

LETTERS PATENT APPEAL

Before D. Falshaw, C. J. and A. N. Grover, J.

MOHINDER SINGH,—*Appellant*

versus

ABHE RAJ SINGH AND OTHERS,—*Respondents*

Letters Patent Appeal No. 197 of 1964.

Punjab Municipal Act (III of 1911) — S. 80 — Punjab Municipal Election Rules — Rule 7(g) — “Special demand” — Meaning of — Whether means notice under rule 7(g) apart from one under S. 80 (2) of the Act.

1964

October, 5th

Held, that demand referred to in rule 7(g) of the Punjab Municipal Election Rules can only be demand, under section 80(2) of the

Punjab Municipal Act, 1911, and the word "special" in the rule merely means that in the demand under section 80(2) it has to be specified under what particular head the demand is being made. It is not correct to say that the special demand in rule 7(g) is a demand made under the rule itself and outside the general provisions of the Municipal Act. The Act itself contains a complete code of provisions for demanding and recovering municipal dues and obviously the election rules are not intended to add to or subtract from these provisions in any way, and if a special demand has to be made under the rules whenever an election is contemplated, it would lead to an absurd result. In fact it would mean that a special notice of demand would have to be issued under the rule to every person on the voters' list who was owing any kind of dues to the Municipal Committee, since each voter is eligible to put himself forward as a candidate and this would even mean some special provision in the election programme for such notices to be issued. An idea of this kind could not possibly have been present in the mind of the framers of the election rules.

Letters Patent Appeal under Clause 10 of the Letters Patent, against the order of the Hon'ble Mr. Justice P. C. Pandit, dated the 25th May, 1964, in Civil Writ Petition No. 868 of 1964.

TIRATH SINGH MUNJRAL AND DALIP SINGH, ADVOCATES, for the Petitioner.

C. D. DEWAN, DEPUTY ADVOCATE-GENERAL, K. S. THAPAR, H. S. SAWHNEY, H. L. SARIN AND MISS ASHA KOHLI, ADVOCATES, for the Respondents.

JUDGMENT

Falshaw, C. J. FALSHAW, C.J.—This is an appeal filed under clause 10 of the Letters Patent against the order of a learned Single Judge dismissing a petition filed under Article 226 of the Constitution by Mohinder Singh, appellant

Mohinder Singh was a sitting member and past President of the Municipal Committee at Samrala when an election was held in April, 1964. According to the election programme nomination papers had to be filed on the 8th of April, 1964, and scrutinised by the officer appointed for the purpose on the 14th of April, 1964. The appellant filed his nomination paper on the due date, but it was rejected by the scrutinising officer by his order dated the 14th of April, 1964, on the ground that on the date when nomination papers had to be filed he was in arrears of various municipal dues. His revision petition was dismissed by the Additional Deputy Commissioner, the revising authority, on

the 21st of April, 1964 and he challenged these orders by a writ petition filed on the 12th of May, 1964 on grounds which can be summed up as being that his nomination paper was valid and should not have been rejected under rule 7(g) of the Municipal Election Rules, and that the action of the officers concerned was *mala fide* because they wished to favour Jasmer Singh, respondent No. 3, who is a brother of S. Ajmer Singh, then Revenue Minister in this State, and the latter was anxious to procure the election of his brother in the Committee and his appointment as President.

Mohinder Singh
v.
Abhe Raj Singh
and others
Falshaw, C. J.

In dismissing the petition the learned Single Judge found that on the facts the rejection of the petitioner's nomination paper was fully justified. He need, therefore, have said nothing whatever about the grounds of alleged *mala fides*, but he also briefly observed that it was not possible on the record to find that there had been any *mala fides*.

The revising authority had found that on the appropriate date, the 8th of April, 1964, Mohinder Singh, was a defaulter of the municipal dues amounting to Rs. 892.16 nP., in respect of house-tax for the period from 1961 to 1964 and Rs. 215.71 nP in respect of the rent of certain tinsheds which he jointly owned along with some other persons for the period from 1958 to 1964 and that in fact four demand notices under section 80 of the Municipal Act had been issued to him in respect of these arrears and a warrant for the recovery of Rs. 276.43 nP. had been issued in respect of house-tax by the S.D.O. under section 81 of the Act on the 19th of February, 1963. Moreover the petitioner had admitted the existence of arrears standing against him by remitting a sum of Rs. 342 by telegram on the 11th of April, 1964, which in any case could not have saved him even if this had represented the total amount of arrears due from him, since the relevant date was the 8th of April, 1964.

The main argument of the learned counsel for the appellant was based on the provisions of rule 7(g). The relevant portion of rule 7 reads—

“No person shall be eligible for election as a member of a municipal committee,

* * * * *

Mohinder Singh
 v.
 Abhe Raj Singh
 and others

 Falshaw, C. J.

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

At this stage the provisions of section 80 of the Municipal Act may also be reproduced. Section 80 reads—

- "(1) When any sum is due on account of a tax payable under this Act in respect of any property by the owner thereof, the committee shall cause a bill for the amount, stating the property and the period for which the charge is made to be delivered to the person liable to pay the same.
- (2) If the bill be not paid within ten days from the delivery thereof, the committee may cause a notice of demand to be served on the person liable to pay the same and, if he does not, within seven days from the service of the notice, pay the sum due with any fee leviable for the notice or show sufficient cause for non-payment, the sum due with the fee shall be deemed to be an arrear of tax."

The learned counsel for the appellant has contended that the "special demand" referred to in rule 7(g) is something quite different from a notice under section 80(2) of the Act. This argument has already been raised and rejected by my learned brother Grover, J., in C.W. No. 1170 of 1961, *Parkash Chand v. State of Punjab*, decided on the 20th of November, 1961, and by D. K. Mahajan J. in *Babu Ram v. The State of Punjab and others* (1). In the latter case the learned Judge held that the demand referred to in rule 7(g) could only be demand under section 80(2) of the Act and that the word 'special' in the rule merely meant that in the demand under section 80(2) it had to be specified under what particular head the demand was being made.

This appears to me to be a correct view, and in fact the only possible view on the matter. The learned counsel for the appellant, however, persisted in contending that the special demand in rule 7(g) was a demand made under

(1) I.L.R. (1962) 1 Punj. 176.

the rule itself and outside the general provisions of the Municipal Act. In my opinion this is wholly untenable. The Act itself contains a complete code of provisions for demanding and recovering municipal dues and obviously the election rules are not intended to add to or subtract from these provisions in any way, and if a special demand has to be made under the rules whenever an election is contemplated, it would lead to an absurd result. In fact it would mean that a special notice of demand would have to be issued under the rule to every person on the voters' list who was owing any kind of dues to the Municipal Committee, since each voter is eligible to put himself forward as a candidate and this would even mean some special provision in the election programme for such notices to be issued. I do not think that an idea of this kind could possibly have been present in the mind of the framers of the election rules and I agree with the view of Mahajan, J., that the word 'special' only means that in the demand made under section 80(2) the head under which the payment is being demanded must have been specified.

Mohinder Singh
v.
Abhe Raj Singh
and others
Falshaw, C. J.

The learned counsel for the appellant also attempted to argue that the notices of demand referred to in the order of the revising authority had not been properly served on him and he sought to derive strength from the observation of the learned Single Judge that he had seen the record and found that some notices issued under section 80 by the Municipal Committee had been refused by him, and that one notice dated the 19th of July, 1961 had actually been received by him. The argument was that under section 215(1) of the Act there was no specific provision as to what was to be done if a notice was refused, but that it followed that the notice should be affixed on the house or place of business of the petitioner, of which there was no proof in this case.

In my opinion this argument cannot possibly be allowed to be raised at this stage. When the writ petition was drafted the learned counsel had before him the order of the revising authority in which four demands made under section 80(2) were listed, but in the writ petition no attempt was made to allege that any of these notices had not been properly served. In fact the whole of the petitioner's contention in the writ petition on this part of the case was that rule 7(g) referred to some notice

Mohinder Singh ^{v.}
 Abhe Raj Singh
 and others

 Felshaw, C. J.

under the rule itself and outside the scope of the provisions of section 80(2) or any other section of the Act. The question of due service or otherwise is obviously a mixed question of fact and law and if it had been raised in the writ petition, this would obviously be a ground for summarily rejecting the writ petition filed at a preliminary stage of the election merely for the purpose of challenging the rejection of the petitioner's nomination paper, since he had an alternative remedy under the Act in the form of an election petition filed to challenge the election of anybody returned as elected in that particular seat, and only in an election petition could the question whether any arrears of municipal tax or rent were due from him be properly examined in the light of evidence. I am, therefore, of the opinion that the question whether the notices of demand issued by the Municipal Committee under section 80(2) were or were not properly served on the petitioner cannot possibly be allowed to be raised in this appeal. In any case the fact that the appellant was in arrears is proved by his payment of Rs. 342.00 a day or two before the scrutiny of nomination papers was due. I am, therefore, of the opinion that the writ petition was rightly dismissed and that it is not necessary to enter into any discussion at all on the question of *mala fides*. I would accordingly dismiss the appeal with costs.

Grover, J.

A. N. GROVER, J.—I agree.

B.R.T.