CIVIL MISCELLANEOUS

Before A. N. Grover, J.

TIRLOK CHANDER SHARMA,—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 1097 of 1964

1965

February, 1st.

Punjab Municipal Act (III of 1911)—Ss. 4, 5 and 6—Notification making fresh delimitation of wards under S. 4—Whether valid—Military areas—Whether can be included within municipal limits—Punjab Gram Panchayat Act, 1952 (IV of 1953)—Part of a Gram Sabha area—Whether can be in a municipal committee—Election of members held on the basis of delimited wards—Whether liable to be set aside in entirety—Writ of quo warranto—*Nature of.*

Held, that the provisions of section 4 of the Punjab Municipal Act, 1911, are meant for constituting a municipal committee for the first time. Once there is an existing Municipal Committee and if it is intended to alter its limits, then the provisions of sections 5 and 6 become applicable and the State Government has to issue notifications in accordance with the procedure laid down in those sections. If that procedure is not followed and the limits of the Municipal Committee are altered by including and excluding certain areas and delimiting the wards afresh by a notification under section 4, the delimitation is not valid and the entire election held on the basis thereof is liable to be set aside as it is not possible to say that no prejudice is caused to the voters thereby.

Held, that no military cantonment or a part thereof can be included in any area proposed to be made a municipal committee. Such a prohibition has been provided in the proviso to section 4(1) of the Punjab Municipal Act.

Held, that parts of the areas constituting Gram Sabhas Block Samitis and Zila Parishads can be included within the limits of a municipal committee as there is no law prohibiting the same. Section 4(3) of the Gram Panchayat Act clearly denotes that it can be done as it lays down that if the whole of the Sabha area is included in a municipality, etc., the Sabha shall cease to exist.

Held, that once the electoral roll is found to be wholly defective, the entire election becomes illegal and invalid, and even one voter can come forward and complain about it and once the Court is satisfied that that is so, it will not decline to make an order which will have

the effect of setting aside the entire election. In proceedings for a writ of *quo warranto,* the applicant does not seek to enforce any right of his own as such, nor does he complain of any non-performance of duty towards him. What is in question is the right of the non-applicant to hold the office and an order that is passed is an order ousting him from office. The legality of an appointment to a high office can, therefore, be challenged by any citizen. Of course, the relator must be a fit person to be entrusted with the writ and he must not have disqualified himself by having acquiesced or concurred in the act which he comes to complain of or in similar acts at some other elections.

Petition under Article 226 of the Constitution of India praying that a writ in the nature of quo warranto *or rule of Nisi or any other appropriate Writ, Order or Direction be issued quashing the entire election to the Municipal Committee, Malerkotla and declare the same to be wholly illegal,* ultra vires *and void and respondents* 1 *to* 4 *be ordered not to administer oath of office to respondents Nos.* 5 *to* 23 *and further directing them not to assume the office or to perform the duties of the Municipal Commissioners under the Act.*

DAYA SARUP NEHRA, ADVOCATE, for the Petitioner.

ABNASHA SINGH, ADVOCATE, FOR ADVOCATE-GENERAL, BABU RAM AGGARWAL, J. V. GUPTA AND S. C. GOYAL, ADVOCATES, for the Respondents.

ORDER

GROVER, J.—This is a petition under Article 226 of the Constitution challenging the election of respondents 5 to 23 to the Municipal Committee, Malerkotla. Grover, J.

The petitioner claims to be a resident and tax-payer in the area of Municipal Committee, Malerkotla, and he is entered as an elector in ward No. 7. Malerkotla was originally a princely State. After the formation of the erstwhile Pepsu State, the Municipal Committee of Malerkotla was constituted a second class Municipality. By a notification dated the 9th January, 1951, the city of Malerkotla was delimited and divided into seventeen wards on the basis of which the electoral rolls were prepared and elections were held in 1951. In 1955, elections were again held on the basis of the wards as already constituted in 1951. The municipal limits of the Committee were the same as delimited by the wards. On the 27th January, 1960, the Punjab Government issued a notification (Copy

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Annexure 'B') making a fresh delimitation of the Malerkotla Municipal Committee. It was divided into twelve wards, out of which ward No. 1 was a double-member constituency. The elections from the wards, then constituted, were to be held in 1961, but for certain reasons the holding of the election was stayed under orders of the Civil Court in a suit filed by certain interested persons. The Municipal Commissioners, who were elected in 1955, continued to hold office till April, 1961, when the Committee was superseded under the orders of the Government and an Administrator was appointed. It may be mentioned that there is hardly much dispute about the facts stated above.

In paragraph 7 of the petition it has been stated that the Government decided recently to alter the boundaries of the Municipal Committee by including certain areas and excluding other areas from the existing municipal limits. Instead of issuing notifications as required by sections 5 and 6 of the Punjab Municipal Act, a notification dated the 3rd May, 1963, was issued under sub-section (6) of section 4 of the aforesaid Act defining the municipal limits. This was followed by another notification dated the 26th November, 1963, delimiting the wards. According to the petitioner even the military cantonment area was included within the limits of the Committee. In paragraph 8 it has been asserted that the Government has actually altered the boundaries of the Committee, which existed up till now by including some areas and excluding others and in particular the areas comprised in Nai Abadi Jamalpur, Chah Mariwala, Nai Abadi Qila Rehmatgarh, Railway Station, Id-Gah and beyond Kothi Abdullah Shah, etc., have been included in wards Nos. 14, 15, 16, 17, 18, 1 and 3. Similarly, areas comprised in Dera Atma Ram and Bagh Pujwala, which were included in ward No. 14 in the earlier delimitation made in 1951, and ward No. 1 in the notification made in 1960, have been excluded in the new delimitation of wards, which has been made. The main challenge has been founded on the following matters:—

(1) No notification could be issued under section 4 of the Municipal Act when the Municipal Committee had already been in existence since 1951, and the only course, which the Government could follow, was to act in accordance with the procedure prescribed by sections 5 and 6 of the Act.

(2) The notification now issued contravenes the restrictions contained in the proviso to section 4(1) by including the area comprised in military cantonment.

(3) Certain areas of villages Jamalpur and Qila Rehmatgarh forming part of the Sabha under the Gram Panchayats and the Block Samiti Malerkotla, which are rural areas, have been illegally included in the municipal limits without the consent of the Panchayats, the Block Samiti and the Zila Parishad, and this is clearly in contravention of section 4 of the Gram Panchayat Act.

In the return it has been stated in paragraph 7, that no notification fixing the limits of the Municipal Committee had been made previously, and, therefore, it became necessary to issue a notification dated the 26th April, 1963, which was published on the 3rd May, 1963, in the Government Gazette, fixing the limits of the Municipal Committee. This was done after a preliminary notification dated the 13th December, 1962, had been published under section 4, and after objections had been invited and the procedure laid down in that section duly complied with and followed. It has been stated in this paragraph as follows:—

> "It is a fact that certain areas have been shown as 'Military Area' which are within municipal limits, but have not been excluded from the municipal boundaries published in the Punjab Government Gazette, mentioned above."

In paragraph 8, it is stated that the delimitation proposal of the wards of the Municipal Committee had been first published in the Government Gazette and objections had been invited, and since no objections were received from any of the residents, the final publication with regard to the proposed delimitation of wards was made. In paragraph 9 it has been admitted that Dera Baba Atma Ram and Bagh Puj had been included in the delimitation made in 1951 and 1960 and it has not been denied that they have been excluded now.

The first contention of Mr. D. S. Nehra for the petitioner is that there was no question of issuing any notification

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under section 4 of the Punjab Municipal Act as has been done in the present case, because that provision is meant for constituting a Municipal Committee for the first time. Once there is an existing Municipal Committee and if it is intended to alter its limits, then the provisions of sections 5 and 6 become applicable and the State Government has to issue notifications in accordance with the procedure laid down in those sections. Mr. Nehra says that the position taken up on behalf of the State that since there was no notification indicating the limits of the Municipal Committee, which had been made previously, it became necessary to issue a notification under section 4 now, is wholly untenable for the reason that admittedly the Municipal Committee was in existence and had been functioning as such since 1951 and its limits were also known because elections had been held according to the wards as delimited at that time in 1951. It seems to me that there is a good deal of force in what Mr. Nehra says and I cannot accept that the limits of the Municipal Committee were not known, or that there was no notification in existence with regard to it although it is stated now that none is traceable. However, issuing of a notification under a wrong section may not have been of much consequence, but for the fact that admittedly certain areas have been included and excluded by the new notification from the limits—which originally existed—of the Municipal Committee prior to the issuing of the notification. If that has been the result then it was necessary for the Government to have followed the procedure laid down in sections 5 and 6 of the Act. It is true that that preliminary notification was published under section 4 and it was open to the petitioner as also the other tax-payers and voters to object to the limits which were being fixed, but it is a legitimate objection on the part of the petitioner that it is one thing to issue a notification under section 4 indicating the proposed limits of the Committee to be constituted and it is another matter to issue a notification under sections 5 and 6, which would clearly define what new areas are intended to be included or excluded from the Committee, which would give an indication to the voters affected thereby to file their objections. It is not possible, therefore, to say that no prejudice has been caused to the voters by following the procedure laid down in section 4 which was not applicable and by not following or complying with the provisions contained in sections 5 and 6 of the Act.

As regards the second point convassed by Mr. Nehra, even under the proviso to section 4(1) of the Punjab Municipal Act, no military cantonment or part of a military cantonment can be included in any area proposed to be made a Municipal Committe. As stated before, it was admitted in the concluding portion of paragraph 7 of the return that certain areas, which have been shown as military areas, have been included and paragraph 10(c) does not contain any denial of the positive allegation in the petition that the Municipal Committee has actually entered into an agreement, dated the 14th April, 1960, with the Government of India, Military Authorities, for carrying out the conservancy work at the rate of Rs. 1,200 per annum in the military cantonment area (apparently included in the area of the Municipal Committee).

At the time of arguments the learned counsel for the State produced a letter from the Sub-Divisional Officer, Malerkotla, addressed to the Advocate-General making certain clarifications with regard to the aforesaid matter. The following part of the letter may be reproduced:—

"The clarification asked for is as under—

> No part of any military cantonment has been shown in the Municipality of Malerkotla. In fact in erstwhile Malerkotla State, the military used to be quartered in this area and with the merger of Malerkotla State, the Indian army or the Indian Air Force was never permanently quartered in the said area. Nor is there any notification by the Central Government as envisaged under section 3 of the Cantonment Act, 1924, declaring this particular area to be the Cantonment. This area is popularly known as Military area, because of the fact that the Military in erstwhile Malerkotla State used to be quartered. Nor is there any Board as contemplated under section 3 of the Cantonment Act, 1924, to govern the said area."

It is most unfortunate that no affidavit has been filed incorporating the above clarification, and it is not possible to take any notice of the contents of the letter, which has been produced only at the stage of arguments. Mr. Nehra

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is, therefore, right in saying that such areas have been included, e.g., military cantonment area, which could not be included even under section 4 of the Act.

As regards the third contention of Mr. Nehra, that the new limits include certain areas which fall within the limits of the Gram Sabhas, Block Samiti, Zila Parishad, etc., Mr. Nehra, relied on a copy of memorandum, dated the 20th November, 1962, from the Financial Commissioner (Development) to the Secretary to Government, Punjab, Local Government Departments, Chandigarh (Annexure 'G'), in which the necessity of evolving a proper procedure to avoid overlaping and confusion in the matter of areas within the limits of the Panchayats, Block Samitis and Zila Parishads and the Municipal Committees was emphasised. There is nothing to show that any such procedure has been evolved so far, and Mr. Nehra, says that when such areas have been included in the municipal limits, there has been a contravention of the relevant provisions of the Gram Panchayat Act, and the enactments relating to the Block Samitis and Zila Parishads. He has referred to section 4 of the Punjab Gram Panchayat Act, 1952, which relates to demarcation of Sabha areas, but he has not been able to show any bar in the aforesaid provision to the inclusion of any village or group of villages, which form Gram Sabha area, in a Municipal Committee. Indeed section 4(3) of the Gram Panchayat Act lays down that if the whole of the Sabha area is included in a Municipality, etc., the Sabha shall cease to exist. I do not find, therefore, much merit in the third contention of Mr. Nehra.

It has now to be determined whether in view of my decision on the first two points the entire election should be set aside. Mr. Babu Ram Aggarwal, who appears for the various respondents, who have been elected to the Municipality, contends that the rules contain an elaborate procedure for publication of preliminary rolls to which objections can be raised as well as final rolls, and if as a result of the new delimitation of wards some of the voters have been disfranchised, it was open to them to seek their remedy under the rules, which they failed to do, and, therefore, the elections canot be set aside now on that ground. Mr. Aggarwal has not contended, and indeed cannot contend, that an election petition would be a proper remedy in the matter, but he says that so far as the petitioner is concerned, he is a resident and a voter of ward No. 7 and there is no

allegation that the boundaries of that ward have been changed, or they are affected in any manner by the new delimitation of wards as a result of a fresh constitution of the Committee under section 4 of the Municipal Act. According to Mr. Nehra, once it is found that the delimitation of the wards was illegal, the entire election held on the basis of the rolls prepared in acocrdance with that delimitation must be set aside. He says, it is wholly immaterial whether any objections were taken under the rules when the rolls were prepared or not, because the whole basis on which the rolls were prepared had no legal sanction. Mr. Nehra, further contends that he is seeking a writ in the nature of *quo warranto* and it is of no consequence that the boundaries of the ward in which the petitioner resides have not been affected by the new delimitation. He has relied on my judgment in *Nitya Nand* v. *Khalil Ahmad* (1), in which I held that once the electoral roll was found to be wholly defective, the entire election becomes illegal and invalid, and even one votor comes forward and complains about it and once the Court is satisfied that that is so, it will not decline to make an order which will have the effect of setting aside the entire election. I further expressed the view that in proceedings for a writ of *quo warranto,* the applicant does not seek to enforce any right of his as such, nor does he complain of any non-performance of duty towards him. What is in question is the right of the non-applicant to hold the office and an order that is passed is an order ousting him from office. The legality of an appointment to a high office can, therefore, be challenged by any citizen. Of course, the relator must be a fit person to be entrusted with the writ and he must not have disqualified himself by having acquiesced or concurred in the act which he comes to complain of or in similar acts at some other elections. According to the petitioner as soon as the election programme was notified on 28th March, 1964, he sent a registered notice to the Chief Secretary to Government, Punjab, and to various other authorities complaining about the defective delimitation of the wards, but the election was held notwithstanding the objections raised by him. It is not denied in the return filed by the State that representations were made by different contesting groups, but it is stated that their allegations of illegalities were found to be baseless.

(1) A.I.R. 19661 Pun. 105.

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Under these circumstances, there seems no reason why the petition should not succeed and the entire election set aside. I would, accordingly, allow this petition and quash the election to the Municipal Committee of Malerkotla. In the circumstances of the case, however, I make no order as to costs.

B.R.T.

CIVIL MISCELLANEOUS.

Before Prem Chand, Pandit, J.

MADAN LAL,—*Petitioner.*

versus

THE DIRECTOR OF PANCHAYATS, PUNJAB,—*Respondent.*

Civil Writ No. 1913 of 1964.

1965

February, 2nd.

Punjab Gram Panchayat Act, 1952 (*IV of* 1953)—*S.* 6(5)(*c*)—*Whether* ultra vires *Article* 14 *of the Constitution—S.* 102—*Conviction for offences under sections* 225 *and* 332 *I.P.C.—Whether make the panch or sarpanch unfit to hold that office—Enquiry to be made—Nature and manner of—Whether to be determined by the Government.*

Held that section 6(5)(c) of the Punjab Gram Panchayat Act, 1952, is not *ultra vires* Article 14 of the Constitution of India. It cannot be said that there are no rules or principles for the guidance of the Government or the officer to whom it has delegated its power of removal under section 6(5)(c) of the Act. In this very clause, it has been clearly stated by the Legislature that the order by a criminal Court should imply a defect of character of *such a nature which might make him unfit to be a Sarpanch or Panch of a Panchayat.*

Held, that according to section 6(5)(c) of the Punjab Gram Panchayat Act, 1952, the order by a criminal Court in the opinion of the Government should imply a defect of character unfitting him to be a Sarpanch or Panch. In the present case, the order of the learned essions Judge convicting the petitioner under sections 225 and 332 of the Indian Penal Code clearly implied a defect of character, which made him unfit to be a Panch or Sarpanch of any Panchayat. The satisfaction in this respect has to be of the Government or of the officer to whom the Government delegates its power of removal. The removal on the ground that the continuance of the petitioner in the