

Before S. S. Kang, J.

SARWAN KUMAR,—Petitioner.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 1425 of 1981.

February 23, 1984.

Punjab Municipal Act (III of 1911)—Sections 254 and 255—Punjab Municipal Election Rules, 1952—Part III—Election Commission submitting report under section 254 of the Act—Government deciding to set aside election of Municipal Commissioner—Opportunity of hearing to such Commissioner before setting aside election—Whether necessary—Rule of audi alteram partem—Whether attracted to such case—Government—Whether required to pass speaking order while accepting the report of the Commissioner.

Held, that a reading of section 254 and 255 of the Punjab Municipal Act, 1911 and Part III, of the Punjab Municipal Election Rules, 1952 it is manifest that a fulfilled inquiry by a commission appointed by the Government, in accordance with the provisions of the Code of Civil Procedure applicable to the trial of suits by Civil Court, is envisaged to determine any disputes regarding the election of the members of the Municipal Committees. The person whose election is sought to be challenged is afforded full opportunity to meet the case set up by the opposite party and to project and prove his own case. After such an inquiry the commission submits its report to the Government. Thereafter, the Government under section 255 of the Act takes a decision on that report. The Government on receiving the report of the commission shall pass order either declaring the candidate duly elected or declaring the election to be void. However, the Government has been authorised to remand the case for further inquiry to the commission or refer any point arising in any case to Civil Court for opinion. The ultimate repository of the power to determine the disputes regarding the legality and validity of an election of a Municipal Commissioner is the State Government. It is not the commission. The commission only makes a report. That report is not binding on the Government. The Government can accept the report. If it is not satisfied it can remand the case to the commission. Rule 64(4) requires the commission to disclose the substance of his report to the parties before sending the report to the State Government. The object behind this provision is to inform the adversaries of the findings of the commission on the election dispute so that if dissatisfied, they can make a representation to the State Government. Though section 255 of the Act does not in terms lay down that before passing any order adverse to the interests of the disputants to the election dispute they shall be given a hearing yet this requirement is inherent in the very power to set aside an election. No doubt right to be elected to a public office is not a fundamental right; it is not even a right under common law; all the same it is a civil right conferred by statute. An order setting

aside the election has serious civil consequences. It takes away the right of a citizen to hold a public office. Any order, judicial quasi-judicial or administrative for that matter, which adversely affects the civil rights of a citizen or which has adverse civil consequences can be passed only after observing the principles of natural justice. The minimum requirement being that the person likely to be affected should be given a hearing. As such the rule of *audi alteram partem* is attracted to the case and a hearing has to be given to the Municipal Commissioner whose election has been set aside.

(Para 6)

Held, that by getting an inquiry conducted through a Commission, the State Government does not abdicate its functions in favour of the commission. The report of the commission at best is a recommendation which is not binding on the State Government. As such, the order passed by the Government under section 255 of the Act must be a speaking order in which the dispute raised, the findings of the commission and the decision of the Government have to be supplied. As such, the Government must pass speaking order which goes to show the reasons which prevailed with it in deciding to accept the report and setting aside the election.

(Para 10)

Writ Petition under Articles 226/227 of the Constitution of India praying that :—

- (i) respondents be directed to produce the complete record relating to this writ petition.
- (ii) this Hon'ble Court may issue a Writ, Direction or Order of any kind especially in the nature of Certiorari or Mandamus that the recommendations of respondent No. 2 as well as order of respondent No. 1 based on the recommendations of respondent No. 2, are illegal, against the provisions of Municipal Act and Municipal Election Rules framed thereunder and against the principles of natural justice and thus void.

It is further prayed that till the decision of this Writ Petition, operation of orders of the Government dated April, 1981 (Annexure P-3), be stayed and the petitioner be allowed to participate and act as Municipal Commissioner.

It is further prayed that respondent No. 2 be estopped from participating in the Municipal proceedings as Municipal Commissioner or acting in that capacity.

R. K. Mahajan, Advocate. for the Petitioner.

Sarwan Singh, Advocate, Anupam Gupta, Advocate, for A.G.,
(Punjab), for Respondent Nos. 1 and 2.

JUDGMENT

Sukhdev Singh Kang, J.

(1) Whether a Municipal Commissioner, against whose election the commission has submitted a report of its finding under section 254 of the Punjab Municipal Act (for short 'the Act') to the State Government, is entitled to a notice and an opportunity of hearing before the Government decides the matter and sets aside his election, is a question of paramount importance which has been raised in this writ petition under Articles 226/227 of the Constitution of India. Equally pertinent are the questions as to whether the State Government is required to pass a speaking order while accepting or rejecting the report of the commission and whether the report of the commission is based on any evidence?

(2) A brief survey of the material facts giving rise to the pristinely legal issues may aptly be noticed at the outset.

(3) Election to ward No. 4 to the Municipal Committee, Haryana, district Hoshiarpur were held on June 10, 1979. Sarwan Kumar petitioner polled 118 votes. Daulat Ram respondent No. 3 secured 116 votes. The petitioner was declared elected. Daulat Ram filed an election petition against the election of the petitioner under Rule 52 of the Municipal Election Rules, 1952 (for short 'the Rules'). The State Government appointed Shri A. R. Darshi, Executive Magistrate, Hoshiarpur a commission under section 247 of the Act for deciding the election petition. The commission submitted a report dated 20th February, 1981 holding that three votes of Rajinder Kumar, Kundan Lal and Smt. Krishna Vati were impersonated by the supporters of Sarwan Kumar and polled in his favour and the real persons had not cast these votes. These were invalid votes. He also held that one Malkiat Singh, who was a Government servant, had canvassed votes in favour of Sarwan Kumar and this had materially affected the result of the election in favour of Sarwan Kumar. The State Government,—*vide* orders dated 1st April, 1981 (Annexure P. 3) set aside the election of Sarwan Kumar petitioner the same being void and declared Daulat Ram to be elected to the Municipal Committee, Haryana. Aggrieved, Sarwan Kumar has filed this writ petition.

(4) The provisions for determination of disputes regarding elections to the Municipal Committees are contained in Chapter XIV

of the Act. Section 246 (a) *inter alia* defines 'commission' to mean a person or persons appointed by the State Government to hold an inquiry in respect of an election under the Act. The State Government is empowered to appoint a commission consisting of one or more persons to hold an inquiry under section 247 of the Act. Under section 248 the Commission shall have the same powers to order discovery and inspection, enforcing the attendance of witnesses and requiring the deposit of their expenses, compelling the production of documents, examining witnesses granting adjournments, reception of evidence taken on affidavit and issuing of Commissions for the examination of witnesses which are vested in a Court under the Code of Civil Procedure when trying a suit. It has been further authorised to summon and examine *suo motu* any person as a witness and shall be deemed to be a Civil Court within the meaning of Ss. 480 Cr. P. C. Provisions of the Indian Evidence Act have been made applicable to the inquiry by section 249. Section 254 enjoins the commission to submit a report of its finding to the State Government. Then the powers to pass orders on this report are conferred on the State Government by Section 255, which reads as under:—

"255. *State Government if in agreement with findings of the commission to pass orders accordingly.*—On receiving the report of the Commission the State Government, shall pass orders either declaring the candidate duly elected or declaring the election to be void, and such orders shall be notified in the Official Gazette. Such orders shall be final and shall specify the amount of costs to be paid, and the person or persons by whom and to whom such costs shall be paid:

Provided that the State Government before passing final orders may remand any case for further inquiry or refer any point arising in any case to a civil Court for opinion; and the civil Court shall deal with any case forwarded to as nearly as may be according to the procedure applicable under the Code of Civil Procedure, 1908 to the hearing of appeals."

(5) Part III of the Rules lays down the detailed procedure for challenging the election of a Municipal Commissioner or inquiry by the State Government into conduct of any election. Rule 51 is

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the dictionary of various terms used in Part III. Sub-rule (a) defines 'Corrupt Practice'. Clause (c) gives the definition of 'material irregularity' which includes any improper reception or refusal of a vote in the election. Rule 53 prescribes the form and the contents of the election petition. The procedure for inquiry is contained in Rule 59 which prescribes that the election petition shall be inquired into as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure to the trial of suits. Grounds for declaring the election void have been furnished by Rule 63. Rule 64 requires that at the conclusion of the inquiry the commission shall report whether the returned candidate has in its opinion been duly elected. Sub-rule (4) of Rule 64 lays down that before submitting the report to the Government, the commission shall fix a date for the presence of the parties or their agents, and shall announce the substance of the report including the findings on questions of costs to such of the parties or their agents as may be present on that date. The Government is empowered under Rule 67 to remand any case for further inquiry to the commission. Under rule 68 the Government can of its own motion direct an inquiry 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 in the conduct of election. Under Rule 69 it is laid down that when as a result of inquiry under the Rules the election of candidate is declared void, the Government shall direct that a new election be held. It is further provided that if the commissioner has found that there has been a mistake in the counting of votes, or in the declaration of invalid votes and that but for that mistake some other candidate would have been declared successful, the State Government instead of directing a new election may declare that the candidate found to have obtained the largest number of valid votes shall be deemed to have been elected.

(6) It is manifest from a reading of the provisions of the Act and the Rules that a fulfilled inquiry by a commission appointed by the Government, in accordance with the provisions of the Code of Civil Procedure applicable to the trial of suits by civil Court, is envisaged to determine any disputes regarding the election of the members of the Municipal Committees. The person whose election is sought to be challenged is afforded full opportunity to meet the case set up by the opposite party and to project and prove

his own case. After such an inquiry the commission submits its report to the Government. Thereafter, the Government under section 255 of the Act takes a decision on that report. The Government on receiving the report of the commission shall pass order either declaring the candidate duly elected or declaring the election to be void. However, the Government has been authorised to remand the case for further inquiry to the commission or refer any point rising in any case to civil Court for opinion. The ultimate repository of the power to determine the disputes regarding the legality and validity of an election of a Municipal Commissioner is the State Government. It is not the commission. The commission only makes a report. That report is not binding on the Government. The Government can accept the report. If it is not satisfied it can remand the case to the commission. Rule 64 (4) requires the commission to disclose the substance of his report to the parties before sending the report to the State Government. The object behind this provision is to inform the adversaries of the findings of the commission on the election dispute so that if dissatisfied, they can make a representation to the State Government. Though section 255 of the Act does not in terms lay down that before passing any order adverse to the interests of the disputants to the election dispute they shall be given a hearing yet this requirements is inherent in the very power to set aside an election. No doubt right to be elected to a public office is not a fundamental right; it is not even a right under common law; all the same it is a civil right conferred by statute. An order setting a side the election has serious civil consequences. It takes away the right of a citizen to hold a public office. Any order, judicial, quasi-judicial or administrative for that matter, which adversely affects the civil rights of a citizen or which has adverse civil consequences can be passed only after observing the principles of natural justice. The minimum requirement being that the person likely to be affected should be given a hearing. "Fair hearing is a postulate of decision making, cancelling a poll, although fair abridgement of that process is permissibleThe philosophy behind natural justice is in one sense, participatory justice in the process of democratic rule of law. The silence of a statute has no exclusionary effect except where it flows from necessary implication....." (*Mohinder Singh vs. Chief Election Commissioner* (1). To the same effect is the dicta in that locus

(1) A.I.R. 1978 S.C. 851.

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classicus *Maneka Gandhi vs. Union of India* (2) wherein it was observed:—

“Although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature. The principle of *audit alteram partem*, which mandates that no one shall be condemned unheard, is part of the rules of natural justice.

“Natural justice is a great-humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. The inquiry must, always be: does fairness in action demand that an opportunity to be heard should be given to the person affected?”

(7) Section 255 and general scheme of the Act does not by an inevitable implication rule out the application of the rule of *audi alteram partem* before passing of the order setting aside an election. The language employed in Section 255 of the Act also does not admit of the construction canvassed by Shri Sarwan Singh, learned counsel for respondent No. 3 that the application of the principles of natural justice has been excluded by the language of the section. All that can be stated is that the section is silent. But as observed in *Mohinder Singh's case* (supra) the mere silence of a statute has no exclusionary effect. True, the delinquent Municipal Commissioner is associated with full-dressed inquiry yet there can be unintentional mistakes, uninformed omissions or other infirmities in the procedure of inquiry or the conclusions of the commission on the evidence adduced before him may be perverse which no reasonable person may reach. If the delinquent is not heard by the Government all these irregularities in the procedure or infirmities and deficiencies in the report may go undetected by the Government unaided by the affected person. There is always an apprehension of a grave miscarriage of justice by the *ex parte* decision of the Government in accepting the report of the commission. The principles of natural justice have now come to be ingrained in the judicial consciousness of the citizens of this

country. Only very strong reasons or clear language can exclude the application of these rules in the decision making which effects the rights of the citizens.

(8) In the present case the petitioner had made a representation to the State Government and had sought personal interview. He had pointed out certain infirmities in the order, in the approach of the commission to the problem, the procedure of inquiry and appreciation of evidence. The representation runs into seven full scape pages but the State Government by a laconic order set aside the petitioner's election and declared Daulat Ram respondent No. 3 as elected member of Municipal Committee, Hariana without dealing with any of the points raised. If the petitioners had been given an opportunity of hearing he may have been able to point out certain irregularities and infirmities in the report of the commission.

(9) Clause 4 of Rule 64 requires the commission to inform the parties of the substance of the report. This is only to enable the aggrieved party to make its objections to the report. This provision lends support to the view that opportunity of hearing should be given to the affected party. Under somewhat similar circumstances A. S. Bains, J. in *Harjit Singh v. State of Punjab etc.* (3) remanded the case for afresh decisions by the Commission. He also directed that in case the report of the Commission went against the Municipal Commissioner then the State Government shall take a decision under Section 255 of the Act after giving him an opportunity of being heard.

(10) For the foregoing reasons answer to the question posed at the outset, is rendered in the affirmative and I hold that it is incumbent on the State Government, to give a delinquent Municipal Commissioner an adequate opportunity of hearing before taking final decisions on such a report.

As noticed earlier, the order of the State Government (Annexure P. 3) is not a speaking order. It does not mention as to what precisely was the dispute raised, what were the findings of the commission, and whether all or any of the findings were accepted by the Government. The order only

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reproduces the language of section 255 and is woefully lacking in factual material. The State Government had to apply its independent mind to the report and the material produced during the inquiry and then come to its independent conclusions regarding the validity of the election of the petitioner. By getting an inquiry conducted through a commission, the State Government does not abdicate its functions in favour of the commission. The report of the commission at best is a recommendation which is not binding on the State Government. The order suffers from the vice of being a non-speaking one. This Court is deprived of the opportunity of knowing what were the reasons which prevailed with the State Government in deciding to accept the report and setting aside the election.

(11) In view of my above conclusions it is not necessary to go into the other questions raised in the writ petition.

(12) I allow this writ petition and set aside the order dated April 1, 1981 (Annexure P.3) and direct the State Government to pass fresh order after hearing the parties concerned. No costs.
