

FULL BENCH

Before R. S. Narula, C.J., M. S. Gujral and R N. Mittal, JJ.

DULI CHAND.—*Petitioner*

versus

STATE OF HARYANA and others,—*Respondents*.

Civil Writ Petition No. 1232 of 1974.

September 5, 1975

Punjab Gram Panchayat Act (IV of 1953)—Sections 95(1) and 102(2)—Power of State Government to remove a Panch under section 102(2)—Whether could be delegated to a Deputy Commissioner—Legislative intent—Reference to Assembly debates—Whether permissible.

Held, that the language of section 95 of the Punjab Gram Panchayat Act, 1952 is plain and does not admit of any exception to the power of delegation thereby conferred on the appropriate authorities. Wherever the Legislature desired the power of delegation to be circumscribed within certain limits or the power to delegate any particular function by any particular authority named in the Act being excluded from the operation of section 95, it has been specifically so provided. There is, indeed, intrinsic evidence of legislative policy for delegation of the Government's function under section 102(2) to lower authorities in the section itself. Whereas clauses (a) to (c) of sub-section (2) relate to the Government's powers to remove any Panch on the objective tests laid down in those clauses being satisfied, the power to remove under clauses (d) and (e) of sub-section (2) is based on the opinion of the Government. In these clauses, i.e. in clauses (d) and (e) it has been specifically stated that a Panch who in the opinion of the Government "or of the officer to whom Government has delegated its powers of removal" has been guilty of misconduct in the discharge of the duties or whose continuance in office is "in the opinion of the Government or of the officer to whom the Government has delegated its powers of removal" undesirable in the interest of the public and if the legislative intent was that the power under sub-section (2) of section 102 to remove a Panch is not expected to be delegated, no reference could at all have been made to the officer to whom the the Government has delegated its power of removal in clauses (d) and (e) of that very section itself. It is settled law that whenever a power vested in the Government by a statute is delegated by it in exercise of statutory authority to do so, the delegatee functions as the Government and any action taken by him or order passed by

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him in exercise of such delegated authority is deemed to be the order of the Government itself. Thus, the power of the State Government to remove a Panch under section 102(2) of the Act can be delegated to the Deputy Commissioner under section 95. (Paras 4, 5 and 13).

Held, that Legislative Assembly debates can be cited before the court at least for the purpose of finding out the historical background and the environmental circumstances in which the law was made. (Para 10).

Case referred by a Division Bench consisting of Hon'ble Mr. Justice R. N. Mittal and Hon'ble Mr. Justice Manmohan Singh Gujral, on 22nd November, 1974 to a Full Bench for decision of an important question of law involved in the case. The Full Bench consisting of Hon'ble the Chief Justice Mr. R. S. Narula, Hon'ble Mr. Justice R. N. Mittal and Hon'ble Mr. Justice Man Mohan Singh Gujral after deciding the question referred, returned the case to the Division Bench on 5th September, 1975 for deciding the case according to law.

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

- (i) that the petition of the petitioner be accepted;
- (ii) that a writ in the nature of Certiorari be issued under Article 226 of the Constitution of India striking down the impugned orders Annexures P-1, P-3 and P-6, as illegal, void, wrong, unjust; in excess of the powers and inoperative against the petitioner;
- (iii) that the record of the case may also be summoned;
- (iv) that the operation of the order of suspension contained in Annexure P-3 be stayed ad-interim;
- (v) that the respondent No. 5 be restrained from holding any enquiry upon the basis of the impugned charge-sheet Annexure 'P-1';
- (vi) that any other Writ, Order or Direction which this Hon'ble Court may deem fit in the circumstances of the case be passed;
- (vii) Costs of this writ petition be awarded to the petitioner.

Gopi Chand, Advocate, for the Petitioner.

H. N. Mehtani, D.A.G. Haryana, for the Respondents.

JUDGMENT

R. S. Narula, C.J.

(1) The question referred to this Full Bench is: —

“Whether the State Government in exercise of the powers conferred by sub-section (1) of section 95 of the Punjab Gram Panchayat Act, 1952, can delegate its powers exercisable under sub-section (2) of section 102 of the said Act, to the Deputy Commissioners in respect of Gram Panchayats within their jurisdiction.”

It appears to be unnecessary to go into the facts and circumstances giving rise to the above-quoted question as the pure legal question referred to us arises in a large number of writ petitions and our answer is expected to govern all those cases.

(2) Section 102 of the Punjab Gram Panchayat Act, 1952, as applicable to the State of Haryana and as amended up to date (hereinafter called the Act) reads as follows:—

- “(1) The Deputy Commissioner may during the course of an enquiry, suspend a Panch for any of the reasons for which he can be removed, and debar him from taking part in any act or proceedings of the said body during that period and order him to hand over the records, money or any property of the said body to the person authorised in this behalf.
- (2) Government may, after such enquiry as it may deem fit, remove any Panch—
- (a) on any of the grounds mentioned in sub-section (5) of section 5;
- (b) who refuses to act, or becomes incapable of acting, or is adjudged an insolvent;
- (c) who, without reasonable cause, absents himself for more than two consecutive months from the meetings of the Gram Panchayat or the Adalti Panchayat as the case may be;

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- (d) who in the opinion of Government or of the officer to whom Government has delegated its power of removal, has been guilty of misconduct in the discharge of his duties during his past or present tenure;
- (e) whose continuance in office is, in the opinion of Government or of the officer to whom Government has delegated its powers of removal, undesirable in the interests of the public.

Explanation.—The expression 'misconduct' in clause (d) includes the failure of the Sarpanch without sufficient cause—

- (i) to submit the judicial file of a case within two weeks of the receipt of the order of any Court to do so;
 - (ii) to supply a copy of the order of the Gram Panchayat in an administrative or judicial case decided by it, within two weeks from the receipt of a valid application therefor.
- (3) A person, who has been removed under clause (a) or (c) of sub-section (2) may be disqualified for re-election for such period not exceeding five years as Government may fix.
- (4) A person, who has been removed under clause (b), (d) or (e) of sub-section (2) shall stand disqualified for re-election for a period of five years from the date of his removal; and a person, who was removed under any of the said clauses on or after the 1st day of September, 1965, shall stand disqualified for re-election during such period after the commencement of the Punjab Gram Panchayat (Haryana Amendment) Act, 1971, which falls within a period of five years from the date of his removal."

Section 95 of the Act, which contains the authority for delegation of powers conferred by the Act is in the following terms:—

- "(1) Government may, by notification delegate all or any of its powers under this Act other than the power to make

rules, to a Deputy Commissioner for or the Sub-Divisional Officer as the case may be or the Director.

- (2) The Director may with the previous permission of Government delegate any of his powers other than those delegated to him to any officer not below the rank of District Panchayat Officer.
- (3) The Chief Judicial Magistrate may delegate any of his powers to a Judicial Magistrate of the first class.
- (4) The District Judge may delegate any of his powers to a Subordinate Judge of the first class.
- (5) The Collector may delegate any of his powers to an Assistant Collector of the first grade.
- (6) The Deputy Commissioner or the Sub-Divisional Officer, as the case may be, may delegate any of his powers of control to any officer not below the rank of an Extra Assistant Commissioner or to a District Panchayat Officer:

Provided that the power specified in section 102 shall not be delegated by the Deputy Commissioner."

In exercise of the powers conferred on the Government by sub-section (1) of section 95 of the Act, the powers of the Government to remove any Panch under sub-section (2) of section 102 and to disqualify such person under sub-section (3) of that section have been delegated to the Deputy Commissioners in respect of the Gram Panchayats within their jurisdiction by the Haryana Government notification No. HP-14-69/4464, dated March 19, 1969 (Annexure P. 6 to the writ petition).

(3) The argument of the learned counsel for the petitioner is that section 95(1) is liable to be struck down as being invalid and inoperative because:—

- (i) its provisions go against the policy of the Act; and
- (ii) the power of removal of a Panch being quasi-judicial in nature is a personal power conferred by the Legislature on

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the Government and such power cannot be lawfully delegated, and the provision authorising such delegation should itself be declared to be bad.

(4) The language of section 95 is plain and does not in our opinion admit of any exception to the power of delegation thereby conferred on the appropriate authorities. It is significant that wherever the Legislature desired the power of delegation to be circumscribed within certain limits or the power to delegate any particular function by any particular authority named in the Act being excluded from the operation of section 95, it has been specifically so provided. For example, sub-section (6) of section 95 authorises the Deputy Commissioner to delegate any of his powers of control to an officer not below the rank of an Extra Assistant Commissioner or to a District Panchayat Officer. [Sub-section (1) of section 102 authorises the Deputy Commissioner to suspend a Panch during the course of an inquiry]. The proviso to sub-section (8) restricts the Deputy Commissioner's power of delegation so as to exclude from its scope the authority to delegate his powers under section 102 of the Act, i.e., to suspend a Panch or to remove one in exercise of his delegated authority. The authority conferred on the Government under sub-section (1) of section 95 to delegate any of its powers under the Act has been conferred by the Legislature subject to only one exception, namely, the power to make rules, and to no other exception.

(5) The other provisions in the Act conferring any powers on the Government are contained in sections 95-A, 99(2), 99-A, 100, 108 and 105 of the Act. Section 95-A refers to the power of the Government to hold general election, etc. of Panches of Gram Panchayats according to the procedure contained in that section. Section 99 provides that if a Gram Panchayat makes default in the performance of any duty other than a judicial function imposed upon it by or under the Act, or under any other law, the Deputy Commissioner may fix a period for the performance thereof, and in case of default may appoint any person to perform it. Sub-section (2) of that section states that if in the opinion of the Government a Gram Panchayat has failed or is otherwise incompetent to administer its property, the Government shall appoint a person to administer such property for and on behalf of the Gram Panchayat, and the Government may terminate such arrangement at any time. Section 99-A authorises the Government to take over by notification the management of any land

of the Gram Panchayats for a period not exceeding twenty years if in the opinion of the Government it is necessary to do so in public interest or to secure proper management of such land held or managed by the Panchayat. Section 100 authorises the Government to call for and examine the record of proceedings of any Gram Panchayat for the purposes of satisfying itself as to the legality or propriety of any executive order passed therein, and further empowers the Government to confirm, modify or rescind any such order. Section 101 of the Act empowers the Government to make rules consistent with the Act. It is this power which has been specifically excluded from the operation of sub-section (1) of section 95. The provisions of section 102 have already been referred to in the opening part of this judgment. Section 103 authorises the Government to suspend or supersede a Gram Panchayat if in the opinion of the Government a Panchayat is incompetent to perform or persistently makes default in the performance of the duties imposed on it by or under the Act or any other Act, or exceeds or abuses its powers or fails to maintain proper sanitation, etc. Section 105 relates to the liability of members for the loss, waste or misapplication of any money or property belonging to the Panchayat. Sub-section (A A) of that section provides that the Government may, either on its own motion at any time, or on an application received in that behalf within the prescribed period, call for the record of any proceedings in which the Deputy Director of Panchayats has passed an order under sub-section (3) for the purpose of satisfying itself as to the legality or propriety of such order and to pass such order in relation thereto as the Government thinks fit. It is settled law that whenever a power vested in the Government by a statute is delegated by it in exercise of statutory authority to do so, the delegate functions as the Government and any action taken by him, or order passed by him in exercise of such delegated authority is deemed to be the order of the Government itself. The authoritative pronouncement of the Supreme Court on this point in *Roop Chand v. State of Punjab and another* (1), is conclusive on the subject. It is also well-settled that there is a presumption in favour of the legality and validity of a statutory provision and burden to rebut that presumption lies on the person who challenges the provision as being invalid or bad or unconstitutional [vide *Barham Dutt and others v. Peoples' Co-operative Transport Society Ltd., New Delhi and others* (2)].

(1) A.I.R. 1963 S.C. 1600.

(2) AIR 1961 Pb. 24.

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(6) The basis on which Mr. Gopi Chand has submitted that section 95(1) of the Act is contrary to the policy of the Act and contrary to the legislative intent are certain observations in the judgment of a Division Bench of this Court (Mehtar Singh, C.J., as he then was, and myself) in *Ram Ditta Singh v. The Deputy Commissioner, Ferozepore, and others*, (3) and certain speeches made in the Punjab Legislature at the time of consideration of the clause in the Bill of the Principal Act at the time it was passed in 1952 by the then Legislature of the united Punjab. The question that arose before Mehtar Singh, C.J., and myself in *Ram Ditta Singh's case* (supra) was whether a Panch could or could not be suspended by the Deputy Commissioner under sub-section (1) of section 102 without an inquiry having first been ordered by the Government under sub-section (2) of that section. The inquiry in that case had been ordered by the Sub-Divisional Officer and was held by the Block Development and Panchayat Officer. It was on the report of that inquiry that an explanation of the Sarpanch was obtained and the same not having been found to be satisfactory the Sarpanch was suspended by the order of the Deputy Commissioner. The order of suspension was impugned in the writ petition which was dismissed by the learned Single Judge on the ground that the Sarpanch still had an opportunity to show cause against the allegation made against him, but was allowed in appeal on the short ground that the initial inquiry against the Sarpanch had not been started under the orders of the Government, and inasmuch as sub-section (1) and (2) of section 102 must be read together, it is only during the course of an inquiry ordered by the Government that the Deputy Commissioner has the power to suspend a Panch or a Sarpanch under sub-section (1). It was held that if no inquiry is ordered by the Government under sub-section (2), the power of the Deputy Commissioner to suspend under sub-section (1) does not become operative, as the provisions of that section do not envisage any inquiry against a Panch independent of that referred to in sub-section (2) during the course of which a Deputy Commissioner can order suspension of a Panch. It was in that context that after laying down the law to the above effect in clear terms, Mehtar Singh, C.J., proceeded to observe as below :—

“The two sub-sections, as I have already said, have to be read together, and the obvious consequence is that it is only when the Government has ordered or started an enquiry

(3) 1968 P.L.R. 341.

under sub-section (2) against a Panch, that the Deputy Commissioner concerned has the power under sub-section (1) to suspend that Panch. He cannot suspend him in consequence of an enquiry not ordered or started by the Government under sub-section (2). The Legislature has designedly framed the two sub-sections in the manner in which the same are, leaving the power to order or start an enquiry against a Panch with the Government alone. The reason is obvious, for a Panch is member of an elected local body and a representative of his constituency so far as that elected body is concerned, and the Legislature did not intend to leave interference with such elected bodies in the hands of local officers by way of starting enquiries against the elected members of such local bodies. The power of suspension was previously with the Director of Panchayats and it is only the recent amendment that has given the same to a Deputy Commissioner, but that is only after the Government has taken the more serious decision of interfering with the tenure of an elected member of Panchayat for irregularities or breaches referred to in sub-section (2) of section 102. The initial step that has to be taken to order or to start an enquiry has been confined by the Legislature only to the Government at the highest level, and this has been done as a matter of sound policy so as to obviate interference with such elected institutions in the State at the lower levels. There may be some preliminary enquiry or looking into the affairs of a Panchayat by the Government for the purpose of making up its mind to order or start an enquiry under sub-section (2), and it is only when it thus makes up its mind to act under that sub-section that an order by the Deputy Commissioner under sub-section (1) may follow, but such a preliminary enquiry does not give power to a Deputy Commissioner to act under sub-section (1) without there being an order by the Government for an enquiry under sub-section (2)."

(7) It may be straightaway noticed that the question which we are called upon to answer neither arose in *Ram Ditta Singh's case* (supra) nor was the same posed, argued or discussed before the Bench which decided that case of which I happened to be a member. The observation in the above-quoted passage from the said judgment about the initial step regarding the decision to start an inquiry having been confined by the Legislature only to the Government at its

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highest level was related to the law as it then stood and appears to have been made in order to lay emphasis on the fact that the order for suspension in consequence of and during an enquiry ordered by the Government was somewhat insignificant when compared with the initial decision to be taken by the Government. That the said provision had been enacted as a matter of sound policy does not, in my opinion, amount to saying that if the power had been vested in some authority lower than the State Government itself, it would be contrary to any policy to be found anywhere in the Act. The observation about interference with the elected institutions in the State at the lower level is mere *obiter* and was neither necessary nor relevant to the decision of the point that was before the Division Bench. What is stated in the last lines of the above-quoted passage from *Ram Ditta Singh's case* that the Deputy Commissioner having no powers to suspend a Panch under sub-section (1) without there being an order "by the Government" for an inquiry under sub-section (2) relates to the provision of section 102 itself without taking notice of section 95 of the Act. In fact the question of the validity and extent of the legal delegation of the Government's power under section 102 did not arise in *Ram Ditta Singh's case*. Nothing stated in that judgment can, therefore, really give any light to us for answering the question which has been quoted in the opening sentence of this judgment. It is also significant that Mehar Singh, C.J., (who was the author of the judgment of the Division Bench in *Ram Ditta Singh's case*) himself made it clear that the power of the Government could be delegated to the Deputy Commissioner while presiding over the subsequent Full Bench of this Court in *Ujagar Singh v. State of Punjab and others*, (4). The judgment in that case was also written by the learned Chief Justice. In the course of that judgment Mehar Singh, C.J. observed as below:—

"According to section 95 of the Act, the Government can delegate its powers under the Act to a Deputy Commissioner of a District, apart from the Director of Panchayats. So the Government can, having regard to this provision, delegate its powers under sub-section (2) of section 102 of the Act to a Deputy Commissioner, though actually it has delegated its power not to any Deputy Commissioner of any district in the State but to the Director of Panchayats, an officer at the centre who heads the Department of Panchayats."

(4) I.L.R. (1969)1 Pb. & Hary. 69.

Reference is then made in the judgment to the amendment of sub-section (1) of section 102 whereby the power to suspend (which originally vested in the Director of Panchayats) was vested in the Deputy Commissioner. That amendment was justified by the Full Bench as having been effected in the wake of the number of cases and the volume of work involved in that respect. It was only after laying down categorically that the Government could delegate its power under sub-section (2) of section 102 to a Deputy Commissioner under section 95 that the following observations were made by Mehar Singh, C.J. in *Ujagar Singh's case* (supra):—

“In spite of the power under section 95 to delegate its powers under the Act to the Deputy Commissioner, the Government has not chosen to do so in so far as its power under sub-section (2) of section 102 is concerned. It has delegated that power to the Director of Panchayats only, an official of top rank in the Department. So, while such a delegation to a Deputy Commissioner is possible, the action of the Government itself supports the inference that it has paid attention to the policy of the Legislature that such powers are not to be delegated to district officials so that they may not interfere with the working of local bodies as Panchayats.”

It is the reference to the “policy of the Legislature” in the above-quoted observations of the Full Bench that has led to the sophisticated argument that has been addressed before us by Mr. Gopi Chand. It is of great importance that while referring to the so-called policy of the Legislature the learned Chief Justice again laid emphasis on the fact that “while such a delegation to a Deputy Commissioner is possible”, what is now sought to be argued before us that such a delegation by the Government of its powers under section 102(2) of the Act to a Deputy Commissioner is not possible and would be void. To argue this is to argue directly contrary to what has been held by the Full Bench of this Court in *Ujagar Singh's case*. From a perusal of the judgment in *Ujagar Singh's case* it appears that no argument about the policy of the Legislature had in fact been advanced by anyone, and that the reference to the same in the judgment is to the normal ordinary general policy of the Legislature to avoid delegation of important governmental functions to officers at district level or below. There is, however, no such general policy. Such policy is bound to vary from legislation to legislation keeping in

Sardar Achhar Singh Chinna.—I want to enquire from the Hon'ble Minister whether the Panchayat Officers are not representatives of the Government what does he mean by the Government ?

Minister for local Government.—I repeat that the Government alone shall be competent to remove them. The Panchayat Officers will not be authorised to do so.

Sardar Achhar Singh Chhina.—The Hon'ble Minister should realise that in this case the Director or the Assistant Director will mean Government as they will be entrusted with this power.

... ..

Sardar Achhar Singh Chinna.—This means that the Panches will begin to look for favours to the person who is invested with this power. It would be the same thing as the Members of this House trying to win favour of the person who may have the authority to remove them from membership despite the fact that they had been elected by the public. Similarly, these Panches will care more for the Government's wishes. Therefore, Sir, I want to submit that they should not delude themselves by the notion that by passing this Bill they shall be able to establish Ram Rajya. They should also not have the misunderstanding that through this Bill they will be successful in checking the people from becoming communists. On the other hand, all of them will become communists.

Minister for local Government.—Mr. Speaker, I want to point out that the Hon'ble Member who was just in possession of the House is mistaken. In the absence of some authority to remove a Panch who does not work diligently that Panchayat will become quite useless. For that reason, the Government must have the power to remove him.

Sardar Achhar Singh Chhina.—Mr. Speaker, I too do not wish that a Panch who does not work well should not be

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removed. In my opinion such a Panch must be removed. The power to remove a Panch should not vest with the Government but it should lie with the electorate which elects him. The Panchayats shall not be able to work well if the Government holds this power. Further, in that case the Panchayat Officers shall be in a position to create a split among the people and the whole purpose with which this institution is being started, shall be destroyed. The Government should not be empowered with the authority of being able to dissolve a Panchayat which has been elected by the people. The people must hold the power to remove those Panches, who in their opinion do not work well, as they have been authorised to elect them."

(9) It will be noticed from the above discussion in the Assembly that there were two view-points; one of Sardar Achhar Singh Chhina and the other of the Minister for Local Government. The view of Mr. Chhina was that though the Bill must provide for power to remove a Panch who does not work well, but that power should not vest with the Government. It appears that the original suggestion was to make a provision in the Bill for the removal of elected Panches by the Panchayat Officers. The initial objection was to that clause. When the Minister for Local Government repeatedly reiterated that power to remove a Panch was going to be vested with the Government, Mr. Chhina still insisted in his objection as the basic difficulty felt by him was that the power for the removal of an elected Panch should lie with the electorate which had elected him, and he thought that the Panches would not be able to work well if the Government held the power to remove a Panch. Great emphasis is laid towards the end of the last speech of Mr. Chhina on the subject wherein he stated unequivocally that the Government should not be empowered with the authority of being able to dissolve a Panchayat which has been elected by the people, and the people alone must hold the power to remove those Panches who in their opinion do not work well as they have been authorised to elect them. It is clear that the distinction if any between the various levels of the Government machinery which was being drawn during the course of the above mentioned discussion was between a Panchayat Officer and the Government. It was even indicated at one stage that the Government may mean the Director or Assistant Director. There is nothing at all in the above mentioned discussion

about an objection having been raised to the power of the Government to delegate its functions under section 102 to a Deputy Commissioner. The Deputy Commissioner is not a local officer. According to clause (14) of section 2 of the Punjab General Clauses Act, the Deputy Commissioner means the Chief Officer in charge of the general administration of a district. He is as responsible an officer as a Deputy Secretary in the State Government Secretariat whose orders are treated to be the orders of the Government according to the rules of business. In fact the posts of the Deputy Commissioners of districts and the Deputy Secretaries in the State Government Secretariat are inter-changeable and it is a matter of common knowledge that *inter se* transfers between the two offices take place amongst the members of the Indian Administrative Service. It has been observed in *Shri Sarwan Singh and others v. The Additional Deputy Commissioner, Patiala, and another*, (5) that the general administration of a district may be carried out by several officers in a particular district, but one and only one of them can be the chief officer in charge of the general administration, and that the very word "chief" denotes head, principal, highest, first or outstanding. The Panchayats work at village level. Various villages and towns make one sub-division. All the sub-divisions in a district are under the Deputy Commissioner. The Deputy Commissioner of a district is, therefore, not an insignificant officer or authority. He is in fact quite high in the hierarchy of executive officers in a State Government. The real administration of the State is divided into the hands of the various Deputy Commissioners. They are responsible officers and it cannot be argued that the Government has acted without any sense of responsibility in delegating its functions under section 102(2) of the Act to some small fry. In *B. Veeraswamy and others v. State of Andhra Pradesh, and others*, (6), the question posed before the Full Bench was whether the State Government could authorise the Regional Transport Officer to exercise the powers and to discharge the functions of the State Transport Authority under sections 48-A, 51-A and 58-A of the Motor Vehicles Act, 1939. While answering that question the Full Bench observed that the State Government could authorise the Regional Transport Officer to exercise the powers and discharge the functions of the State Transport Authority as there was a presumption that the Government will discharge its duties honestly and in accordance with the rules

(5) 1966 P.L.R. 633, at page 635.

(6) A.I.R. 1959, Andhra Pradesh 413.

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of law and it cannot be argued that where the powers of delegation are vested in the Government, the same would be abused.

(10) Similarly arguments were advanced before us on the question whether it is open to the Court to allow reference being made to the Legislative Assembly Debates for the purpose of finding out the intention of the Legislature which enacted the relevant law. It appears to me to be absolutely unnecessary to refer to those arguments as it is now settled law that Legislative Assembly Debates can be cited before the Court at least for the purpose of finding out the historical back-ground and the environmental circumstances in which the law was made. We have not been able to discern any legislative intent in the Legislative Assembly Debates referred to before us which might indicate that the Legislature never intended that the Government may delegate its functions under sub-section (2) of section 102 of the Act to a Deputy Commissioner in exercise of the express power of delegation conferred on the Government under sub-section (1) of section 95. The second argument of Mr. Gopi Chand also, therefore, fails.

... ..

(11) The last submission of the learned counsel for the petitioner was that the power of removal of a Panch is a judicial or quasi-judicial power of a personal nature, and no law can ever be made authorising the delegation of such a power. In other words it was argued that if a power is vested in a particular authority, its delegation would amount to the delegation of the rank of that authority and no law permits the Deputy Commissioner to be made the Government. Counsel relied in this connection on certain observations made in a Full Bench judgment of the Delhi High Court in the *Management of Delhi Transport Undertaking (of the Municipal Corporation) New Delhi v. Shri B. B. L. Hejelay and another* (7). The question which arose before the Delhi High Court in that case was that whereas section 96(1) of Delhi Municipal Corporation Act provided that every municipal officer or every municipal employee would be liable to have his increment or promotion withheld or to be censured, reduced in rank, etc., for any breach of departmental regulations or misconduct, etc., the said power having been vested in the Commissioner could not be delegated by him in exercise of

his authority under section 491 of the said Act, which provides as below:—

“The Commissioner may by order direct that any power conferred or any duty imposed on him by or under this Act shall, in such circumstances and under such conditions, if any, as may be specified in the order, be exercised and performed also by any municipal officer or other municipal employee specified in the order”.

The proviso to section 95(1) categorically prohibits any officer or other employee of the Corporation being reduced in rank, compulsorily retired, removed or dismissed by any authority subordinate to that by which he was appointed. The question whether the Commissioner who had appointed the respondents in that case could delegate his power of reducing the respondents in rank to some subordinate authority in exercise of his power under section 491 of the Delhi Act was answered in the negative. Nothing stated in that judgment can in our opinion be of any advantage to the petitioner as there is no prohibition in section 95(1) of the Act which may partake of the nature of the prohibitive proviso to section 95(1) of the Delhi Act.

(12) The above-mentioned judgment of the Delhi High Court was upheld by their Lordships of the Supreme Court, while dismissing the appeal of the Management of Delhi Transport Undertaking (Civil Appeal 1518 of 1971) on September 6, 1972. It is on the following passage of the judgment of the Supreme Court that Mr. Gopi Chand has sought to place reliance:—

“It is, therefore, clear that a protection which is given to an employee by the statute cannot be nullified by rules and regulations authorised by the statute itself. In other words, any regulation made by the Corporation which would have authorised the Assistant General Manager to remove respondent No. 2 from service would have been inoperative *qua* respondent No. 2 as his appointing authority was the General Manager (Transport). The question now is whether, if the Corporation itself by any regulation could not have destroyed the above protection given by the statute to respondent No. 2, it would be appropriate to say that the General Manager by an order delegating his functions to the Assistant General Manager under sections 491 read with 504 of the Corporation Act

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could destroy the protection. Since the General Manager (Transport) is an officer of the Corporation and subordinate to the Corporation, it will amount to saying that what the Corporation could not do by a regulation could be done by an officer of the Corporation by merely delegating his functions to the Assistant General Manager. The position would look ridiculous. The true position in law is that while sections 491 and 504 read together authorised the General Manager (Transport) to delegate his powers and functions to a subordinate, they did not authorise delegation of his rank. What is involved in matters of appointment and removal is the status and rank of the employee and the status and rank of the authority taking action. When the proviso to sub-section (1) of section 95 says that an officer and an employee shall not be dismissed by an authority subordinate to that by which he was appointed the coordination is of rank and not of functions. The proviso places an embargo on any subordinate of the appointing authority from removing or dismissing an employee from service and, therefore, the High Court was right in holding in the present case that the removal of respondent No. 2 by the Assistant General Manager (Transport) was illegal.

Mr. Chagla then contended that by reason of the delegation, the Assistant General Manager had become an agent of the General Manager and the act of the Assistant General Manager must be deemed to be the act of the General Manager himself. We are not concerned here with the law of agency. It is implicit in the statutory prohibition debarring removal by a lesser authority, that the appointing authority has to personally apply its mind to the question of removal and cannot delegate such a function. Since the authority which can remove an employee is the appointing authority or its superior in office, the protection thus provided cannot be destroyed by importing concepts of agency”.

The objection to delegation in the above-quoted passage is again based on the proviso to section 95(1) which contains an absolute prohibition against the delegation of power vested in the Commissioner under the purview of sub-section (1) of section 95 to any one

in respect of an employee, who was appointed by him. The reference to the necessity of the authority to personally apply its mind to the question of removal, and, therefore, to the undesirability of delegation of any such function is again directly connected in the same sentence to the statutory prohibition debarring removal by the lesser authority. There is no such debarring provision in section 95 of the Act.

(13) In fact it appears to us that there is intrinsic evidence of legislative policy for delegation of the Government's function under section 102(2) to lower authorities in the section itself. The section has already been quoted in an earlier part of the judgment. Whereas clauses (a) to (c) of sub-section (2) relate to the Government's powers to remove any Panch on the objective tests laid down in those clauses being satisfied, the powers to remove under clauses (d) and (e) of sub-section (2) is based on the opinion of the Government. In those clauses, i.e., in clauses (d) and (e) it has been specifically stated that a Panch who in the opinion of the Government "or of the officer to whom Government has delegated its powers of removal" has been guilty of misconduct in the discharge of his duties or whose continuance in office is "in the opinion of the Government or of the officer to whom Government has delegated its powers of removal" undesirable in the interest of public. If the legislative intent was that the power under sub-section (2) of section 102 to remove a Panch is not expected to be delegated, no reference could at all have been made to the officer to whom the Government has delegated its power of removal in clauses (d) and (e) of that very section itself. This we think is the crucial turning point which completely dispels the illusory argument advanced on behalf of the petitioner. The provisions of section 102(2) have already been held to be *intra vires* and valid by a Division Bench of this Court in *Piyare Lal v. The Deputy Commissioner, Hoshiarpur and another* (8), nor has the vires of that provision or the reference to delegation in the sub-section itself been attacked before us.

(14) Before parting with the case we may also notice that the counsel for the petitioner referred to the judgment of the Judicial Commissioner of Goa, Daman and Diu in *Village Panchayat of Curchorem v. Lt. Governor of Goa, Daman and Diu and others* (9), to argue that the power of the Government under section 102(2) of

(8) I.L.R. (1966) 2 Pb. 20.

(9) A.I.R. 1972 Goa, Daman and Diu 1.

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the Act is personal power like the power of the Lieutenant Governor to be exercised in his own discretion, and cannot, therefore, be delegated. This argument hardly deserves any serious notice as the Government is not a person like a Lieutenant Governor, and the provisions of the Act itself indicate that the Legislature intended the power of the Government under section 102(2) to be delegated to some lower officer. Same applies to the reference made by the learned counsel to the judgment of the Rajasthan High Court in *Ramdutt and others v. State of Rajasthan and others* (10) on the basis of which it was argued that a Panchayat is a local Government and the Government cannot be authorised to remove a local Government. There are a large number of fallacies in this argument. Even if the Panchayat is treated to be a local Government, each Panch or Sarpanch of the Panchayat cannot be said to be a local Government. Moreover, in the Rajasthan case the question was of legislative policy. The policy of the Punjab Legislature in the Act before us is clear and unambiguous. The judgment of the Supreme Court in *Sub-Divisional Officer, Sadar, Faizabad v. Shambhoo Narain Singh* (11), and of the House of Lords in *Vine v. National Dock Labour Board* (12), having been cited in the same connection do not require being dealt with at any length.

(15) Mr. Bhup Singh who is the counsel for the petitioner in the connected writ petition (C. W. P. 4776 of 1974—*Chiranjil Lal v. The State of Haryana and another*) which is one of the cases heard by us along with this petition, adopted all the arguments of Mr. Gopi Chand, and further submitted that if delegation of Government's power under section 102(2) to the Deputy Commissioner is held to be legal, it would further have to be held on account of the express provision of sub-section (1) of section 95 of the Act that the said power may even be delegated by the Government to the Sub-Divisional Officer, and it would really be anomalous that whereas the main power to order an inquiry may be vested in the Sub-Divisional Officer, the less important routine power of suspending a Panch in the course of such an inquiry be left to the Deputy Commissioner by sub-section (1) of section 102 of the Act, the further delegation of which is prohibited by the proviso to sub-section (5) of section 95 of

(10) A.I.R. 1966 Rajasthan 125.

(11) A.I.R. 1970 S.C. 140.

(12) (1956)3 All E.R. 939.

the Act. No such thing has happened, and we are not called upon to answer academic questions which have not arisen. Nor has the vexed question posed by Mr. Bhup Singh any relevance to the precise question which has been referred to this Bench.

(16) For the foregoing reasons we answer the question referred to us in the affirmative. The case will now go back to the Bench which originally heard it (and referred it to us) for being decided in accordance with law.

R. S. Narula, C.J.—I agree.

Rajendra Nath Mittal, J.—I agree.

Man Mohan Singh Gujral, J.—I agree.

N. K. S.

FULL BENCH

Before S. S. Sandhawalia, C.J., Prem Chand Jain and S. C. Mittal, JJ.

SURJIT SINGH AND OTHERS,—Petitioners.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ No. 1713 of 1975.

July 31, 1978.

Punjab Urban Estates (Development and Regulation) Act (22 of 1964)—Section 3—Punjab Urban Estates (Sales of Sites) Rules 1965—Rule 5—Scheme for sale of plots in an Urban Estate advertised inviting applications—Applicants depositing ten per cent of sale price with their applications—Applications received in excess of the number of plots to be allotted—Allotment—Whether to be made on 'first come first served' basis—Rule 5—Whether excludes allotment by lots—Allotment to such applicants in subsequent schemes—Whether can be made at the enhanced rate.