positively, failing which serious action will be taken in the matter. This may be treated most urgent.”

(4) Karam Singh sent his reply to the notice on April 27, 1967, rendering a sort of account of a total amount of Rs. 1,501.59 which he allegedly expended towards the work entrusted to him. He added that he had overspent Rs. 101.59 from his own pocket. The Administrator of Municipality thereupon wrote the letter, Annexure 'C' to the writ petition, raising several audit objections and requesting Karam Singh, petitioner to explain the same within two days for further action. In response, Karam Singh sent the reply, dated August 2, 1967 Annexure 'D', which is alleged to have been received in the office of the Municipality on August 17, 1967. Similarly, Bachan Singh, Writ Petitioner, sent his reply, dated January 28, 1967, giving an account of a sum of Rs. 1,750 allegedly expended by him. Thus, he said that the whole of the amount advanced to him had been expended and no amount was due from him. He requested that a clearance certificate be issued to him. He also stated that a balance of Rs. 101.60 was payable to Amar Singh, contractor. The Administrator of the Municipality then wrote the letter, dated July 24, 1967, Annexure 'C' raising some objections and seeking clarifications within two days. Bachan Singh then sent clarifications by his letter, dated August 9, 1967.

(5) The Returning Officer rejected the nomination papers of Karam Singh and Bachan Singh, (per his orders contained in Annexure 'E' to the respective writ petitions) on the ground that the advances made to them by the Municipal Committee still remained unadjusted in spite of notice, and that they had thus incurred the disqualification to be a member of the Municipal Committee. To impugn those orders of the Returning Officer rejecting their nomination papers, Karam Singh and Bachan Singh brought writ

petitions under Articles 226 and 227 of the Constitution. The sole question for determination before the learned Single Judge, was, whether the petitioners incurred the disqualification set out in rule 7(g) of the Municipal Election Rules, 1952. This question was answered in the affirmative by the learned Single Judge, and, in the result, the petitions were dismissed with costs.

(6) The material part of rule 7 of Punjab Municipal Election Rules, 1952, reads as follows :—

“7. *Disqualification for membership.* No person shall be eligible for election as a member of a Municipal Committee, who—

* * * * *

(g) is an undischarged insolvent; or is in arrears of any kind due from him (otherwise than as a trustee) to the committee when a special demand in this behalf has been served upon him by the committee, or”

(7) An analysis of the above Rules shows that in order to attract the disqualification embodied therein, three elements must co-exist :—

- (a) There must be arrears of any kind due from the candidate to the Municipal Committee.
- (b) The liability in respect of those arrears should not be in the capacity of a trustee.
- (c) A special demand made by the Committee must have been served upon the candidate.

(8) The learned counsel for the appellants vehemently contends that in the case of both the petitioners none of three elements existed; that the petitioners were not under any outstanding liability to pay any monetary dues to the Municipality; that the amounts in respect of which they were called upon to render account were held by them as trustees, and that the Notices, dated April 21, 1967, to the writ petitions, do not constitute a ‘special demand’ within the meaning of the aforesaid rule.

(9) With regard to (a), the first question is : whether the failure to render accounts due, is “arrears” within the meaning of the aforesaid rule. “Arrears”, said Mr. Justice Bennett in *Queen Anne Bounty v. Title Redemption Commission* (1), at page 237,

(1) (1937) 1 Ch. D. 229.

“is not a term of art but a well-known word commonly used to describe sums overdue and payable in respect of periods of time—for example, unpaid annuities, unpaid interest, unpaid preference dividends—there is no real difficulty in applying the word “arrears” to sums due and not to rights and liabilities in respect of sums which became due on account of tithe (one-tenth of the rent charged) before the appointed day”. In the Rule, the term appears to have been used to denote some outstanding *pecuniary* liability as distinguished from a mere liability to render accounts or any other non-pecuniary liability. It involves the existence of some default on the part of the debtor or the person against whom such liability is outstanding. Further, the mere fact that some amounts remained unpaid, will not *ipso facto* make it ‘arrears’ unless its payment has fallen due. In the instant case, what has been shown is that the petitioners were liable to render accounts in respect of certain amounts given to them for meeting the expenses of the construction of an octroi barrier. By the Notices, the petitioners were simply called upon to *render accounts* in respect of those sums. In response, they did render the accounts. Thus, even if it is assumed for the sake of argument that they defaulted in rendering the accounts in due time, then also it could not be said that they were in “arrears of any kind” due to the Municipality. The words “of any kind” immediately following the word “arrears” do not enlarge the meaning of the word “arrears” so as to cover liabilities other than pecuniary liabilities. These words are only descriptive of the classes of the monetary dues such as taxes, cesses, fees, debts or other sums due to the Municipal Committee. To my mind, the words “of any kind” only mean ‘monetary dues of any kind’. Thus, element (a) was missing in this case.

(10) Regarding (b), it has been maintained by the learned counsel for the appellants that in respect of the sums given to the petitioners, they were ‘trustees’. It is urged that the word “trustee” has been used in this rule in its wider sense so as to cover even implied and constructive trusts where money is handed over by one person to another in confidence for a specific purpose for the benefit of another. The argument is attractive but does not appear to be sound. The term “trustee” has not been defined in the Punjab Municipal Act or the Rules. According to the definition of the term contained in Section 3 of the Indian Trusts Act, 1882, it is “an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner or declared and

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accepted by him, for the benefit of another, or of another and the owner". The word "trustee" therefore has to be construed with reference to the aforesaid definition. It will be seen that in a trust, the legal title in the property vests in the trustee while the equitable title rests with the beneficiary. The ownership in the amounts given to the petitioner did not vest in the petitioners but it remained the property of the Municipality although the petitioners had been given powers of expending it. The relationship created between the Committee and the petitioners was purely that of Principal and Agent. The petitioners had only undertaken to act on behalf of the Municipality, their Principal, and subject to the latter's control. The argument of the learned counsel for the appellants, therefore, on this point is rejected.

(11) The question whether element (c) did or did not exist, will, to a large extent, turn on the construction of the notices, dated April 21, 1967, and the nature of the transaction and the liability of the petitioners towards the Committee. Interpretation of the words "special demand" in rule 7(g) of the Rules was considered by Narula, J., in *Duni Chand v. Punjab State and others* (1). That case was also cited before the learned Single Judge who has attempted to distinguish it from the facts of the instant case. It is, therefore, proposed to notice *Duni Chand's case* (1), in some detail. In that case, programme for election to the Municipal Committee, Jagraon, was issued. Duni Chand petitioner and two of the respondents in that case filed nomination papers for contesting the election to that Municipal Committee on August 25, 1967. The papers were scrutinised on September 2, 1967, when Joginder Singh, Respondent No. 5, raised an objection to the effect that the petitioner owed some dues to the Municipal Committee, Jagraon, on account of work contract which he had undertaken in the past. Joginder Singh also produced before the Scrutiny Officer a copy of memorandum, dated September 1, 1967, which was in the following terms—

"Dated 1st September, 1967.

Shri Duni Chand,

Mori Gate, Jagraon.

Settlement of objection.

(1) 1968 P.L.R. 48.

There are audit objections in respect of work of construction of Drain on Raikot Road, and repair to Kaluwal Dehran Road, which involves certain recoveries from you in this account. You are, therefore, requested to attend this office within a week so that cases are settled after necessary payment.

(Sd.) Manmohan Kaur,
Secretary,
M.C., Jagraon."

(12) The Scrutiny Officer found that though the securities, etc., had been refunded to the petitioner, some dues were still outstanding against him. The nomination paper of Duni Chand petitioner was, therefore, rejected. The petitioner went in revision before the Revising Authority which dismissed the same with this observation—

"It was a liability on the petitioner to prove that he does not owe anything to the Municipal Committee as provided in 'sub-section' 7(g) of the Punjab Municipal Election Rules, 1952. The notice issued by the Municipal Committee clearly shows that some recovery was to be made from the petitioner by the Municipal Committee which is a disqualification under rule 7 of the rules *ibid*I am, therefore, of the opinion that the Returning Officer has rightly rejected the nomination papers of the petitioner".

(13) Against those orders of the Scrutiny Officer and the Revising Authority, Duni Chand made a petition under Articles 226 and 227 of the Constitution. In the affidavit of the Secretary of the Municipal Committee, it was admitted that the petitioner had been finally paid for other works carried out by him. There were some audit objections pending with the Jagraon Municipality against the petitioner which involved certain recoveries from him. It was further admitted that Notice, dated September 1, 1967, was issued to Duni Chand. One of the audit objections raised was with regard to certain excess measurements and the Municipality had decided to make certain recoveries from the petitioner on the basis of the aforesaid audit objections. Though the amounts of relevant vouchers mentioned in the audit objections were Rs. 2,887.96 under

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item 20 and Rs. 240.25 under the other item, no particular sum was mentioned as due from the petitioner in the notice of demand, dated September 1, 1967. It was contended on behalf of the respondents in that case, as was contended before the learned Single Judge in this case, that after the candidate concerned is aware either on receipt of some notice or otherwise that some amount is due from him, it should be a sufficient demand within the meaning of rule 7(g). This contention was rejected with these observations—

“I have no hesitation in holding that whatever may be the scope and meaning of the expression ‘Special Demand’, such a demand must have been made before the relevant time in connection with the arrears for the non-payment of which the disqualification referred to in clause (g) of rule 7 is claimed to have been incurred. I do not think that if a person goes to the Municipality and ask for a ‘No Demand Certificate’ and the same is refused to him, this can amount to a demand having been made by the Municipality on the person concerned. A demand is necessarily not a negative thing but a positive act. The phraseology used in clause (g) of rule 7 itself shows that the candidate concerned being merely aware of his being indebted to the Municipality is not enough to incur the disqualification in question, but that in addition to the arrears being due, a special demand must have been made on the candidate by the Municipality itself. The sense in which the word ‘Demand’ has been used in clause (g) is ‘to claim to ask pre-emptorily or authoritatively, or to call for, or to ask for what is due’. No demand is made unless claim is made for the amount. I would go to the extent of holding that if a *Municipal Committee* was to write to a person that some thing was due from him but not to make any claim for the same in the communication it would not amount to a ‘Demand’ but a mere intimation of the outstanding. It would, however, depend upon the circumstances of each case, as no particular form of the requisite demand has been prescribed under the rules.”

(14) The learned Judge further considered the significance of the word “special” prefixed to the word “Demand” and said—

“What is significant is that for purposes of incurring the penal consequence of clause (g) of rule 7, it is not a mere

'demand' which is enough, but what is required is a 'special demand'. The word 'special' in its ordinary dictionary meaning signifies 'particular; peculiar; distinctive : exceptional : additional to ordinary : detailed, etc'. (Chambers' Twentieth Century Dictionary)."

(15) On principle, *Duni Chand's case* (supra), (1) is not distinguishable from the facts of the present case. The difference in facts makes the above-quoted observations of Narula, J., applicable to the present case with greater force. In the instant case, the Notices are for rendition of accounts. They do not give even a general intimation that any sum is recoverable from the petitioners, whereas in *Duni Chand's case* (supra) (1) the Notice stated in so many words that as a result of the audit objections' certain recoveries from the petitioner were involved' and the petitioner was further called upon 'to attend the office to settle those cases after necessary payments'. In the instant case, the Notices did not convey even an oblique information that any sums were recoverable from the petitioners, not to speak of making a demand for payment of a specific amount. As we read the Notices, we do not find any warrant for the observation of the learned Single Judge that "it seems clear that demands for specific amounts had been made from the petitioners who were required pre-emptorily to make these payments within two days failing which serious notice would be taken of their defaults". It is nowhere mentioned in the Notices that any sums, whatever, were due from the petitioners. The learned Single Judge appears to have been unduly prejudiced by the fact that the petitioners had, at first, denied the receipt of these Notices of April 21, 1967. But that does not alter the fact that the Notices, dated April 21, 1967, do not amount to 'special demands' for the simple reason that no specific amount due from the petitioners to the Municipality is indicated therein. By no stretch of imagination, the sums mentioned in these Notices as having been advanced to the petitioners for meeting the expenditure on the construction of the octroi barrier, could be considered as the specific amounts due, for the return of which a demand had been made. The demand was not made for the return of those amounts but for rendition of accounts of those advances made to the petitioners for a specific purpose. Assuming, but not holding, that some liability in respect of some unascertained amount due from the petitioners could be spelled out of these Notices, then also, at best, these Notices would

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amount merely to an *intimation* of the outstanding and not to a 'demand'. On this point, also, I find myself in respectful agreement with the observations of Narula, J., in *Duni Chand's case* (supra) (1), that no demand is made unless the claim is made for the amount and that a mere intimation by the Municipality to a person that something might be due from him without making claim for the payment of the sum, would not constitute a 'demand' within the meaning of clause (g) of rule 7, which being a disabling provision, has to be construed strictly.

(16) For reasons aforesaid, the conclusion is inescapable that the impugned orders rejecting the nomination papers of the petitioners were manifestly illegal and without jurisdiction. The decision of the learned Single Judge is, therefore, reversed and the appeals are accepted with costs. In the result, both the writ petitions, Nos. 2010 and 2011 of 1967, are allowed and the impugned orders, dated September 4, 1967 (Annexure 'E' to the writ petitions) are quashed, with the direction that fresh elections to the Municipal Committee, Kharar, from Wards 8 and 10, for which the writ petitioners were candidates, be held in accordance with law.

(17) Out of the costs, in each case, 50 per cent shall be paid by the respondent State and 50 per cent by the other respondents. Counsel's fee : Rs. 60 in each case.

MEHAR SINGH, C.J.—I agree.

K. S. K.

CIVIL MISCELLANEOUS

Before H. R. Sodhi, J.

THE BRITISH INDIA CORPORATION LIMITED,—*Petitioner.*

versus

THE DEPUTY COMMISSIONER, GURDASPUR, AND ANOTHER,—*Respondents.*

Civil Writ No. 1526 of 1964.

January 31, 1969.

Punjab Municipal Act (III of 1911)—Sections 3(1) (b) 66 and 68—East Punjab Urban Rent Restriction Act (III of 1949)—Section 4—Annual rental value of a building—Fixation of by a Municipal Committee—Rent Control Laws—Whether can be ignored—Fair rent of a building not determined by