*Before S. S. Sandhawalia, C.J. and S. C. Mital, J.*

JASWANT SINGH MULTANI,—*Petitioner.*

*versus.*

SUB-DIVISIONAL OFFICER and others,—*Respondents.*

*Civil Writ Petition No. 4143 of 1980.*

September 16, 1981.

*Punjab Municipal Act (III of 1911)—Section 244—Constitution of India, 1950—Article 14—Denotification of notified area by the State Government—Power conferred by section 244—Whether arbitrary and without any guideline—Provisions of section 244—Whether violative of Article 14 and, therefore, unconstitutional.*

*Held*, that in the language of section 244 of the Punjab Municipal Act, 1911, there is not the least hint of any legislative policy or any inkling of a guideline for the denotifiiation of a Committee. Indeed, the language excels in its absoluteness and confers power on the State Government to cancel at any time any notification under section 241 of the Act without more. There is no manner of doubt that a denotification of a corporate urban area is fraught with grave and material legal and civil consequences not merely to the individual members of the Committee, but to the corporate existence of all the citizens composed thereof. Nevertheless, section 244 is wholly silent, both as to policy and as to guidelines for the exercise of a totally arbitrary power vested in the Government to denotify an existing Committee. It seems to be now well settled that where such an unlimited and uncanalised power is vested without even remotely indicating a legislative policy, or the rational criteria, the same would be hit by Article 14 of the Constitution, even though the repository of the power is the State or the Central Government itself. Thus, the provisions of section 244 of the Act plainly suffer from the taint of unconstitutionality. (Paras 16 and 19).

*Amended Writ Petition under Articles 226 and 227 of the Constitution of India praying that this Hon'ble Court may be pleased to :—*

(i) *call for the records of the case and after its perusal issue a writ in the nature of* Certiorari, *or any other appropriate writ, order or direction quashing the impugned notifications Annexure P-4 and P-5.*

(ii) *Any other relief which this Hon'ble Court may deem just and proper under the facts and circumstances of the case may also be awarded to the petitioner.*

(iii) *Filing of certified copy of the annexures and issuance of prior notice to the respondents may be dispensed with; and*

(iv) *the writ petition may be allowed with costs.*

*It is further prayed that during the pendency of the writ petition, the operation of the impugned notifications Annexures P-4 and P-5 may be stayed; or any other interim relief which this Hon'ble Court may deem fit in the circumstances of the case may be granted.*

B. S. Shant, Advocate, *for the Petitioner.*

Mohinderjit Singh Sethi, Additional A. G. (Pb.), *for the State.*

JUDGMENT

*S. S. Sandhawalia, C.J.*

1. Do the provisions of Section 244 of the Punjab Municipal Act, 1911 suffer from the taint of unconstitutionality—is the spinal issue which has necessitated the admission and hearing of this set of cases by the Division Bench.

2. For a question so pristinely legal, the facts pale into relative insignificance. However, a skeletal resume thereof giving rise to the issue seems to be inevitable and a reference to those in C.W.P. No. 4143 of 1980 (*Jaswant Singh Multani* v. *Sub Divisional Officer (Civil) Exercising the powers of the Deputy Commsisioner, Kapurthala and another*), would suffice. By a notification published in the Punjab Government Gazette dated October 27, 1978, in exercise of the powers under section 241 of the Punjab Municipal Act, 1911 (hereinafter called 'the Act'), the Governor of Punjab declared the local area comprising Bholath in the Kapurthala District, to be a notified area for the purpose of the said Act. Later,—*vide* notification annexure P/2, dated February 8, 1980, the Governor of Punjab appointed a Committee of 16 persons for the Notified Area Committee of Bholath and fixed their term for a period of three years from the date of its publication. By a similar notification, dated February 9, 1980, Jaswant Singh Multani-petitiiner was appointed as the President of the said Notified Area Committee and his term of office was also fixed for the same period of three years.

3. However, hardly eight months later on October 17, 1980, the respondent-State issued the notification annexure P/4 abolishing the Notified Area Committee which is the primary subject matter of challenge and may, therefore, be quoted *in extenso*.

> "No. 41(1)80-USLG(3)/332(Spl)—In exercise of powers conferred by Section 244 of the Punjab Municipal Act, 1911, and all other powers enabling him in this behalf, the Governor of Punjab is pleased to cancel with immediate effect Notification No. 10(1)-78 USLG(3)/235 (Spl), dated 19th October, 1978, issued under section 241 of the said Act declaring notified area and as published in the Punjab Government Gazette dated the 27th October, 1978."

In the writ petition, apart from the legal grounds, the issuance of the notification was sought to be challenged on the grounds of *mala fides* and extraneous considerations therefor. However, during the course of arguments, the allegations of *mala fide* and extraneous grounds were expressly given up and therefore, do not merit any reference. To complete the resume of facts it may be mentioned that during the pendency of the writ petition, the respondent-State issued another notification on November 21, 1980, annexure P/5, whereby the area earlier covered by the Notified Area Committee was constituted into a Sabha area and a Gram Panchayat was sought to be created therefor. In the amended petition, this notification was further made the target of attack.

4. Era is advert to the basic issue of the challenge to the constitutionality of section 244 of the Act, a bird's eye view of the broad scheme of the Local Self-Government within the State is called for. At the very gross-roots is the village as a unit and under section 4 of the Punjab Gram Panchayat Act any village or group of villages may be declared a 'Sabha Area" and a Gram Panchayat may be constituted therefor under section 5 of the said Act. Next in the hierachy thereto are the semi-urbanized areas for which the Government does not deem it expedient to constitute a Municipality. These are served by the creation of Notified Area Committees under section 241 of the Act which fall for primary consideration here. Higher in ranks comes the creation of Municipal

Committees under section 4 and 5 of the Punjab Municipal Act for areas which are truly urban in nature. At the very apex, in this context are then the Municipal Corporations created by the statute for the larger cities of Amritsar, Jullundur and Ludhiana.

5. The learned counsel for the petitioner frontally assailed the provisions of Section 244 of the Act on the anvil of Article 14 of the Constitution, by contending that it conferred totally unfettered, unguided and uncanalised powers in the State Government to abolish a Notified Area Committee at its whim. It was submitted that not the least guideline for exercising a power of such large and meaningful import had been given either expressly or by implication in the provision. The added argument was that the cryptic provisions of Section 244 of the Act suffer from an excessive delegation of the legislative function to the State Government in absolute terms and was, therefore, not valid.

6. Before adverting to the merits of the aforesaid contentions, it deserves highlighting at the outset that within this Court, the question before us is covered by precedent, if not on all, fours at least by a virtually conclusive analogy. It is, therefore, necessary to point out the applicability of the binding precedent and if necessary to examine its correctness.

7. Now to appreciate the applicability of the earlier case law, it may be reiterated that the Punjab Municipal Act, 1911 itself visualized two distinct kinds of Local Self Government for the urban areas. The first is the creation of the Municipal Committees and the other at a slightly lower plane—where it is not deemed expedient to constitute them—is the creation of the Notified Area Committees. The pre-requisite and the procedural requirements for the constitution and creation of Municipal Committees and the addition or exclusion of areas therefrom is spelled out in detail in Sections 4, 5, 6, 7, 8 and 9 of the Act. Similarly, Sections 241 to 243 of the Act laid down the basic criteria for the creation of the Notified Area Committees and matters relevant thereto.

8. As regards the dissolution or obliteration of an existing Municipal Committee or Notified Area Committee, the statute expressly confers this power on the State Government by Section 10 in the first case and Sections 244 and 245 in the second. Mr.

Sethi, the learned Additional Advocate General, Punjab, on behalf of the respondent-State made a vain attempt to draw a finical distinction between the Objects and Purposes of Section 10 on the one hand and Section 244 on the other, yet it suffices to say that these are distinctions without any material differences. Though in strict legal parlance it cannot be said that the provisions are literally in *pari materia* with each other, yet the parity of the provisions becomes obvious when they are juxtaposed against each other:—

| | |
|---|---|
| "10. (1) The State Government may, by notification withdraw from the operation of this Act the area of any municipality constituted thereunder. | "244. The State Government may at any time cancel or modify any notification under section 241 or any order under Section 242". |
| "10. (2) When a notification is issued under this section in respect of any municipality, this Act and all notifications, rules, by-laws, orders, directions and powers issued, made or conferred under this Act, shall cease to apply to the said area, the balance of the municipal fund and all other proprety at the time of the issue of the notification vested in the committee shall vest in the State Government and the liabilities of the committee shall be transferred to the State Government." | "245. Save as provided in sub-section 7(a) of section 4 of this Act, when by reason of any order of cancellation under the last foregoing section any notified area ceases to be notified, the unexpanded proceeds of any taxes levied therein under section 242 shall be applied as the State Government may think fit." |

Now a plain reading of the aforesaid provisions makes their similarity if not the identity so manifest that it would be labouring the obvious to elaborate the issue. It is in the aforesaid context that one may now advert to *Dewand Chand* v. *State* (1). Therein the constitutionality of Section 10 of the Act was forcefully assailed and

(1) CW No. 2328 of 1966 decided on 23rd April, 1975.

accepting the argument, the provision was struck down with the following observations:

> "A reading of the section would show that no guideline is provided as to in which cases the area from the municipal committee is to be withdrawn under section 10 of the Act and in which cases it is not to be withdrawn. Hence the powers under this section are highly arbitrary which may lead to disastrous results and cut the very root of the democratic fabric. Moreover, it may lead to discrimination among various municipal committees in the absence of any guideline. In the present case, the impugned notification is in respect to a small town but such a notification can be issued even in the cases of big towns like Ludhiana, Jullundur, Amritsar and Patiala. Moreover, it is not shown as to on what basis or material the State Government came to the conclusion to issue the impugned notification withdrawing the area of Narot Jaimal Singh from the operation of the Act. Since there are no guidelines and the blanket power is given to the Executive under Section 10 of the Act, I hold that section 10 of the Act is **ultra vires** Articles 14 and 19 of the Constitution".

The State of Punjab appealed, but the Letters Patent Bench in *The State of Punjab* v. *Dewand Chand and others* (2), affirmed the said view even more categorically as follows:—

> "Further if the State Government intends to alter the limits of any municipality, then again a detailed procedure is prescribed under Section 5 of the Act. In Section 7, procedure is given with regard to cases covered by Section 6 which relates to the exclusion of local area from any municipality. It would thus be clear from the perusal of these sections, that a mandatory formality of inviting objections from the inhabitants of the local area, is required to be complied with and that before taking any action, the Government is duty bound to consider these objections. Surprisingly, under Section 10 which gives powers to withdraw municipal area altogether from the operation of the

(2) A.I.R. 1979 Pb. & Hary. 46.

Act, a blanket power is given to the State Government and the right of an inhabitant of that area to raise an objection has been denied. As observed by the learned Single Judge, it has been left completely to the whim of the State Government to withdraw any municipal area from the operation of the Act, the same is *ultra vires* of Articles 14 and 19 of the Constitution."

9. It would appear that the respondent-State has neither challenged the aforesaid judgment by way of appeal before their Lordships of the Supreme Court nor made any statutory changes or amendments in the Act as a consequence of the striking down of Section 10. In a way it can be said that the respondent-State has willingly accepted the view of this Court in this context.

10. Once it is held that Section 10 conferring the virtually identical powers on the respondent—State of dissolving or obliterating the Municipal Committee is unconstitutional; it seems to follow logically that Section 244 of the Act would inevitably follow suit. It is obvious that not the least hint or guideline is spelled out in the statute for cancelling the earlier notification constituting the Notified Area Committee and thus dissolving the Local Body created under Section 241 of the Act. The same vice which attaches to Section 10 would be equally attracted with even greater force to Section 244 of the Act.

11. Faced with the above, Mr. Sethi, the learned Additional Advocate General for the respondent-State was unable to advance any meaningful argument to distinguish **Dewan Chand's case** (supra), and equally the applicability of its ratio to the similar provisions of Section 244 of the Act. Unable to wriggle out of the aforesaid precedent, learned counsel for the respondents then made a flanking attack in attempting to assail the correctness of the view expressed by the learned Single Judge and later affirmed by the Letters Patent Bench in *Dewan Chand's case* (supra.). The primary argument raised in this context was sought to be rested on the observations of their Lordships in paragraph 25 of the report in *Smt. Maneka Gandhi* v. *Union of India and another* (3). On these premises, it was sought to be contended that the power under Section

(3) AI.R. 1978 S.C. 597.

244 of the Act having vested in the high authority of the State Government, the abuse of the power should not be lightly assumed.

12. I am unable to accede to the contention of the learned Additional Advocate General that *Dewan Chand's case* (supra), is bad law on this score alone. The vesting of the power in high authority is only one of the many criteria for judging the constitutionality of a statute. It is not the law that merely because a power is vested in the Central Government or the State Government then it cannot be unconstitutional for reasons of being unguided and uncanalised. Indeed, a close reading of the judgment and the paragraph relied upon, would show that far from aiding the learned counsel for the respondent-State it seems to provide yet another arrow to the bow of the petitioner. Therein, it had been said in no uncertain terms as follows:—

> ".....Now, the law is well settled that when a statute vests unguided and unrestricted power in an authority to affect the rights of a person without laying down any policy or principle which is to guide the authority in exercise of this power, it would be affected by the vice of discrimination since it would leave it open to the Authority to discriminate between persons and things similarly situated..".

In a way therefore, the above observation further strengthens the view that a provision devoid of guidelines or policy and vesting an uncanalised and unguided power is conducive to the exercise of arbitrary and capricious fiats. and therefore, violates the equality clause of the Constitution. I must, therefore, conclude on precedent that the ratio of *Dewand Chand's case* (supra), covers the issue before us. Following the same, it must be held that Section 244 of the Punjab Municipal Act, 1911 is violative of Article 14 of the Constitution and therefore, unconstitutional.

13. Nevertheless, I would not wish to rest this judgment entirely on the precedent in *Dewan Chand's case* (supra), because it appears to me that even **de hors** the same, on principle and the existing statutory provisions, the same conclusion appears to be inevitiable.

14. The core of the stand on behalf of the respondent-State rested on Section 241 in contending that the criteria and pre-conditions for the creation of a Notified Area Committee therein may be

read into Section 244 as implicit and those would provide the necessary guidelines for its de-notification. Though in the first flush of the argument, it appears to have something of plausibility, a closer analysis indicates that it is inherently fallacious. To appreciate it more fully, the provisions of Section 241 of the Act may first be read:—

> "(1) The State Government may, by notification declare that with respect to some or all of the matters upon which a municipal fund may be expanded under section 52, improved arrangements are required within a specified area, which, nevertheless, it is not expedient to constitute as a municipality.
>
> (2) An area in regard to which a notification has been issued under sub-section (1) is hereinafter called a notified area
>
> "(3) No area shall be made a notified area unless it contains a town or a bazar and is not a purely agricultural village
>
> (4) The decision of the State Government that a local area is not an agricultural village within the meaning of sub-section (3) shall be final, and a publication in the Official Gazette of a notification declared an area to be notified area shall be conclusive proof of such decision."

A plain reading of the aforesaid provisions should make it clear that the criteria spelled out by it for the creation of a Notified Area Committee, can have little and indeed no relevance to the pre-conditions which might be necessary for its de-notification and dissolution. For instance, one of the pre-requisites for the creation of a Notified Area Committee laid down in sub-section (3) is the existence of a town or a *bazar* therein. Some modicum of urbanization or semi-urbanization is thus a pre-requisite for the creation of a Notified Area Committee. Now it is manifest that this cannot have the remotest relevance when subsequently the question of the de-notification or the dissolution of an existing Notified Area Committee arises. Clearly the statute was not visualising an earthquake which would raze the town or *bazar* to shambles and consequently obliterate one of the pre-requisites for its creation. An urban area in the shape of a town or *bazar* having already come into existence, it is too remote a possibility that the same would

vanish into thin air and in this manner provide a guideline or policy for de-notifying the Committee under Section 244 of the Act.

15. Again the other criterion negatively put for the creation of a Notified Area Committee is that the area comprised therefore is not a purely agricultural village. Now once this is satisfied and the area loses its pristine rural or agricultural nature so as to warrant the creation of a Notified Area Committee, it seems rather inconceivable, if not impossible, that the same would revert again to a purely agricultural village so as to necessitate a de-notification. Indeed, it appears to me that the learned counsel for the petitioner is on a sound footing that at least for the limited purpose of the statute before us, the guidelines for the constitution and creation of a Notified Area Committee would be totally alien to the considerations which might later require its de-notification.

16. Once it is held as above, it appears to be plain and beyond cavil that in the language of Section 244, there is not the least hint of any legislative policy or any inkling of a guideline for the de-notification of a Committee. Indeed, the language excels in its absoluteness and confers power on the State Government to cancel at any time any notification under Section 241 of the Act without more. There is no manner of doubt that a de-notification of a corporate urban area is fraught with grave and material legal and civil consequences not merely to the individual members of the Committee, but to the corporate existence of all the citizens composed thereof. Nevertheless, Section 244 is wholly silent, both as to policy and as to guidelines for the exercise of a totally arbitrary power vested in the Government to de-notify an existing Committee. It seems to be now well settled that where such an unlimited and uncanalised power is vested without even remotely indicating a legislative policy or the rational criteria, the same would be hit by Article 14 of the Constitution, even though the repository of the power is the State or the Central Government itself. Way back, the final Court in *Kathi Raning Rawat* v. *The State of Saurashtra*, (4), after an exhaustive discussion on principle and precedent held as follows:—

> "— — — On the other hand, if the statute itself does not disclose a definite policy or objective and it confers

(4) 1952 (III) S.C.R. 435.

authority on another to make selection at its pleasure, the statute would be held on the face of it to be discriminatory irrespective of the way in which it is applied."

The aforesaid observations, to my mind, fit the present case like a glove. This view was again reiterated with the following observations in *Ram Krishna Dalmia and others* v. *Shri Justice S. R. Tendolkar and others*, (5):—

".....After such scrutiny the Court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situate and that, therefore, the discrimination is inherent in the statute itself. In such a case the Court will strike down both the law as well as the executive action taken under such law, as it did in *State of West Bengal* v. *Anwar Ali Sarkar* (supra), *Dwarka Prasad* v. *State of Uttar Pradesh*, (6), and *Dhirendra Kumar Mandal* v. *Superintendent and Remembrancer of Legal Affairs* (7).

Reference must also be made to a Division Bench of this Court in *Surjit Singh Sud* v. *The State of Punjab, etc.*, (8) where even in a relatively narrow field of the removal from office of the Chairman of a Trust under Section 5 of the Punjab Town Improvement Act, it was observed in paragraph 15, thereof, as under:—

"On applying the aforesaid principles to the present case, it will be clear that the State Government has been given unbridled, uncanalised, and arbitrary powers to

(5) A.I.R. 1958 S.C. 538.
(6) 1954 S.C.R. 803.
(7) (1955) 1 S.C.R. 224.
(8) 1974(1) S.C.R. 709.

remove a Chairman of a Trust under seciton 5 of the Act. No guideline has been provided according to which the said principles can be applied. It is at the whim of the State Government either to retain the Chairman or to remove him. It does not matter that the power vests in the State Government as a Chairman can be discriminated even if such a power is given to the highest executive authority. .. .. .."

It would be unnecessary to multiply authorities on the point and it suffices to say that the sound enunciation of the law, above said, has not been deviated from.

17. After the close of the argument, the learned Additional Advocate General for the respondent-state had attempted to place some fragmentary reliance on certain observations in *Ayodhya Prasad Vajpai* v. *State of U.P. and another,* (9). In the said case, section 3 of the Uttar Pradesh Shettra Samitis and Zila Parishads Adhiniyam, 1961, was the subject-matter of challenge. The said provision was in the following terms:—

"The State Government shall by notification in the Gazette divide the rural area of each disrict into Khanda specifying each Khand by a name and the limits or constituents of its area and may likewise change the names or make modifications in the areas and limits of the Khands by including therein or excluding therefrom areas or create new Khands."

Their Lordships upheld the constitutionality of the abovesaid provision by holding that the preamble and the other provisions of the Act gave adequate indication of the purposes of making a Khand and the mere power to re-determine the boundaries of the Khand etc. was, in no way, unfettered or uncanalised.

(17-A) It is obvious that the aforesaid judgment is distinguishable. The language of section 3 of the Uttar Pradesh Kshettra Samitis and Zila Parishads Adhiniyam is entirely different from what falls for construction here. It is apparent that under the aforesaid U.P. Act, merely a power of redistribution of areas constituting a Khand had been vested in the State Government under section 3 thereof. The geographical areas would always continue to be a part

(9) A.I.R. 1968 1344.

of one Samiti or another and their inclusion in a body having corporate existence is not altogether abolition. As is rightly contended on behalf of the petitioner, the provisions in the U.P. Act were merely for a geographical change of areas and modifications in the limits thereof, I am clearly of the view that the observations in *Ayodhya Prasad Vajpai's case* (supra) are not relevant to the issue herein.

18. Perhaps as a last argument of desparation, it was sought to be argued on behalf of the respondent-State that the power of constituting Notified Area Committee having been vested in the Government, it had an inherent power to undo the same irrespective of Section 244 of the Act or in the alternative the said section was merely declaratory of that power. I am unable to subscribe to any such blanket proposition of what the learned Additional Advocate General styled as a sovereign or inherent power in the State Government to dissolve or obliterate statutory corporations or other authorities expressly created by or under a statute. It perhaps suffices to mention that here in admittedly the source of the power is the Punjab Municipal Act. If the constitution and the creation of a Notified Area Committee has to look for its legal sanction under Section 241 thereof then the power to de-notify and dissolve the same must also necessarily flow from the same statute under Section 244 of the Act. If the later provision does not satisfy the test on the anvil of Article 14, it has to be necessarily struck down.

19. In the wake of the aforesaid discussion I would hold both on principle and precedent that the provisions of Section 244 of the Punjab Municipal Act, 1911 plainly suffer from the taint of unconstitutionality and are hereby struck down.

20. It is the admitted and the common stand that the legal source for the impugned notification was Section 244 of the Act alone and the same having been itself cut down, the action thereunder must necessarily stand vitiated. The impugned notification in all these cases are hereby quashed and inevitably the writ petitions are allowed. In view of the somewhat intricate questions, arising herein, we leave the parties to bear their own costs.

S. C. Mittal, J.—I agree.

*N.K.S.*