

Tek Chand v. The State of Punjab, etc. (Sodhi, J.)

whether the transferred area should form part of the permissible area of a landowner or remain outside of it and form part of surplus area having regard to the circumstances and equities of a particular case.

(8) In the approach as above, the direction of the learned single judge is the only direction that could have been made in the case. However, what the learned counsel for the appellant urges is that while the Financial Commissioner had taken out the first sale of land by the appellant from his reserved or selected area, the effect of the order of the learned single judge is to bring that also into consideration. But if the appellant has reserved or selected his permissible area and the areas transferred are outside the same, there is nothing which is open to exception in the direction of the learned Single Judge. If, on the contrary, he has not done so, then the justice of the case requires the reconsideration of it, whether all or any of the transfers made by him should form part of his permissible area or surplus area. The learned Judge proceeded to quash the order of the Financial Commissioner as a whole because of an argument that there has been a change in the law. The counsel for the parties are not able to specifically refer to any change of Act in the case, but in view of the argument urged before the learned Judge the approach made by him is unexceptional.

9. In consequence this appeal fails and is dismissed, but there is no order in regard to costs.

B. R. TULI, J.—I agree.

B. S. G.

CIVIL MISCELLANEOUS

Before H. R. Sodhi, J.

TEK CHAND,—Petitioner.

versus

THE STATE OF PUNJAB AND ANOTHER,—Respondents.

Civil Writ No. 954 of 1969

May 19, 1970.

*Punjab Municipal Act (III of 1911)—Section 16(1)(e)—Punjab Municipal (General) Rules, 1918—Rule 3-A—Statutory object of—Stated—Interest of the member attending the Municipal meeting in violation of the*

*rule—Whether must be pecuniary and direct—Removal of a Municipal Commissioner for gross violation of his position—High Court—Whether can hold judicial scrutiny into such misconduct.*

*Held*, that the Constitution of a Municipal Committee is the foundation of a democratic system and the members elected thereto are expected to perform their functions affecting the inhabitants of a particular area with unbiased mind. It is fundamental requirement of rule of law that no authority judicial, quasi-judicial or even administrative, which is called upon to discharge functions affecting the rights of a third party, should carry any bias in its mind or be a Judge in a cause in which it is interested. Rule 3-A of Punjab Municipal (General) Rules, 1918, has a similar statutory object behind it and a member of a Municipal Committee is prohibited from participating in any proceeding in which he or any of his relations falling within the categories given in that rule is directly or even indirectly interested so that he is not in a position to use his influence to promote his own interest or that of his relations. The interest of the member need not be pecuniary and he may not even be directly involved in the issue arising for consideration before the Municipal Committee.

(Para 9).

*Held*, that it depends on the facts and circumstances of such case whether a member of a Municipal Committee is guilty of flagrant abuse of his position and High Court in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India can hold judicial scrutiny to find out whether the conduct styled by the State Government as flagrant abuse of position is really such as is intended by the Act and one of the tests is whether the misconduct attributed to the Municipal Commissioner shocks the conscience of a reasonable person so as to be considered to be a flagrant abuse of position.

*Petition Under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of Certiorari, Prohibition or any other writ or directions be issued quashing the notification, dated 7th of April, 1969, No. 13727-3CII-69.*

BHAGIRATH DASS, S. K. HIRAJI AND B. K. JHINGAN, ADVOCATES, for the Petitioner.

MELA RAM SHARMA, DEPUTY ADVOCATE-GENERAL, PUNJAB, for the Respondent.

#### JUDGMENT

H. R. SODHI, J.—This writ petition is directed against the order of the State Government passed under section 16(1) of the Punjab Municipal Act, 1911 (hereinafter called the Act), removing the petitioner from membership of Municipal Committee, Dhariwal (hereinafter called the Committee), for his alleged abuse of position as a member thereof.

(2) The petitioner has a brother-in-law (sister's husband), Daya Kishan, who runs a shop in the municipal area of Dhariwal and has also a house in Ward No. 9 on the G.T. Road. The Committee issued two separate notices Annexures A and A.1 to the said Daya Kishan under sections 173 and 172 of the Act, respectively, on 27th December, 1967. One of these notices related to the alleged violation of the conditions of permission granted to him for use of certain land in front of his shop for which he claims to be paying Tehbazari of Rs. 4 per month since his migration from West Pakistan. The other notice called upon him to remove an encroachment on public land measuring 12 Karams×10 Karams in front of his residential house in Ward No. 9, where he had planted fruit-trees and enclosed the area with hedges. In the event of failure of Daya Kishan to do so, the notice called upon him to show cause why action should not be taken against him in accordance with law. Similar notices had been issued under one provision of law or the other to several other inhabitants as well residing in the limits of the Committee. Daya Kishan submitted a consolidated reply to both the notices on 29th December, 1967. It was stated by him that there were hundreds of such cases in Dhariwal on different roads where the occupants were paying Tehbazari for the size of 6'×6' space only but were actually occupying more space. According to the explanation as furnished by Daya Kishan, he was keeping benches and chairs in the morning and removing them in the evening, whereas in other cases, the encroachments were more or less of permanent nature, but the Committee was not taking action against them. As regards planting of flowers in front of his house, the stand taken by Daya Kishan was that he had done so as a good citizen in order to beautify the G.T. Road site.

(3) A meeting of the Committee was fixed for 6th January, 1968, and six members including the petitioner moved a requisition that the case of Daya Kishan be included in the agenda for the meeting. The President did not accept the requisition and allow the item to be considered. Another meeting was held on 31st January, 1968, when the Vice-President Shri G. S. Bedi presided. The said requisition was allowed and the case of Daya Kishan taken up. The total strength of members of the Committee was 11, but 10 out of them attended the meeting. Resolution No. 38, a copy whereof is appended as Annexure 'C' with the writ petition was passed by majority of 6 against 4 whereby the notices served upon Daya Kishan were withdrawn. In the matter of removal of encroachment, certain priorities were fixed and the category of Tehbazari occupants in which Daya

Kishan's case fell was put in the last with the result that removal of the encroachment made by him was postponed.

(4) The State Government then issued a notice to the petitioner on 5th September, 1968, calling upon him to show cause why he should not be removed from membership of the Committee for his participation in the proceedings of the meeting held on 31st January, 1968, as he violated the provisions of rule 3-A of the General Rules framed under section 240 and that this default on his part amounted to a flagrant abuse of position within the meaning of section 16(1)(e) of the Act. A statement of allegations was attached to the show-cause notice in which a reference was made to the requisition moved in writing by Tek Chand petitioner and others calling for a discussion of the case of Daya Kishan in the meeting of 6th January, 1968, but the same having been disallowed, the matter was taken up in the meeting of 31st January, 1968, and the petitioner voted for the resolution which withdrew the notices about the removal of encroachments effected by the brother-in-law of the petitioner.

(5) The petitioner gave a reply to the show-cause notice and admitted that the aforesaid Daya Kishan was his brother-in-law (sister's husband), but it was denied that the petitioner violated the provisions of rule 3-A of the General Rules. It was asserted that Daya Kishan did not fall in the category of persons referred to in rule 3-A and that even if it be held that his relationship with the petitioner was covered by the said rule creating a prohibition for the latter to be present or vote or take part in any proceeding in which he (Daya Kishan) had a direct or indirect interest, his presence was innocent and did not affect the decision of the Committee which was by a majority of 6 against 4. According to the petitioner, even if he did not vote, still the resolution would have been passed. Another plea taken up was that the statement of allegations nowhere suggested that the other five members voting for the resolution were doing so at the instance of the petitioner or under his influence.

(6) Before discussing the various contentions raised by Mr. Bhagirath Dass, learned counsel for the petitioner, it is necessary to reproduce rule 3-A of the General Rules which is in the following terms:—

*"3-A. Members not to take part in proceedings in which they or their relatives are pecuniarily interested.—No member of*

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a committee shall be present at or vote or take any other part in any proceeding of a committee or sub-committee relating to a matter in which such member or a parent, or descendent of such member, or descendent of any parent of such member, or the husband or wife of such member, or descendent or a parent of the husband or wife of such member, or a descendent of such parent last referred to has a direct or indirect interest."

(7) The submissions of the learned counsel are that—

- (1) no pecuniary interest of any of the relations of the petitioner within the meaning of rule 3-A was involved directly or indirectly in resolution No. 38, which affected Daya Kishan. The argument is that the charge against Daya Kishan was of having made some encroachments and the petitioner's sister who is wife of Daya Kishan could not be said to have direct or indirect pecuniary interest in such encroachments;
- (2) violation of rule 3-A does not *per se* amount to an abuse much less flagrant abuse of position by a member of the Committee within the meaning of section 16(1)(a);
- (3) there is no evidence to show that the petitioner exercised his influence over other members, nor is the exercise of such influence an abuse of position. The resolution was passed by a majority of 6 against 4, and that vote of the petitioner could not matter either way; and
- (4) the order by which the petitioner has been removed is not a speaking one as is required of a quasi-judicial authority and must, therefore, be quashed on the short ground that it gives no reasons.

(8) I have given my careful thought to the arguments of the learned counsel but find myself unable to accept any of them.

(9) The wife of Daya Kishan, who is sister of the petitioner is beyond doubt a descendent of the parents of the latter within the meaning of rule 3-A and the only question that survives for consideration is whether she had any direct or indirect interest in the item under consideration of the Committee on 31st January, 1968. It is not necessary that the interest must be pecuniary one.

The rule as it existed before the year 1950, did require a pecuniary interest to be involved, but it was amended by the Punjab Government notification No. 3421-C-50/II-3193, dated 12th June, 1950, whereby the expression "pecuniary" was deleted. It appears that the amendment escaped notice of the learned counsel. Disqualification by a member is, therefore, incurred when any of his relations specified in the rule has any interest not necessarily pecuniary, and may not even be directly involved in the issue arising for consideration before a Municipal Committee. The ordinary dictionary meaning of the word "interest" in such a context is "concerned or the state of being concerned or affected especially with regard to advantage, personal or general". It cannot be said that if legal action is taken against a husband for an alleged encroachment made by him whether in front of his residential house or a business establishment, the wife is not interested in the cause. A wife cannot possibly be indifferent to what is happening to her husband, more so when penal consequences are likely to ensue as a result of some action threatened against him. The benefit that comes to the husband is, in such circumstances, bound to be hailed by the wife who must feel happy and comfortable, more particularly when proceedings of a penal nature are dropped against the husband. To my mind, she is interested in the affairs of her husband and if not directly at least indirectly, no matter she is not a party to the proceedings initiated against the husband. The constitution of a Municipal Committee is the foundation of a democratic system and the members elected thereto are expected to perform their functions affecting the inhabitants of a particular area with unbiased mind. It is a fundamental requirement of rule of law that no authority judicial, quasi-judicial or even administrative, which is called upon to discharge functions affecting the rights of a third party, should carry any bias in its mind or be a Judge in a cause in which it is interested. Rule 3-A has a similar statutory object behind it and a member of a Municipal Committee is prohibited from participating in any proceeding in which he or any of his relations falling within the categories given in that rule is directly or even indirectly interested so that he is not in a position to use his influence to promote his own interest or that of his relations. 'The basic rule of interpretation of statutes is that an interpretation which advances the object of a statute must be adopted where a provision is susceptible of interpretation and in this view of the matter as well, the only way to interpret rule 3-A is that the word "interest" should be given a meaning of wide amplitude.'

(10) The remaining three contentions of the learned counsel for the petitioner can be disposed of together. It is true as held by a Division Bench of this Court in *State of Punjab v. Sugna Ram* (1), that the mere fact that the interested members happen to attend a meeting either due to inadvertence or otherwise cannot by itself lead to the conclusion unless there are some further allegations that by doing so they had abused their position. The facts of *Sugna Ram's case* (1), were quite different. Sugna Ram and Naurata Ram were members of Municipal Committee, Budhlada. Madan Lal, brother of Naurata Ram and Sugna Ram were the lessees of two of the shops belonging to the Municipal Committee. They became lessees much before their election as members of the Municipal Committee. A question arose about the increase in the rent of some 200 shops including the two taken on lease by Sugna Ram and Madan Lal. A sub-committee of which Sugna Ram and Naurata Ram were not members was constituted to suggest reasonable increase. Different increases were suggested and the rent of Sugna Ram's shop was also recommended to be increased by Rs. 1.37 nP. per month and Madan Lal's by Rs. 2.12 nP. per month. When the case came up before the Municipal Committee in its meeting, Naurata Ram and Sugna Ram were present. The Municipal Committee by a unanimous resolution adopted the recommendations of the sub-committee. The State Government removed Sugna Ram from membership of the Committee on the ground that by contravening rule 3-A he was guilty of flagrant abuse of position. The learned Judges, in the circumstances of that case, took the view that the conduct of Sugna Ram was not such as would shock the conscience of any reasonable person. So as to come to a conclusion that the contravention of rule 3-A amounted to flagrant abuse of position. What appears to have weighed with the learned Judges was the circumstance that the Committee which was constituted by different political parties accepted the unanimous recommendations of the sub-committee and that there was no suggestion in the charge levelled against Sugna Ram or in the return filed by the State, that the increase in rent of the two shops in which Sugna Ram and Naurata Ram were interested was not fair. Harbans Singh J., who delivered the judgment of the Court, however, observed that it would have been more discreet and in accordance with the rules if Sugna Ram and Naurata Ram had refrained from attending the meeting, but they

(1) 1964 Curr. L.J. (Pb.) 388.

did so either due to inadvertence or otherwise. If there had been some more evidence beyond mere participation in the meeting, the learned Judges might have taken a different view.

(11) Mr. Mela Ram, learned counsel for the State, contends that *Sugna Ram's case* (1), does not lay down correct law and I should refer the case to a larger Bench. The learned State counsel submits that the observations made by their Lordships of the Supreme Court in *A. K. Kraipak and others v. Union of India and others* (2), overrule the decision of the Division Bench of this Court in *Sugna Ram's case* (1). Further submission is that when a statute requires a certain conduct to be observed, violation thereof is by itself a misconduct. I am afraid the learned State counsel is misreading the Supreme Court judgment which has not the semblance of relevancy in the instant case. In *A. K. Kraipak's case* (2), a high-powered Selection Board was constituted by the Central Government under statutory regulations for making selections to Indian Forest Service. One of the members of the Selection Board was the acting Chief Conservator of Forests of the State concerned against whose promotion some other officers had made representations and preferred appeals to the State Government. They claimed to be senior to this member of the Selection Board. The appointments were, of course, ultimately to be made by the Union Government, but the recommendations of the Selection Board were of great significance. The selections made on the basis of recommendations of the Selection Board were quashed by the Supreme Court on the ground that it was against rules of natural justice to have appointed the acting Chief Conservator of Forests to be a member of the Selection Board when the cases of those officers who were aggrieved by his promotion were to be considered. In this context their Lordships of the Supreme Court considered the scope of the rules of natural justice and quashed the selections made on the basis of the recommendations of the Selection Board. It is not understood how this case can even remotely help Mr. Sharma in his submission or can be held to have made any observations casting a doubt about the correctness of the Division Bench judgment of this Court in *Sugna Ram's case* (1). The argument of the learned counsel in this respect is wholly misconceived. It depends on the facts and circumstances of each case whether a member of a Municipal Committee is guilty of flagrant abuse of his position and this Court in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India can hold judicial scrutiny to find out whether the conduct

(2) A.I.R. 1970 S.C. 150.



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styled by the State Government as flagrant abuse of position is really such as is intended by the Act and one of the tests is whether the misconduct attributed to the Municipal Commissioner shocks the conscience of a reasonable person so as to be considered to be a flagrant abuse of position. The present is not the case where the petitioner participated in the meeting just by inadvertence or innocently. He used his position as a member of the Committee and moved a special requisition to get the case of Daya Kishan alone considered in the meeting fixed for 6th January, 1968. The President declined to discuss that item and very rightly as notices had been issued to several persons and it would have been very unjust to withdraw notices against one individual in whom obviously the petitioner and other requisitionists were interested. The President was absent in the meeting of 31st January, 1968, and the Vice-President who seemed to be siding with them allowed discussion of the case of Daya Kishan and a resolution was passed by majority that notices against Daya Kishan be withdrawn. It is understandable if notices against other encroachers were also withdrawn but that is not so. It is not possible to expect direct evidence of influence having been exercised by a member of the Committee who wants to get benefit for himself or his relations but a conclusion in the instant case arrived at by a competent authority that the petitioner abused his position as a member of the Committee cannot be regarded as unreasonable or in any way actuated by extraneous considerations. Where several persons sit together to deliberate over a matter, it is not possible to say how far one influences the other, and no wonder that the Vice-President and others who supported the cause of Daya Kishan might have been influenced by the presence of the petitioner.

(12) I have looked into the executive file and find that the State Government has considered elaborately and properly the various aspects of the matter. From the perusal of the facts as were available it came to the conclusion that the petitioner had not only attended the meeting and voted for the resolution, but was one of the six members who submitted a requisition asking the President not to proceed further against Daya Kishan. It was not a case of mere innocent participation in the meeting but a clear abuse of his position by the petitioner. The abuse is related to his office as member of the Committee and he acted in violation of the statutory rule requiring him not to participate in the meeting in which he was interested. Keeping in view the conduct of the petitioner who was throughout anxious to get the notices against his brother-in-law withdrawn, the

State Government could not be said to have taken a decision without any just cause or basis. At any rate, I am not sitting as a Court of appeal against the order of the State Government so as to interfere in its discretion when the action taken by it is not shown to be contrary to law, *mala fide* or without jurisdiction.

(13) For the foregoing reasons, there is no merit in the writ petition which stands dismissed with no order as to costs.

B.S.G.

CIVIL MISCELLANEOUS.

Before A. D. Koshal, J.

PIRTHI AND OTHERS,—*Petitioners*

*versus*

THE SUPERINTENDING CANAL OFFICER AND  
ANOTHER,—*Respondents.*

**Civil Writ No. 744 of 1970.**

May 29, 1970.

*Northern India Canal and Drainage Act (VII of 1873)—Sections 30-A, 30-B and 30-FF—The word ‘may’ in section 30-FF(3)—Whether means ‘shall’—Notice issued under section 30-FF(2)—Such notice not complied with—Divisional Canal Officer—Whether bound to restore the watercourse to its original condition—Approval of scheme envisaged by section 30-A without following the prescribed procedure—Whether without jurisdiction.*

*Held*, that ordinarily the word ‘may’ does not connote a duty but signifies the conferment of an option, but sometimes by the word ‘may’ the legislature really issues a mandate and enjoins upon the authority concerned a duty to be compulsorily performed. In each particular case it will be a question depending upon the context in which the word is used as to whether it casts a duty upon or gives an option to the authority concerned. In the context in which the word ‘may’ occurs in sub-section (3) of Section 30-FF of the Northern India Canal and Drainage Act, 1873, it means ‘shall’ or ‘must’. An option is given under sub-section (1) of Section 30-FF of the Act to any person affected by the demolition, alternation, enlargement or obstruction of a watercourse to apply to the Divisional Canal Officer for directing the restoration of the watercourse and under sub-section (2) to the Divisional Canal Officer to issue a notice of the requisite type in proper cases. Once the notice is