

CIVIL MISCELLANEOUS

Before H. R. Sodhi, J.

JOGINDER SINGH,—Petitioner.

Versus

STATE OF HARYANA AND ANOTHER,—Respondents.

Civil Writ No. 2823 of 1967

February 13, 1970.

Punjab Town Improvement Trust Act (IV of 1922)—Sections 5 and 103—Constitution of India (1950)—Articles 14 and 245—Section 103—Whether ultra vires the Constitution—Dissolution of an Improvement Trust ordered by State Government—Chairman of such Trust—Whether has legal right to continue in office.

Held, that the creation of an Improvement Trust or abolition thereof is purely an administrative act requiring no judicial approach. The Punjab Town Improvement Trust Act, 1922, is concerned with the preparation and execution of schemes for the improvement of a town and the State Government, in exercise of its executive power, is alone the best judge to decide whether a trust be created or allowed to continue. It is not for the High Court to sit in judgment over a decision of the State Government in this regard and direct that a trust be not abolished because it will entail removal of Chairman or a member from his office. No legal right of a citizen is involved in the matter of creation, continuance or abolition of a trust and the question of abuse of authority by the State Government thereby prejudicially affecting any such right does not, therefore, arise. Section 103 of the Act is not *ultra vires* the Constitution on the ground that wide, unbridled and despotic powers have been given to the State Government. (Para 5)

Held, that a Chairman of an Improvement Trust cannot claim a legal right to continue in that office in spite of the dissolution of the Trust. He is just a nominee of the State Government and it is clearly provided in section 5 of the Act, that when the trust ceases to exist the term of office of Chairman shall be deemed to expire on the date of dissolution of the trust. It is also provided that he can be removed from office at any time by the State Government. He can, therefore, be removed at any time, may be, even at the whim of the Government. (Para 4)

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the impugned Notification No. 6191-CI(1)-67/20106, dated 14th August, 1967, issued by respondent No. 1 and directing the respondent No. 1 to treat the Ambala City Improvement

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Trust as existent and not having been abolished and the petitioner not having been removed from the office of the Chairman of the said Trust and to treat him as if he continues to occupy that office.

JOGINDER SINGH WASU, AND INDERJIT SYAL, ADVOCATES, for the petitioner.
R. A. SAINI, ADVOCATE FOR ADVOCATE-GENERAL (HARYANA), for the respondent.

JUDGMENT.

SODHI, J.—This writ petition has been filed by Shri Joginder Singh, a practising Advocate of Ambala City. In the year 1962, he was appointed as an Honorary Chairman of the Ambala City Improvement Trust (hereinafter referred to as the Trust), for a period of three years under the Punjab Town Improvement Act, 1922 (hereinafter called the Act). It is alleged that he was reappointed to the same office for another year on the expiry of the first term of his office and in January, 1966, he was appointed a whole-time Chairman with effect from 1st February, 1966. A reference in the writ petition is made to memorandum No. 4066-4CIII-66/13051, dated 18th May, 1966, fixing the term of appointment of the petitioner at three years with effect from 2nd November, 1965. A copy of this memorandum has not been placed on the record either by the petitioner or by the State. Be that as it may, it is not controverted before me that the petitioner was appointed a whole-time Chairman of the Trust on 31st May, 1966, and the period of three years was to commence with retrospective effect from 2nd November, 1965. There is no indication as to whether it was a salaried office or an honorary one. It is unfortunate that the petitioner being an advocate has not chosen to disclose the details relating to the terms and conditions of his appointment.

(2) The composite State of Punjab was reorganised on 1st November, 1966, under the Punjab Reorganisation Act, and the State of Haryana, became the successor of the erstwhile State of Punjab. A notification was issued by the State of Haryana on 14th August, 1967, whereby in exercise of the powers conferred by sub-section (1) of section 103 of the Act, the Governor of Haryana dissolved the Trust from the date of publication of the notification. It is this notification that is mainly challenged as it resulted in removal of the petitioner from the office of Chairmanship of the Trust. In the impugned notification, the reason given is that the State Government considered it expedient to dissolve the Trust. Section 103 reads as under:—

“103. (1) When all schemes sanctioned under this Act have been executed or have been so far executed as to render

the continued existence of the trust, in the opinion of the State Government, unnecessary, or when in the opinion of the State Government it is expedient that the trust shall cease to exist, the State Government may by notification declare that the trust shall be dissolved from such date as may be specified in this behalf in such notification and the trust shall be deemed to be dissolved accordingly.

(2) From the said date—

- (a) all properties, funds and dues which are vested in or realisable by the trust and the chairman respectively shall vest in and be realisable by the municipal committee; and
- (b) all liabilities which are enforceable against the trust shall be enforceable only against the municipal committee; and
- (c) for the purpose of completing the execution of any scheme, sanctioned under this Act which has not been fully executed by the trust and of realising properties, funds and dues referred to in clause (a) the functions of the trust and the chairman under this Act shall be discharged by the municipal committee and the President of the municipal committee, respectively; and
- (d) the municipal committee shall keep separate accounts of all moneys respectively received and expended by it under this Act, until all loans raised hereunder have been repaid, and until all other liabilities referred to in clause (b) have been duly met."

(3) The contention of Mr. Wasu is that the dissolution of the Trust was not *bona fide* but a colourable exercise of power because, at the relevant time, the State Government acted on some resolution of Samyukta Dal, a political party which wanted abolition of the Trust. The State in its return has denied that it acted on any such resolution and there was no rejoinder filed by the petitioner against the averments of the State. As a matter of fact, what we notice is that all the trusts in the State had been abolished. The petitioner cannot, therefore, reasonably urge that the State Government was actuated by any extraneous considerations in abolishing a particular trust so that the petitioner was put out of office.

(4) The next contention of Mr. Wasu is that the petitioner had been appointed for a fixed period of three years and before the expiry of that period, the Trust could not be dissolved or at any rate the petitioner could not be dislodged from his office. I am afraid the contention is wholly misconceived. The petitioner by being appointed as Chairman could not claim a legal right to continue in that office in spite of the dissolution of the Trust. He was just a nominee of the State Government as admitted by the petitioner himself, and it is clearly provided in section 5 of the Act that when the trust ceases to exist the term of office of the Chairman shall be deemed to expire on the date of dissolution of the trust. The outgoing Chairman or a member of the trust is, of course, eligible for reappointment and it is also provided that he could be removed from office at any time by the State Government. This provision of law determines the extent of legal right that the petitioner had to retain the office. He chose to accept the office where he was placed at the mercy of the State Government and he could be removed at any time, may be, even at the whim of the latter. Section 4 of the Act gives the constitution of a trust. Three members are to be elected by the municipal committee and four members, including the Chairman, are to be nominated by the State Government. Section 9 provides that the Chairman shall receive such salary as may be sanctioned by the State Government, but, as already stated, the petitioner has not stated nor is his counsel in a position to say so as to if the petitioner was drawing any salary at all and what was the amount. An authority appointing a person has a right to withdraw that appointment unless there is some contract to the contrary or a provision of law which stands in the way of doing so. I have been referred to no such provision creating an impediment in the exercise of authority by the State Government so as to prohibit it from withdrawing the appointment made by it. The petitioner indeed does not even claim that he entered into any contract with the State in joining as Chairman. If there was a contract the remedy then lay for breach thereof by way of suit for damages in an ordinary civil Court. Mr. Wasu submits that the petitioner had a right to hold the post and in that connection he has drawn my attention to *Parshotam Lal Dhingra v. Union of India* (1). There is no analogy between the employee holding a civil post under the State and the appointment of Chairman of a trust. Even in case of a Government employee holding a civil post, it is open to the State Government to

(1) A.I.R. 1958 S.C. 36.

abolish the post, but it is not necessary for the purpose of the present writ petition to go into that question at all.

(5) The last contention of Mr. Wasu is that section 103 of the Act is *ultra vires* of the Constitution inasmuch as it gives wide, unbridled and despotic power capable of abuse by the State Government in the matter of abolition of a trust. It is thus urged that the power so given can be abused and exercised for extraneous reasons and that section 103 must, therefore, be struck down as unconstitutional. I am satisfied that there is no substance in the contention raised by the learned counsel. The creation of a trust or abolition thereof is purely an administrative act requiring no judicial approach. The Act is concerned with the preparation and execution of schemes for the improvement of a town and the State Government, in exercise of its executive power, is alone the best judge to decide whether a trust be created or allowed to continue. It is not for this Court to sit in judgment over a decision of the State Government in this regard and direct that a trust be not abolished because it will entail removal of a Chairman or a member from his office. No legal right of a citizen is involved in the matter of creation, continuance or abolition of a trust and the question of abuse of authority by the State Government thereby prejudicially affecting any such right does not, therefore, arise. The judge of "expediency" is the State Government alone. In the instant case, we find, as stated by the petitioner himself, that several schemes had been prepared and none executed. The State, in its return, has made an averment that there were complaints against the working of the Trust. The mere fact that schemes are made and not executed is by itself sufficient for the State Government to abolish a trust. When a trust is abolished, the functions of the trust and the Chairman are taken over by the municipal committee and its President as envisaged in section 103(2)(c) of the Act. It is for the State Government thus to decide whether development of a town should be left to a municipal committee alone or an improvement trust be created.

(6) For the foregoing reasons, there is no merit in the writ petition which stands dismissed. In the peculiar circumstances of the case, I leave the parties to bear their own costs.

R.N.M.