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properly in an ordinary Court and the petitioner must seek his remedy in such Court. This petition, therefore, as it stands, must fail and I would dismiss it, but in the circumstances I leave the parties to bear their own costs.

PREM CHAND PANDIT, J.—I agree.

K.S.K.

LETTERS PATENT APPEAL

Before D. Falshaw, C.J., and Inder Dev Dua, J.

JOGINDER SINGH,—*Appellant*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 35 of 1962.

1962

March, 26th

Punjab Municipal Act (III of 1911)—Section 236—Order passed by the State Government annulling the election of the President after it had been gazetted—Whether an administrative order immune from interference by High Court, under Article 226, Constitution of India—Such an order—Whether can be passed by the State Government—Punjab Municipal Election Rules—Rule 48—Marking of ballot papers with 'Yes' or 'No' in case, there are more than one candidate—Whether invalid—Interpretation of Statutes—Construction of a section—Whether permissible to look to other sections—Rule of implied exclusion—applicability of.

Held, that the order of State Government passed under section 236 of the Punjab Municipal Act, 1911, setting aside the election of the President is not a purely administrative or executive order outside the writ jurisdiction of the High Court under Article 226 of the Constitution. This Article is not confined to the five categories of writs mentioned therein and the High Court can always in the interest of justice frame its orders and directions to suit the occasion and the contingencies of a given case.

Held, that the election of the appellant as President, having been duly notified, could be the subject-matter of

an election petition in acordance with the rules and non-compliance with the provisions of the Act or the Rules could be taken as a ground for founding the petition on. Even the State Government has been empowered *suo motu* to direct an enquiry if there is reason to suspect the commission of a material irregularity which includes non-compliance with the provisions of the Act or the Rules, but in that contingency also the matter has to be dealt with in the manner prescribed by the rules. There is no provision of law which empowers the State Government to set aside the election of President, after notification, by its own administrative determination. Nor is the State Government competent to do so indirectly by having resort to section 236 under the mask of setting aside the proceedings of the Committee so far as they relate to the election of the President.

Held, that the method of casting votes by writing "Yes" or "No" on the ballot paper in case there are more than one contestant is not against Rule 48 of the Punjab Municipal Election Rules nor offends the doctrine of Secrecy of Ballot.

Held, that the mere fact that general words have been used in a statutory provision does not preclude enquiries into its object, purpose and effect. It is undeniable that for the purpose of construing a section of a statute it is right to look not only at the provision immediately under construction but also at other provisions which may throw light upon it and afford an indication that the general words employed were not intended to be applied without some limitations.

Held, that the Rule of implied exclusion, no doubt, connotes that when a statute directs the performance of certain things by a special means or in a particular manner, ordinarily it implies that it shall not be done otherwise. Under this rule express mention of one matter may also, generally speaking, exclude by implication other matters not mentioned, and, a positive direction in a statute may similarly carry with it an implication against everything contrary to it. But at the same time it cannot be gainsaid that the rule that the mention of one thing in a statute implies the exclusion of another is neither conclusive nor of universal application and has indeed to be applied with

extreme care and caution. Strictly speaking it is not a rule of law but only a subsidiary rule of construction, one of several rules which only serve as aids in discovering the legislative intent in case of ambiguity or uncertainty of statutory language. It is designed only to produce a rational interpretation and to promote the policy supposed to have dictated the statutory enactment. It may thus be properly attracted only when in the natural association of ideas what is expressed is so stated either by contrast to what is omitted or the contrast compels or induces the affirmative inference that what is omitted must have been designed by the author to have the contrary or opposite treatment. And then this rule may only be pressed into service consistently with other rules of interpretation which aid the Court in ascertaining true legislative meaning, for, no single cannon of interpretation can by itself serve fully to bring out or disclose with certainty and precision the legislative intent.

Letters Patent Appeal, under Clause 10 of the Letters Patent against the judgment, dated 7th of February, 1962, passed by Hon'ble Mr. Justice Shamsher Bahadur, in Civil Writ No. 1503 of 1961.

B. R. AGGARWAL, ADVOCATE, for the Appellant.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL, for the Respondents.

JUDGMENT

Dua, J.

DUA, J.—This is an appeal under clause 10 of the Letters Patent and is directed against the order of a learned Single Judge of this Court dismissing the appellant's writ petition with the observation that the State Government had acted in exercise of the powers vested in it under section 236 of the Punjab Municipal Act and, therefore, the petitioner's grievance was without merit.

According to the writ petition the petitioner-appellant along with 11 others was duly elected a member of the Municipal Committee, Nabha, on 20th January, 1961. On 4th March, 1961, a meeting of the elected members was held to elect the President and the Vice-President of the Committee

under Rule 47 of the Municipal Election Rules, 1952 (hereinafter called the Rules). At the meeting held for this purpose the appellant and one Shri Asa Singh were proposed for the office of the President. The voting was by ballot and every member was given a ballot paper on which the names of both the candidates were written, and the members were required to cast their votes by writing the word "Yes" against the name of the candidate of their choice. As a result of the election, the petitioner was duly declared elected as President of the Committee, he having secured 7 votes as against 5 secured by the rival candidate. On 18th June, 1961, the appellant's election as President of the Committee was duly gazetted. The State Government by means of an order dated 30th October, 1961, purporting to act under section 236 of the Punjab Municipal Act, annulled the proceedings of the Municipal Committee, Nabha, held on 4th March, 1961 so far as they related to the election of President and Vice-President, holding them to be "not in conformity with law". This order was attached to the writ petition and marked as Annexure 'A', from which it is apparent that a copy of the order was forwarded to the Deputy Commissioner, Patiala, with the note that the Municipal Committee, Nabha, should be advised to elect its President and Vice-President afresh at an early date. It was further noted that the proceedings relating to the previous election had been annulled as the method adopted for casting votes by writing "Yes" or "No" on the ballot paper was not in accordance with the provisions of Municipal Election Rules. It is this order which was impugned by the writ petition under Article 226 of the Constitution and the challenge to the order was based on the following grounds:—

(i) that the proceedings of the Committee at the meeting held on 4th March, 1961, were in conformity with the law and the relevant rules.

(ii) that according to the rules the election of the President is to be by ballot and at the impugned election also, voting was by ballot.

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(iii) that the method adopted for casting votes by writing the word "Yes" against the name of the candidate was in accordance with the rules and in any case it did not offend any provision either of the Municipal Act or of the Rules.

(iv) that the appellant's election had been duly approved by the Government and thereafter duly gazetted in the Government Gazette, and section 236 of the Municipal Act could not be invoked after the election had been gazetted.

(v) that the appellant had not been given any opportunity of showing cause against the proposed action, and

(vi) that the order is *mala fide* as the defeated candidate was a nominee of the ruling party in whose interest the impugned order had been passed.

In the written statement, there is no dispute about the broad facts. The allegations of *mala fides* have, however, been denied. The principal defence is based on the plea that the method adopted for casting votes by writing "Yes" or "No" on the ballot paper was against Rule 48 and it also offended the doctrine of Secrecy of Ballot. The method adopted in the impugned election, according to the reply, can only be adopted when there is one candidate for the office of President/Vice-President. It is further pleaded that the petitioner could submit a representation to the Government for the redress of his grievance, if any.

The learned Single Judge disposed of this petition in a very brief order and the grievance of the appellant is that the matter has not been fully dealt with.

On appeal, the learned counsel for the appellant has contended that section 237 of the Punjab Municipal Act (hereinafter called the Act) is not intended for setting aside the election of President and Vice-President held in accordance with

the rules. This section, it is urged, is intended, strictly speaking, for controlling or supervising the proceedings of the Committee in discharging its purely administrative or executive functions, and not for calling in question and scanning the proceedings for electing President or Vice-President after the election has been duly declared; it being a matter, for questioning which, statutory rules have been framed providing proper procedure and forum. The challenge to the election of President, according to the appellant, is to be dealt with in a *quasi-judicial* manner as exhaustively provided by statutory rules. In this connection, our attention has been drawn to Rule 2(i) according to which the word "election" extends to the election of President and Vice-President of a Committee. Reference is then made to Rule 52 according to which no election is to be called in question except by an election petition presented in accordance with the rules and to rule 53 which provides for an election petition against the return of a President or a Vice-President of a Committee. According to Rule 68, the State Government is authorised of its own motion to direct an enquiry to be held into the conduct of any election if there is reason to suspect commission of a corrupt practice or material irregularity, and, in such a contingency the case is to be dealt with, so far as may be, in the manner prescribed in the rules. Fresh election is to be ordered under Rule 69. These rules, according to the submission, by necessary implication, negative interference with the election in question under section 236.

The further contention raised on behalf of the appellant is that even Rule 48 does not unequivocally provide that if there are more candidates than one for the office of President then voting cannot be done by writing "Yes" or "No" on the ballot paper and that this method is necessarily fatal to the validity of the election with the result that the order of the State Government should be considered to be tainted with a serious legal infirmity which is patent on its face and which goes

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to the root of the matter rendering it liable to be quashed.

On behalf of the respondents, the learned Additional Advocate-General has tried to support the impugned order and the order of the learned Single Judge principally on the ground that the order of the Government, dated 30th October, 1961 is an administrative order and, therefore, immune from challenge in the proceedings under Article 226 of the Constitution. Support for this contention has been sought from a decision of the Supreme Court in *Radeshyam Khare and another* v. *The State of Madhya Pradesh and others* (1). Particular reliance has been placed on the first paragraph of head-note (b) which reads as under:—

> "The function which the State Government exercises under section 53-A (C.P. and Berar Municipalities Act 2 of 1922) is administrative in nature and hence its action under the section is not amenable to a writ of certiorari."

Two more grounds have been urged by the learned Additional Advocate-General in support of the impugned order. In the first instance it is contended that the method adopted for the election of President in the instant case offended the doctrine of Secrecy of ballot and secondly that Rule 48 by necessary implication contains a prohibition against the adoption of this method in cases where there are more candidates than one for the office of President or Vice-President. I would deal with these contentions in seriatim.

In so far as the argument that the function exercised by the State Government in the instant case is administrative and, therefore, immune from challenge on writ side is concerned, it is pertinent to point out that under sections 240 and 258 of the Act the State Government has in its wisdom framed statutory rules called the Municipal Election Rules, 1952. Section 240 which finds place in

(1) A.I.R. 1959 S.C. 107.

Chapter XII of the Act headed "Control" empowers the State Government *inter alia* to make rules consistent with the Act to carry out its purposes and then certain subjects are expressly specified but this specification is without prejudice to the general power conferred by this section. The specified subjects include among others, elections to the Municipal Committees and allied matters. Section 258, the last section of the Act, is in Chapter XIV headed "Municipal Election Enquiries" and it similarly empowers the State Government to make rules to carry out the purposes of this Chapter. Section 246 with which this Chapter opens defines the word "election" to mean any election held under the Act or the Rules. The other provisions of this Chapter provide for the appointment of Commissions to hold enquiries in respect of elections and their power and procedure and other incidental matters. Section 255 authorises the State Government before passing final orders on receipt of reports of Commissions to remand any case for further enquiry and also to refer any point arising in any case to a Civil Court for opinion.

Adverting to the rules, now Part II, thereof begins with Rule 47 which deals with the election of President or Vice-President of Municipal Committees. Rules 48 and 49 deal with the method of voting and of electing President, etc., in certain contingencies and Rule 50 with the manner in which casual vacancies are to be filled. Part III deals with election petitions, and, as noticed earlier, according to Rule 52 no election can be called in question except by an election petition presented in accordance with the rules. Rules 56 to 67 deal with the procedure of the trial of election petitions and the findings and the result thereof. Rule 67 empowers the Commissioner and the State Government to remand any case for further enquiry to the Election Commission whereas Rule 68 vests in the Punjab Government power *suo motu* to direct an enquiry into the conduct of an election. Rule 69 lays down that fresh election can be directed when as a result of an enquiry under the rules

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the election of a candidate has been declared void. It may be remembered that,—*vide* rule 2(i) "election" includes the election of a President.

At this stage, I may make a passing reference to some of the relevant provisions of Chapter II of the Act which is headed "Committees". Sections 11 to 19 fall under the heading "Constitution of Committees" and sections 20 to 24 fall under the caption "President and Vice-President". Section 20 enjoins every committee to elect one of its members to be President and the member so elected becomes President, if approved by the State Government. Section 21 prescribes the term of office of President and under section 22 the State Government is empowered to remove a President on grounds of abuse of power, etc. Section 24 provides for notifications of elections, for appointments and vacancies and for taking of oath.

Now, construing the rules along with the provisions of Chapters II and XIV of the Act in the background of the importance our system of jurisprudence has attached to the representative form of Government and also to the local bodies as units of self-government, I am most disinclined and reluctant to uphold the contention of the learned Additional Advocate-General that the impugned action by the State Government in annulling the election of the President in the instant case is such an administrative act as is immune from challenge under Article 226. The scope of this Article as its language suggests is broad and comprehensive enough to include challenge to administrative acts as well, provided of course the necessary pre-requisites for interference are made out. This Article is not confined to the five categories of writs mentioned therein and this Court can always in the interest of justice frame its orders and directions to suit the occasion and the contingencies of a given case. The observations from the judgment in *Radeshyam Khare's case* on which reliance has been placed by the respondent must, in my opinion, be construed in their own context and they could hardly have

been intended to cover the case like the one in hand and to exclude this Court's jurisdiction of supervision. In the reported case the Court was concerned with a question materially different from the one posed before us. No other authority has been cited nor any cogent argument urged in support of the exclusion of this Court's jurisdiction. The first contention is, therefore, devoid of merit and is repelled. The order setting aside the election of the President not being a purely administrative or executive order outside the writ jurisdiction the question arises if such an order is at all contemplated by the Legislature to fall within the purview of section 236.

This section which reads as under:—

"236 (1) The State Government and Deputy Commissioners, acting under the orders of the State Government, shall be bound to require that the proceedings of committees shall be inconfirmity with law and with the rules in force under any enactment for the time being applicable to Punjab generally or the areas over which the committee have authority.

(2) The State Government may exercise all powers necessary for the performance of this duty, and may among other things, by order in writing, annul or modify any proceeding which it may consider not to be in confirmity with law or with such rules as aforesaid, or for the reasons which would in its opinion justify an order by the Deputy Commissioner under section 232.

(3) The Deputy Commissioner may, within his jurisdiction for the same purpose, exercise such powers as may be conferred upon him by rule made in this behalf by the State Government,"

is undoubtedly couched in the words of very wide amplitude, but I do not find it possible to

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hold that the mere fact of general words having been used in a statutory provision precludes all enquiries into its object, purpose and effect. It is undeniable that for the purpose of construing a section of a statute it is right to look not only at the provision immediately under construction but also at other provisions which may throw light upon it and afford an indication that the general words employed were not intended to be applied without some limitations. It is, therefore, legitimate to seek aid from other material parts of the Act and the rules for ascertaining the true legislative meaning, scope and effect of section 236, and further to construe them in the background of the basic principles underlying the Constitution. The legislative design and intent as deduced from the entire statutory instrument should prevail over the bald literalness of a particular provision couched in general words, because it is only thus that the various statutory parts and provisions can be reconciled and harmonised.

Now in the instant case it is admitted that the election of the appellant as President was duly notified. His election could be the subject-matter of an election petition in accordance with the rules and non-compliance with the provisions of the Act or the Rules could be taken as a ground for founding the petition on. Even the State Government has been empowered *suo motu* to direct an enquiry if there is reason to suspect the commission of a material irregularity which includes non-compliance with the provisions of the Act or the Rules, but in that contingency also the matter has to be dealt with in the manner prescribed by the rules. It would be pertinent here to point out that the learned Additional Advocate-General has not been able to draw our attention to any provision of law which empowers the State Government to set aside the election of President, after notification, by its own administrative determination.

The question thus posed is: If the State Government is not empowered to set aside the election directly, is it competent to do so indirectly by having resort to section 236 under the mask

of setting aside the proceedings of the committee so far as they relate to the election of President ? After devoting my most anxious thought to the question posed, I am unable to persuade myself to ascribe to such competence. The anxiety shown by the law-giver in enacting Chapter XIV of the Act and in taking pains to frame detailed and comprehensive rules would be wholly futile if such a power is conceded to the State on the executive or administrative side and indeed as I construe the various statutory provisions such a power appears to be inconsistent with the legislative plan or scheme. To accede this power to the State may mark the beginning of the end of Rule of Law—a position not easy for this Court to countenance.

Shri Doabia, has said nothing convincing or cogent to induce me to hold to the contrary; his sole argument was confined to the emphasis laid on the generality of the language of section 236 which he described to be conclusive on the point. I find it difficult to agree, for, to go only by the general words of this section would lead to inconsistency and, to some extent, to repugnancy in the various statutory provisions and would also tend to make the right conferred on an elected President to some extent illusory—a result which, in my opinion, could not have been contemplated by the law-giver.

The contention that the power exercised is only to annul the proceedings of the Committee and this power is not affected by the other provisions of the Act and the rules ignores the substance and the real effect and purpose of the impugned order. This order is clearly intended to set aside the appellant's election as President and this, as already discussed, does not seem to be permissible under the power conferred by section 236.

This should be enough to dispose of the appeal and the writ petition, but as Shri Doabia has also tried to support the correctness of the action of the

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State Government on the merits I will briefly deal with that submission as well. In order to understand Shri Doabia's contention based on the language of Rule 48, it would be desirable at this stage to reproduce it :—

> "48. Voting for the office of President or Vice-President shall be by ballot, and if only one candidate for the office is proposed the members present shall be required to vote by writing 'Yes' or 'No' on the ballot paper, and if a majority of votes is not in the affirmative the election shall be postponed to the next meeting of the committee when a further ballot shall be taken in respect of such candidates as may then be proposed, and the chairman of the meeting shall not have a casting vote. Special ballot-papers shall be used for such voting, each bearing an official mark to be placed thereon by the Deputy Commissioner."

The argument that the method adopted in the case under discussion offends the doctrine of secrecy of ballot and should, therefore, be considered to be something abnoxious to Rule 48 has not impressed me. A plain reading of the rule clearly shows that this method is not tabooed and indeed when there is only one candidate for the office of President or Vice-President it is precisely this method which has been recommended as the sole and the only method to be adopted. But then the learned Additional Advocate-General has contended that in such cases secrecy of ballot is unecessary. Except for the bald assertion by the learned counsel no rational or reasonable ground has been shown as to why secrecy of ballot is less desirable when there is only one candidate and more desirable when there are more candidates than one. If an election is to be held and it is open to the members to refuse to elect the solitary candidate, then in such a contingency the secrecy of ballot would, in my opinion, be no less important or sacrosanct than when there is plurality

of candidates. This contention is thus equally unmeritorious and is repelled.

It was next contended that when votes are cast by writing "Yes" or "No" on the ballot paper then it ceases to be a ballot paper. In support of this argument the counsel had again to fall back on the argument just repelled, namely, that the essential ingredient of a ballot paper is that it is secret and that if the voter has to write "Yes" or "No" in his own handwriting then it offends the doctrine of Secrecy of ballot. The argument is wholly unimpressive and unacceptable. The language of the rule most clearly suggests that the ballot paper does not cease to be one merely because the members present are required to vote by writing "Yes" or "No" on it. An attempt was made to get support for this contention from Rule 39(3). But this rule merely lays down that a ballot paper contained in a ballot-box should be rejected if it bears any mark or writing by which the elector can be identified. I do not see how this provision can help the respondents in their contention that the writing "Yes" or "No" on a ballot paper in the case in hand should be considered to have been prohibited by Rule 48.

A suggestion was also thrown on behalf of the respondents that in rule 48 we must read an implied prohibition against the method of writing "Yes" or "No" on the ballot paper when there are more than one candidates for the office of President. Here again, Shri Doabia has not been able to refer us to any precedent or principle. The contention, however, appears to be based on the rule of implied exclusion. This rule no doubt connotes that when a statute directs the performance of certain things by a speical means or in a particular manner, ordinarily it implies that it shall not be done otherwise. Under this rule express mention of one matter may also, generally speaking, exclude by implication other matters not mentioned, and, a positive direction in a statute may similarly carry with it an implication against

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everything contrary to it. But at the same time it cannot be gainsaid that the rule that the mention of one thing in a statute implies the exclusion of another is neither conclusive nor of universal application and has indeed to be applied with extreme care and caution. Strictly speaking it is not a rule of law but only a subsidiary rule of construction, one of several rules which only serve as aids in discovering the legislative intent in case of ambiguity or uncertainty of statutory language. It is designed only to produce a rational interpretation and to promote the policy supposed to have dictated the statutory enactment. It may thus be properly attracted only when in the natural association of ideas what is expressed is so stated either by contrast to what is omitted or the contrast compels or induces the affirmative inference that what is omitted must have been designed by the author to have the contrary or opposite treatment. And then this rule may only be pressed into service consistently with other rules of interpretation which aid the Court in ascertaining true legislative meaning, for, no single cannon of interpretation can by itself serve fully to bring out or disclose with certainty and precision the legislative intent. Now, can it be said that Rule 48 contains an implied prohibition as suggested ? I think not.

Now Rule 48, as I read it, merely lays down that when only one candidate for the office is proposed then the members present must be required to vote by writing "Yes" or "No" on the ballot paper and if a majority of votes is not in the affirmative the election must be postponed to the next meeting of the Committee when a further ballot must be taken in respect of such candidates as may then be proposed. I do not see how this provision can on any rational ground necessarily imply the negative that when there are more than one candidates then this method must not be adopted. All that the rule says is that voting for the office of President shall be by ballot and this, in my opinion, does not by itself negative the method by means of which voting took place in

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the case in question. The marginal heading of this rule also seems to negative Shri Doabia's contention. I have, therefore, no hesitation in repelling it. On this conclusion also the order of the State Government must be struck down as contrary to law and liable to be quashed by this Court.

Article 226 of the Constitution, as is by now well settled, is very broadly worded and the power of this Court is not restricted to the writs specified in that Article or to the writs which the Courts in England can issue. This Court has full power to issue directions and orders or writs including writs in the nature of five categories mentioned therein and this can be done for the enforcement of any of the rights conferred by Part III of the Constitution as also for any other purpose, whether the impugned order is described to be an adminstrative or a *quasi-judicial* order the power of this Court to quash such an order where it vitally affects the right of the petitioner to the elected office, the election of which as also the setting aside of such election is regulated by the statutory rules framed under the Punjab Municipal Act.

For the reasons given above this appeal is allowed and setting aside the order of the learned Single Judge I quash the order of the State Government, dated 30th October, 1961, annulling the proceedings of the Municipal Committee, Nabha, dated 4th March, 1961, so far as it relates to the election of the petitioner as President. There would, however, be no order as to costs of this appeal.

D. FALSHAW, C. J.—I agree.

D. Falshaw, C. J.

B.R.T.

APPELLATE CRIMINAL

Before S. B. Capoor and A. N. Grover, JJ

MUNICIPAL CORPORATION OF DELHI,—*Appellant*

versus

SATPAL KAPOOR AND ANOTHER,—*Respondents*

Criminal Appeal No. 170-D of 1961

1962

March, 27th

Prevention of Food Adulteration Act (XXXVII of 1957)—Sections 7 and 16—Prevention of Food Adulteration