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(5) Under the circumstances, the petitioner may appear to have been rightly convicted for the abetment of the main offences, even though the main offenders have got off because their identity could not be established by the prosecution.

(6) The appellant's convictions and sentences are, therefore, maintained and the revision petition is dismissed.

B.S.G.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

SURJIT SINGH SUD,—Petitioner.

versus

THE STATE OF PUNJAB ETC.—Respondents.

Civil Writ No. 3183 of 1971.

October 8, 1971.

Punjab Town Improvement Act (IV of 1922)—Sections 5, 10, 17, 18 and 73(1) (iii)—Employment, Suspension, Removal and Conduct of Officers and Servants of the Trust Rules (1945)—Rules 17 to 19—Whether apply to Chairman and Trustees of an Improvement Trust—Removal of a Chairman from office—State Government—Whether bound to follow procedure under rule 19—Section 5—Whether ultra vires Article 14, Constitution of India for vesting absolute power in the State Government and being more disadvantageous than Section 10.

Held, that from a reading of Sections 17 and 73(1) (iii) of the Punjab Town Improvement Act, 1922, together, it irresistibly follows that the Employment, Suspension, Removal and Conduct of Officers and Servants of the Trust Rules, 1945, for the framing of which power has been vested in the State Government, relate to the officers and servants who can be employed by the trust itself and not to the Chairman and trustees who are appointed by the Government or the Municipal Committee concerned. Section 18 makes the position further clear because the power of appointing, promoting and granting leave to officers and servants of the trust and reducing, suspending or dismissing them for misconduct, and dispensing with their services for any reason other than misconduct, vests in the chairman of the trust or the trust itself. The power of appointment and removal of a Chairman has been expressly vested in the State Government

and, therefore, it cannot be said that, while exercising that power, the State Government is bound by the Rules framed under Section 73(1) (iii) of the Act. Hence a Chairman of a Town Improvement Trust is not governed by the Rules and, therefore, it is not incumbent on the Government to follow the procedure prescribed in rule 19 while passing an order removing him from office as Chairman. (Paras 4 and 7)

Held, that Section 5 of the Act clearly points out that the appointment of a Chairman of a trust is at the pleasure of the Government. The section does not permit the State Government to appoint the chairman of a trust for a period exceeding three years at a time and even within that period power has been reserved to the Government to remove him at any time. This provision, therefore, clearly makes the continuance in office of the chairman of a trust at the sweet will and pleasure of the Government and the Legislature can confer such power on the Government. When the statute creating the office prescribes its tenure but reserves to the Government the right to remove him at any time, he cannot be said to have a statutory right to continue in that office for the period for which he is once appointed. Any person who accepts the office of a chairman of an Improvement Trust is presumed to know that even if he has been appointed for a fixed period, he can be removed at any time and, thus, there is no security of tenure. He also knows that no provision has been made in the Act for following any procedure before removing him from service before the expiry of the period for which he is initially appointed and if he accepts the office on those statutory conditions with eyes open, he cannot make a grievance later on that his tenure of office was cut short. Section 5 of the Act, therefore, cannot be struck down under Article 14 of Constitution of India on the ground that it vests an absolute power in the State Government to remove a chairman even before the expiry of the term for which he is initially appointed. (Para 8)

Held, that section 10 of the Act, provides for the removal of trustees whereas a chairman can be removed only under Section 5. The chairman, by virtue of his appointment as chairman, becomes a trustee and not that trustees are appointed and from amongst them the chairman is elected or appointed. The chairman becomes a trustee *ex officio*, that is, by the reason of his office as chairman and not that he becomes the chairman by reason of his office as a trustee. If he is removed from the office of chairman, he also ceases to be a trustee, whereas if he is removed from the office of a trustee, he can claim that he continues to be the chairman unless he is removed from that office as well and that can be done only under section 5 of the Act. In the whole Act, the distinction between the chairman and other trustees is maintained which clearly leads to the conclusion that the chairman and the trustees are to be treated differently and what applies to the trustees does not necessarily apply to the chairman. Hence Section 5 is not more disadvantageous than section 10 since both

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deal with different sets of persons and is not hit by Article 14 of the Constitution of India. (Para 9.)

Petition under Article 226/227 of the Constitution of India praying that a writ of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the order of removal of the petitioner from the Office of the Chairman, Jullundur Improvement Trust, Jullundur and directing the respondents not to interfere with the rights and privileges and also with the office of the Chairman, the Jullundur Improvement Trust, Jullundur for a period of three years that is, upto 6th of June, 1971.

Kuldip Singh, Devinder Singh, R. S. Mongia, Advocates, for the petitioner.

Abnasha Singh, Advocate, for Advocate General Punjab, for respondent No. 1.

JUDGMENT

TULI, J.—(1) The petitioner, Surjit Singh Sud, was practising as an Advocate at Jullundur on June 4, 1971, when a notification appointing him as Chairman of the Improvement Trust, Jullundur, was published. He assumed charge of his office on June 7, 1971. By another notification dated June 14, 1971, he was allowed a fixed salary of Rs. 1,000.00 per mensem plus dearness pay/allowances at Government rates. His appointment was for a period of three years with effect from the date he assumed charge of the office as a whole-time Chairman with the condition that he would give up his practice as an Advocate. The petitioner came to know on August 22, 1971, from some news item published in the daily news-papers that orders for his removal from the office of Chairman, Improvement Trust, Jullundur, had been passed. He immediately rushed to this Court with this petition in order to obtain an order staying the publication of the notification removing him from his office. Notice of motion returnable for September 8, 1971, was issued by the Motion Bench on August 24, 1971, and the notification and implementation of the impugned order and termination of the service of the petitioner were stayed till further orders. On September 8, 1971, the petition was adjourned to the following day at the request of the Senior Deputy Advocate General for respondent 1 and was admitted on September 9, 1971.

(2) Written statement has been filed by respondent 1, the State of Punjab, to which a replication has also been filed by the petitioner.

Respondent 2 to the petition is Shri Gurdial Saini, Ex M.L.A. Congress (R), against whom it has been alleged that he manoeuvred the removal of the petitioner with the Government. Respondent 2 has not chosen to file any return or affidavit controverting those allegations.

(3) The record has been produced by respondent 1 as directed by the Motion Bench which shows that an order for the removal of the petitioner from his office of Chairman, Improvement Trust, Jullundur, was in fact passed on August 19, 1971, by the Governor of Punjab after obtaining the advice of the Legal Remembrancer and the Advocate-General. This action was taken on a letter of the Deputy Commissioner, Jullundur, and some complaints sent by Shri Manmohan Kalia, ex-Minister of Punjab belonging to Jan Sangh party and respondent 2. The petitioner was not given any notice to show cause why he should not be removed from his office and the action was taken by the State Government entirely on its own satisfaction as to the unsuitability of the petitioner to continue in his office.

(4) The learned counsel for the petitioner submits, in the first instance, that the Chairman of an improvement trust is an officer of the trust and is governed by the Rules for the Employment, Suspension, Removal and Conduct of Officers and Servants of the Trust, 1945 (hereinafter called the Rules) which were published *vide* notification dated September 4, 1945, and, therefore, the petitioner could not be removed from his office except in accordance with the procedure prescribed in rule 19, which procedure was admittedly not followed. These Rules were framed by the Governor of Punjab in exercise of the powers conferred on him by section 73 of the Punjab Town Improvement Act, 1922 (hereinafter called the Act) and the point for determination is whether these rules apply to the chairman of an improvement trust or only apply to its officers and servants employed by itself. According to sections 4 and 5 of the Act, the chairman of a trust is to be appointed by the State Government by notification for a term not exceeding three years as the State Government may fix in that behalf but is liable to removal from office by the State Government at any time. He is also eligible for reappointment. He is to preside at every meeting of the trust if he is present (section 12(1)(c)). Sections 17 to 20 of the Act have a direct bearing on the point for determination and are reproduced below :—

“17. Subject to such rules as the State Government may make under clause (iii) of section 73 the trust may from time to

time employ such servants as it may deem necessary and proper to assist in carrying out the purposes of this Act and may assign to such servants such pay as it may deem fit.

18. Subject to the provisions of section 17 and to any rules for the time being in force, the power of appointing, promoting and granting leave to officers and servants of the trust, and reducing, suspending or dismissing them for misconduct, and dispensing with their services for any reason other than misconduct, shall be vested—

(i) in the case of officers and servants whose maximum monthly salary does not exceed one hundred rupees—
in the chairman, and

(ii) in other cases—in the trust:

Provided that any officer or servant, in receipt of a minimum monthly salary exceeding fifty rupees who is reduced, suspended or dismissed by the chairman may appeal to the trust, whose decision shall be final.

19. The chairman shall exercise supervision and control over the acts and proceedings of all officers and servants of the trust; and, subject to the foregoing sections, shall dispose of all questions relating to the service of the said officers and servants and their pay, privileges and allowances.

20(1) The chairman may, by general or special order in writing, delegate to any officer of the trust any of the chairman's powers, duties or functions under this Act or any rule made thereunder except those conferred or imposed upon or vested in him by sections 12, 15, 21, 46 and 96, respectively.

(2) The exercise or discharge by any officer of any powers, duties or functions delegated to him under sub-section (1) shall be subject to such conditions and limitations (if any) as may be prescribed in the said order, and also to control and revision by the chairman, or the trust."

It is also appropriate to reproduce section 73(1)(iii) of the Act, as it has been specifically mentioned in section 17. This section reads as under :—

“73(1) In addition to the power conferred by section 64, the State Government may make rules consistent with this Act and applicable to all trusts or any trust—

(i) * * * * *

(ii) * * * * *

(iii) as to the employment, payment, suspension and removal of officers and servants of the trust, and the conduct of such officers and servants ;

* * * * *

Reading sections 17 and 73 (1) (iii) together, it irresistibly follows that the Rules, for the framing of which power has been vested in the State Government, relate to the officers and servants who can be employed by the trust itself and not to the chairman and trustees who are appointed by the Government or the Municipal Committee concerned. It may be noted here that under section 4 of the Act, three out of the seven trustees of every trust are to be members of the Municipal Committee of the town and are to be elected by that Committee. It is only on the failure of the Municipal Committee concerned to elect a person to be a trustee that the State Government has the power to appoint a member of that Committee to be a trustee. Section 18 makes the position further clear because the power of appointing, promoting and granting leave to officers and servants of the trust and reducing, suspending or dismissing them for misconduct, and dispensing with their services for any reason other than misconduct, vests in the chairman of the trust in case of officers and servants whose maximum monthly salary does not exceed one hundred rupees and in other cases in the trust. Under section 19, the chairman has been given the power of supervision and control over the acts and proceedings of all officers and servants of the trust. It is admitted by the learned counsel for the petitioner that the trust cannot appoint, dismiss, suspend or dispense with the services of a chairman for any reason whatsoever. The power of appointment and removal of a chairman has been expressly vested in the State Government and, therefore, it cannot be said that, while exercising that power, the State Government is bound by the Rules framed under section 73 (1) (iii) of the Act. If that were so, the provision would have

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been made in the Act itself rather than in the Rules framed for the officers and servants to be employed by the trust just as the provision has been made in section 10 of the Act for the removal of trustees. I cannot persuade myself to hold that the Act intended that the chairman of the trust would be governed by the Rules. The Rules expressly make provision for the appointment of Secretary, Land Acquisition Officer, Town Planner, Engineer, Assistant Engineer, Assistant Town Planner, Senior Draftsman, Junior Draftsman, Overseer and Accountant in rules 1 to 10. In every one of these rules it is stated that the appointment is to be made by the trust. Rules 12 to 19 refer to the procedure to be followed while suspending, dismissing or removing an officer or servant of the trust for which provision is made in section 18 of the Act, under which the trust or the chairman has the power to suspend, dismiss or remove an officer or servant of the trust according to the amount of his monthly salary at that time. The learned counsel for the petitioner has vehemently argued that section 17 does not talk of officers but only talks of servants to which, however, I attach no importance because in sections 18 and 19 reference is made to both servants and officers and it cannot be denied that servant is a generic term which includes all sorts of employees-officers, ministerial or menial. In the Police Rules, even constables are referred to as officers. The mere absence of the word "officer" in section 17 cannot, therefore, be taken to mean that the Rules framed under section 73(1) (iii) also apply to the chairman of a trust, he being one of the officers of the trust. The Secretary, Town Planner, and other employees for whom provision is specifically made in rules 1 to 10 can be termed more appropriately as officers rather than as members of the ministerial or menial establishment which alone, according to the learned counsel, are covered by the word "servant". Section 18, however, makes it clear that the Rules intended to be framed under section 73(1) (iii) were to cover all officers and servants of the trust. It is also stressed by the learned counsel that if the Rules were not intended to apply to the chairman of a trust, rule 11-B would not have found a place therein. This rule reads as under :—

"11-B. The Chairman of a Trust shall retire on his attaining the age of 55 years, unless some stipulation requires it to happen earlier by cessation of his term of office, or unless the Government allows him to continue in office beyond the age of 55."

Under this rule, there is a note reading as under:—

“*Note.*—This rule does not in any way affect the provisions of section 5 of the Punjab Town Improvement Act, 1922.”

In my opinion, there was no necessity of including this rule in the Rules but the note underneath it makes it absolutely clear that the statutory power under section 5 of the Act for the appointment and removal of the chairman has not at all been affected. Rule 20 further makes it clear that the Rules were intended to apply only to the officers or servants employed by the trust.

(5) In this connection, it is further submitted by the learned counsel for the petitioner that the Punjab Town Improvement Trust Casual Leave Rules, 1950, have been made applicable to the Chairman of a trust as is clear from the note at the end of the Appendix to those rules, reading as under:—

“The Chairman shall, ordinarily, obtain the previous sanction of the Trust to such leave, but when in special circumstances, previous sanction is not possible, he shall obtain formal sanction in the next meeting of the Trust following the date (s) on which he avails of the leave.”

The Casual Leave Rules were made for the trust employees and in the Appendix authorities are mentioned who can grant casual leave to the employees. The note, referred to above, only provides that the chairman shall obtain the sanction of the trust before proceeding on casual leave or immediately thereafter in the first meeting of the trust if the sanction to the leave could not be obtained before he proceeded on leave. This note does not in any way make the chairman an employee of the town improvement trust. Reference may also be made to the Punjab Improvement Trust Leave Rules, 1944, which provide for various kinds of leave admissible to the officers or servants of a trust. In rule 3 “Officer or servant of the Trust in permanent employ” is defined to mean an officer or servant who holds substantively a permanent post or holds a lien on a permanent post. Admittedly, this phrase cannot cover the chairman

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of an improvement trust. For this reason too, it cannot be said that the Casual Leave Rules also apply to the chairman of a trust in view of the note appearing at the end of the Appendix to those Rules because the number of days for which casual leave can be granted to the chairman is not mentioned in that note. Even if the leave rules are made applicable to the chairman of a trust, it cannot be held that the chairman becomes an officer of the trust governed by the Rules framed under section 73 of the Act.

(6) The learned counsel then relies on memorandum No. 4916-LG-49/53904, dated August 25, 1949, from the Secretary to Government, East Punjab, Medical, Local Government and Industries Departments, to the Commissioners of Jullundur and Ambala Divisions, reading as under :—

“The following questions have been considered by Government :—

- (1) Whether the Chairman of the Town Improvement Trusts in East Punjab are Government Officers or officers of their respective Trusts,
- (2) Whether they can contribute to a provident fund, and
- (3) Whether they are entitled to receive dearness allowance.

2. It has been decided that :—

- (1) These Chairmen cannot be regarded as Government servants because Trusts are local authorities. The Chairmen are Trustees and Officers of their respective Trusts.
- (2) Government will have no objection to the grant to Chairmen of dearness allowance at the rates to which they would have been entitled had they been Government servants drawing the same salary, and
- (3) At the time of advertising these posts, it was clearly stipulated that the Chairmen will not be entitled to any provident fund or pensionary benefits. The

matter has been reconsidered and it has been decided that the Chairmen may be permitted to contribute to a provident fund like other officers and servants of the Trusts where such a fund or funds exist."

From this memorandum, the learned counsel concludes that the chairman of a trust is an officer of that trust and, therefore, is governed by rule 19 of the Rules. I find myself unable to agree. All that this decision of the Government indicates is that the chairmen are trustees and officers of their respective trusts but it does not mean that they become officers governed by the Rules framed under section 73 of the Act. I cannot bring myself round to the view that the chairman was considered to be on a lower level than the trustees and was made subject to the Rules, particularly because separate provisions are made in sections 5 and 10 for the removal of the chairmen and the trustees. The Rules cannot fetter the statutory power especially when no power has been conferred on the Government in section 73 of the Act to make rules prescribing the procedure for the exercise of power to remove a chairman. It is also well-settled that if there is a conflict between a provision in the statute and the rules framed under that statute, the former will prevail as against the latter. The mere fact that the chairmen have been allowed dearness allowance or the benefit of contributing to a provident fund like other officers and servants of the trust does not make them officers of the trust to whom the Rules apply. Those rules, in my opinion, only apply to the officers and servants employed by the trust and not to any other officer who is appointed by the Government like the chairman and the trustees of a trust.

(7) For the reasons given above, I hold that the chairman of a town improvement trust is not governed by the Rules and, therefore, it was not incumbent on the Government to follow the procedure prescribed in rule 19 while passing an order for the removal of the petitioner from his office as Chairman of the Jullundur Improvement Trust.

(8) The learned counsel for the petitioner then submitted that section 5 of the Act is *ultra vires* Article 14 of the Constitution of India because it vests an absolutely arbitrary and unguided power in the executive Government without providing any guide-lines for the removal of the chairman of an improvement trust at any time

even if the term of his office has not yet expired. According to him, this power is capable of being administered with an evil eye and an unequal hand inasmuch as the Government may remove one chairman but not another. I find no substance, in this argument. Section 5 of the Act clearly points out that the appointment of a chairman of a trust is at the pleasure of the Government. The section does not permit the State Government to appoint the chairman of a trust for a period exceeding three years at a time and even within that period power has been reserved to the Government to remove him at any time. This provision, therefore, clearly makes the continuance in office of the chairman of a trust at the sweet-will and pleasure of the Government and it cannot be contended that the Legislature cannot confer such power on the Government. When the statute creating the office prescribes its tenure but reserves to the Government the right to remove him at any time, he cannot be said to have a statutory right to continue in that office for the period for which he is once appointed. Any person who accepts the office of a chairman of an improvement trust is presumed to know that even if he has been appointed for a fixed period, he can be removed at any time and thus there is no security of tenure. He also knows that no provision has been made in the Act for following any procedure before removing him from service before the expiry of the period for which he is initially appointed and if he accepts the office on those statutory conditions with eyes open, he cannot make a grievance later on that his tenure of office was cut short. A similar matter was considered by a Full Bench of this Court in *Prem Nath Bhalla v. State of Haryana and others*, (1) wherein it was held (per the head note) :—

“that sub-section (7) of section 3 of Punjab Municipal (Executive Officer) Act, 1931, governs the appointments made both under sub-sections (1) and (4) of section 3 of the Act. An Executive Officer appointed under any of these sub-sections can be removed at any time by the Government. His is not a tenure job. When an Executive Officer accepts the appointment, he is supposed to know that even though the Municipal Committee is appointing him for a fixed period, yet the Government is entitled to remove him at any time even after 15 days of his appointment. Under these circumstances, he cannot complain

(1) I.L.R. (1970) 2 Pb. & Hr. 772.

that he has a right to the post for the full period. If he knows that his services can be dispensed with at any time, then he cannot have any grievance if action is taken against him under sub-section (7) by the State Government without giving him any show-cause notice. He cannot say as to why and on what ground he is being removed and precisely for that very reason he also cannot say that he should have been given a show-cause notice before he is removed from his office. He has no right to hold the post for the full period fixed at the time of his appointment. Principles of natural justice only come into play when somebody has got a right to a post and even though the terms of his appointment do not say that he will be given a show-cause notice before his services are terminated, still he should be given such a notice before he is asked to go out of office. In that situation, he is entitled to ask the Government as to why his services are being dispensed with. When he accepts the appointment, both he and the Government know that he has a right to hold that post and if it is a tenure job, then both the parties fully realise that he has to remain there for a particular period. But, on the other hand, if in the very beginning he is told that though he is being appointed for a fixed period, yet his services can be terminated at any time during that period by the Government, he cannot then complain as to why his services are being dispensed with earlier. Hence the State Government can under section 3(7) of the Act remove an Executive Officer of a Municipal Committee appointed either under sub-section (1) or sub-section (4) of section 3 of the Act before the expiry of the period of his appointment without complying with the rules of natural justice by affording him an opportunity to show cause against such an action and the principles of natural justice are not implied in section 3(7) of the Act."

Section 5, therefore, cannot be struck down on the ground that it vests an absolute power in the State Government to remove a chairman even before the expiry of the term for which he is initially appointed or that such a power is capable of being exercised in a discriminatory manner. The impugned order in a given case may

be set aside if the charge of discrimination is proved but section 5 of the Act cannot be struck down as violating Article 14 of the Constitution on that ground.

(9) The second argument in support of the unconstitutionality of section 5 of the Act, submitted by the learned counsel for the petitioner, is that two provisions are made for the removal of a chairman, one in section 5 and the other in section 10 of the Act and section 5 being more dis-advantageous to the petitioner, it is liable to be struck down as violative of Article 14 of the Constitution. It is submitted that it is open to the Government to act either under section 5 or section 10 while removing a chairman of a trust from his office. Under section 10, the State Government has been given the power to remove a trustee only on certain specified grounds and after following the prescribed procedure and not arbitrarily whereas under section 5 the chairman can be removed at any time without assigning any reason and without following any procedure or rules of natural justice. According to the learned counsel for the petitioner, section 10 is applicable to a chairman because under section 4 of the Act he is both a chairman and a trustee. I am unable to agree. Section 4 of the Act provides that there shall be seven trustees, one of them being the chairman. The chairman, by virtue of his appointment as chairman, becomes a trustee and not that trustees are appointed and from amongst them the chairman is elected or appointed. It can, therefore, be said that the chairman becomes a trustee ex-officio, that is, by the reason of his office as chairman and not that he becomes the chairman by reason of his office as a trustee. If he is removed from the office of chairman, he also ceases to be a trustee whereas if he is removed from the office of a trustee, he can claim that he continues to be the chairman unless he is removed from that office as well and that can be done only under section 5 of the Act. In the whole Act, the distinction between the chairman and other trustees is maintained which clearly leads to the conclusion that the chairman and the trustees are to be treated differently and what applies to the trustees does not necessarily apply to the chairman. Section 4 provides that the chairman and three other trustees shall be appointed by the Government while the remaining three trustees are to be elected by the members of the Municipal Committee of the town from amongst the Municipal Commissioners. The State Government gets the power to appoint a Municipal Commissioner as a trustee in case the

Municipal Committee fails to do so within the time prescribed. The term of office of the chairman is provided in section 5 while the term of office of other trustees is provided in section 6. For the trustees, provisions have been made in section 7 and 8 of the Act in respect of resignation, commencement and term of office of first trustees and filing of casual vacancies. Evidently, these provisions do not apply to the chairman appointed by the Government because *qua* him the provisions are made in section 5. The chairman and the trustees are separately mentioned in section 9 wherein provision has been made for their salary. Removal of trustees has been provided in section 10 while disabilities of trustees removed under section 10 are mentioned in section 11 of the Act. The chairman is to preside at all meetings of the trust when he is present and is to exercise supervision and control over the acts and proceedings of officers and servants of the trust. He has also been invested with certain powers, duties and functions in various sections of the Act, particularly sections 12, 15, 21, 46 and 96, which powers he cannot delegate to any other officer of the trust. The scheme of the Act, therefore, leads to the conclusion that the chairman has been dealt with on a footing different from the trustees and for this reason I am of the opinion that sections 10 and 11 of the Act do not apply to a chairman but only apply to trustees other than the chairman. The learned counsel for the petitioner, however, submits that the Government had taken action against Kirpal Singh, chairman, Amritsar Improvement Trust, under section 10 of the Act for his removal. He challenged that order in *Kirpal Singh v. The State of Punjab*, (2) wherein the *vires* of section 5 of the Act were challenged. That petition was referred to a larger Bench by me on April 15, 1969, and was decided by the Division Bench consisting of Narula, J., and myself. At the hearing of the writ petition before the Division Bench, the point with regard to the *vires* of section 5 of the Act was given up as the counsel for both the parties agreed that the order had been passed under section 10 and not under section 5. We, therefore, considered whether the order passed by the Government removing Kirpal Singh could be sustained under section 10 of the Act. No question was raised that a chairman of an improvement trust cannot be removed under section 10 of the Act. In fact, we came to the conclusion that the order could not be sustained under section 10 of the Act and quashed the same. That judgment is of no help to

(2) C.W. No. 549 of 1969 decided on 16th January, 1970.

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the learned counsel for the petitioner on the point now urged by him. After considering the matter from all aspects, I am of the opinion that section 10 of the Act does not apply to the removal of a chairman and he can be removed only under section 5. Consequently, the judgments of their Lordships of the Supreme Court in *Ram Dial and others v. The State of Punjab* (3) and *Northern India Caterers (Private) Ltd. and another v. State of Punjab and another*, (4) do not apply to the facts of this case.

(10) The learned counsel for the petitioner has relied on the judgment of their Lordships of the Supreme Court in *Shri Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar and others*, (5) which, instead of helping the petitioner, helps the respondents. In that case, the principles enunciated in various judgments of their Lordships were reiterated for holding whether a particular statute offended Article 14 of the Constitution or not. It was held—

“A statute may itself indicate the persons or things to whom its provisions are intended to apply and the basis of the classification of such persons or things may appear on the face of the statute or may be gathered from the surrounding circumstances known to or brought to the notice of the court. In determining the validity or otherwise of such a statute the court has to examine whether such classification is or can be reasonably regarded as based upon some differentia which distinguishes such persons or things grouped together from those left out of the group and whether such differentia has a reasonable relation to the object sought to be achieved by the statute, no matter whether the provisions of the statute are intended to apply only to a particular person or thing or only to a certain class of persons or things. Where the court finds that the classification satisfies the tests, the court will uphold the validity of the law,.....”

I have already set out above the scheme of the Act from which it is clear that the chairman, although a trustee by virtue of his office, has been treated differently from the other trustees because of the

(3) A.I.R. 1965 S.C. 1518.

(4) A.I.R. 1967 S.C. 1581.

(5) 1959 S.C.R. 279.

powers which have been vested in him by the Act. Section 5, therefore, cannot be struck down as violative of Article 14 because it applies only to the chairman while section 10 applies to other trustees and is not applicable to the chairman although he is also a trustee. The learned counsel then relies on a judgment of their Lordships of the Supreme Court in *Jyoti Pershad v. Union Territory of Delhi and others*, (6) wherein it was observed—

“If the statute itself or the rule made under it applies unequally to persons or things similarly situated, it would be an instance of a direct violation of the Constitutional guarantee and the provision of the statute or the rule in question would have to be struck down.”

This principle does not apply in the present case in view of what has been stated above. The chairman and the other trustees have been treated differently by the statute for good reasons and, therefore, it cannot be said that there has been discrimination amongst persons similarly situated. The chairman is not similarly situated as the other trustees. His functions, duties and powers are in many respects different from and in addition to those of the other trustees and, therefore, Article 14 of the Constitution cannot be said to have been violated if different provisions for the removal of the chairman and the other trustees have been made in the statute. Section 5 of the Act, therefore, cannot be struck down as violative of Article 14 of the Constitution, as has been contended by the learned counsel for the petitioner.

(11) Lastly, the learned counsel for the petitioner submitted that some adverse remarks to the petitioner have been recorded in the official file on the basis of which the order of his removal has been passed. This material will remain on the record and will prejudicially affect him if any successor Government wishes to appoint him as a chairman of a town improvement trust or in any other responsible post. On this ground, it is submitted that it was incumbent on the Government to issue a notice to the petitioner containing the allegations against him and his explanation should have been sought before passing the order so that his version in respect of those allegations should have also been brought on the record for the successor Government to see and weigh against the

adverse reports against him. Since no explanation of the petitioner has been called, the order passed by the State Government removing him from the office of Chairman of the Jullundur Improvement Trust should be quashed as it results in evil civil consequences to him. In reply, the learned counsel for respondent 1 points out that the record of the Government is confidential and has been produced for the perusal of this Court in obedience to the order passed by the Motion Bench and that material cannot be expunged from the record nor can the impugned order be quashed on that ground. When such an order is passed, there is always some basis for it and that basis cannot be removed from the file. After carefully considering the arguments of the learned counsel for the parties, I find no merit in the submission made on behalf of the petitioner. The petitioner was appointed to the office of Chairman, Jullundur Improvement Trust, Jullundur, by the Akali Ministry and if that Ministry comes back into power, he may again be appointed irrespective of what is on the file. When such an appointment is accepted by a member of a political party, he must also be prepared to accept the consequences if that order is set aside by a successor Government. Since I have held above that the petitioner was not entitled to any such notice as claimed by him, either under the Act or on the basis of principles of natural justice, the submission of the learned counsel loses all force. The impugned order cannot be quashed on that ground.

(12) In fairness to the learned counsel for the petitioner, I may also advert to a half-hearted argument advanced by him that the petitioner was made to leave his lucrative practice as an Advocate on the faith that he would be continued in the office of the Chairman, Improvement Trust, Jullundur, for three years at least and that he will suffer a good deal of loss if the order of his removal is allowed to stand. In my opinion, that fact cannot be taken into consideration while determining the validity of the order of his removal under section 5 of the Act. As already observed, the petitioner ought to have known when he accepted the office of chairman that his services could be terminated at any time even before the expiry of the term for which he was appointed. The petitioner may, if so advised, claim damages from the Government on the footing that a breach of contract had occurred and the Court, by whom the suit is tried will go into the matter whether the petitioner is entitled to any damages or not. I express no opinion on

this aspect nor can I persuade myself to quash the impugned order on this ground.

(13) In the return filed by respondent 1, it was stated that the petition was pre-mature as no order removing the petitioner from his office had been communicated to him. It is now admitted that an order for his removal had been passed by the Governor of Punjab on August 19, 1971, and the only thing that remained to be done was to issue the notification. If the notification had been issued, the order would have taken effect immediately and the petitioner would have been deprived of his office. In fact, it had appeared in some of the newspapers that orders for the petitioner's removal had been passed. The petitioner was, therefore, justified in filing the petition even before the formal orders were communicated to him or notified and the petition cannot be dismissed as pre-mature. This objection, however, was not pressed at the hearing by the learned counsel for respondent 1.

(14) For the reasons given above, this petition fails and is dismissed but without any order as to costs.

N.K.S.

INCOME TAX REFERENCE

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

**THE COMMISSIONER OF INCOME TAX, PUNJAB, J. & K. &
CHANDIGARH, PATIALA,—Applicant.**

versus

SHRI ARJAN SINGH,—Respondent.

Income Tax Reference No. 16 of 1971.

October 12, 1971.

Income-tax Act (XI of 1922)—Sections 2(1) (a) and 4(3) (viii)—Agricultural land not assessed to land-revenue or subject to local rates in the current settlement—Income derived therefrom—Whether exempt as agricultural income under Section 4(3) (viii) read with Section 2(1)