

another v. Sarwan Singh and others (4) and Single Bench judgments in Lalji Singh and others v. Gram Sabha, Lahli and others (5) and Gram Panchayat Sadhraur v. Baldev Singh and others (6).

(7) No other point arises for consideration.

(8) For the reasons recorded above I allow this appeal, set aside the judgments and decrees of the Courts below and direct that the plaint be returned to the plaintiffs for presenting the same before the competent authority constituted under the Act. In the circumstances of the case, I make no order as to costs.

S. S. Sandhwalia, C.J.—I agree.

S.C.K.

Before S. S. Kang & G. C. Mital, JJ.

RISHI DUTT GULATI and another,—Petitioners.

versus

THE STATE OF PUNJAB and others,—Respondents.

Civil Writ Petition No. 474 of 1983.

April 11, 1983.

Punjab Town Improvement Act (IV of 1922) (as amended by Punjab Act 18 of 1982)—Sections 3, 3-A, 4 and 103—New trust proposed to be created but no notification yet issued under section 3-A—Municipal Committee, however, asked to elect three members as trustees to the proposed trust but the Municipal Committee not so electing—Notification under section 3-A issued creating a new trust—Municipal Committee not given an opportunity to elect the trustees after the creation of the trust—Government appointing three trustees under section 4(4) for the alleged omission of the Committee to elect such trustees—Appointment of trustees by the Government—Whether invalid.

(4) 1981 P.L.J. 311.

(5) 1982 P.L.J. 140.

(6) 1983 P.L.J. 19.

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Held, that first a Trust has to be created under section 3 of the Punjab Town Improvement Act, 1922. Then the Trust is constituted under section 4 of the Act. When the State Government considers expedient that the Trust should cease to exist, it issues a notification in exercise of the powers conferred by section 103 of the Act declaring that the Trust shall be dissolved from such date as may be specified. The resultant effect of dissolution of the Trust is contained in sub-section (2) of section 103 of the Act. If for such a dissolved Trust, a new Trust is created, notification has to be published under section 3-A of the Act. Whether it is an originally created Trust or a newly created Trust, for both, the incidence of constitution of the Trust is under section 4 of the Act. On a reading of sections 3, 3-A and 4 of the Act, it is clear that unless a Trust or a new Trust is created, the question of electing or nominating members or nominating a Chairman would not arise. The nomination of a Chairman and members and the selection of three members by the Municipal Committee would arise only after the Trust or new Trust is created. Unless a notification under section 3 or 3-A of the Act is published by the State Government, the nomination of a Chairman and members by the State Government under section 4(1)(b) & (c) read with sub-section (2) would be wholly ineffective and of no avail. Similarly, before the creation of the Trust or a new Trust, any resolution passed by the Municipal Committee electing three of its members to be Trustees under section 4(1)(b) read with sub-section (3) of the Act, would be of no avail and will serve no useful purpose. There can be no nomination or election for a body which does not exist. Therefore, a Trust or a new Trust has to be created first and then it has to be constituted under section 4 of the Act. At any time before the publication of the notification under section 3-A of the Act creating a new Trust, the Municipal Committee can have no power to elect three members as Trustees. Hence, the appointment of three members of the Municipal Committee as Trustees published by the State Government on the date of the creation of a new Trust in exercise of its power under section 4(4) of the Act clearly denies an opportunity to the Municipal Committee to elect three of its members as Trustees as provided by section 4(3) of the Act and is illegal. (Para 6).

Held, that unless the Municipal Committee meets to elect the three members as Trustees and fails to elect all or some, only then the State Government can step in to exercise its powers to appoint under section 4(4) of the Act. (Para 9).

Pétition Under Articles 226/227 of the Constitution of India praying that this Hon'ble Court may be pleased to summon the records of the case and after a perusal of the same may be pleased to issue:—

- (a) a writ in the nature of Certiorari quashing the impugned notification Annexure P-4.
- (b) a writ in the nature of Mandamus directing the State Government and the President of the Municipal Committee, respondents No. 1 and 4 respectively, to convene a meeting of the

Municipal Committee for electing the representatives to the Improvement Trust, Batala.

- (c) *Any other writ, order or direction that this Hon'ble Court may deem fit under the circumstances of the case.*
- (d) *Service of advance notices of motion on the respondents may be ordered to be dispensed with.*
- (e) *Filing of certified copies of the Annexures P-1 to P-5 may also be ordered to be dispensed with.*
- (f) *That the cost of the petition may also be awarded to the petitioners.*

It is, therefore, further prayed that during the pendency of this writ petition the operation of the impugned notification Annexure P-4 may kindly be ordered to be stayed or any other ad interim relief, order or direction that this Hon'ble Court deem fit may be passed.

S. P. Jain, Advocate & Praveen Goyal, Advocate, for the Petitioners.

H. S. Sawhney, Advocate, for respondent 1.

T. S. Doabia, Advocate, for respondents 2 & 4.

H. S. Mattewal, Advocate, for respondent 3.

D. V. Sharma, Advocate, for respondents 5 to 7.

JUDGMENT

Gokal Chand, Mital, J.—

(1) By Notification No. 1020-USLG-II-82/1362, published on 18th January, 1983, the Governor of Punjab created a new Improvement Trust for the local area of Municipal Committee, Batala to be called the Batala Improvement Trust (hereinafter referred to as the Trust) with immediate effect in exercise of the powers vested under section 3-A of the Punjab Town Improvement Act, 1922 (for short the Act). Section 3-A of the Act was inserted by the Punjab Town Improvement (Amendment) Act, 1982 (Punjab Act No. 18 of 1982), which was published on 4th October, 1982. Sub-sections (1), (2), (3) and (4) of section 4 of the Act were substituted by new sub-sections by the same Amendment Act.

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Simultaneously, the Governor of Punjab issued Notification No. 1020-USLG-II-82/1365, which was also published on 18th January, 1983, in exercise of the powers vested under clauses (a) and (b) of sub-section (1), read with sub-section (4) of section 4 of the Act and appointed three official members and three members of the Municipal Committee, Batala, as Trustees of the Trust. In this case, there is no dispute with regard to the appointment of the official members. The dispute is with regard to the appointment of three members of the Municipal Committee, Batala, as Trustees of the Trust. Those persons have been impleaded as respondents 5 to 7.

(2) On 25th January, 1983, two members of the Municipal Committee, Batala, filed this writ petition under Articles 226 and 227 of the Constitution of India to challenge the appointment of respondents 5 to 7 as Trustees of the Trust.

(3) Shri Satya Pal Jain, argued that under section 4(1)(b) read with section 4(3) of the Act, three members of the Municipal Committee, Batala, had to be elected by the Municipal Committee as Trustees of the Trust and the State Government had no jurisdiction to appoint them as Trustees in exercise of the powers under section 4(4) of the Act unless an opportunity is provided to the Municipal Committee to elect the Trustees. If inspite of opportunity, the members fail to elect, only then the State Government can nominate under section 4(4). In highlighting the argument, it was urged that the Trust was created on 18th January, 1983 in accordance with the provisions of section 3 read with section 3-A of the Act. From that date onwards, the matter of the constitution of the Trust under section 4 of the Act had to start, and hence opportunity to elect had to be given on or after 18th January, 1983, which was not done in this case.

(4) Under section 4 of the Act, the Trust is to consist of a Chairman and nine others Trustees out of whom there are to be three officers serving in three different departments of the Government as prescribed in section 4(1)(a); three members of the Municipal Committee or the Corporation, as the case may be (the present case is of a Municipal Committee) under section 4(1)(b); and three other persons under section 4(1)(c) of the Act. Section 4(2) of the Act provides that the Chairman and the Trustees referred

to in clauses (a) and (c) of sub-section (1), shall be appointed by the State Government by notification. Section 4(3) provides that the members of the Municipal Committee referred to in clause (b) of sub-section (1) shall be elected by the Municipal Committee. Section 4(4) provides that if the Municipal Committee does not by such date as may be fixed by the State Government, elect a person to be Trustee, the State Government shall, by notification, appoint a member of the Municipal Committee to be a Trustee and any person so appointed shall be deemed to be a Trustee as if he had been duly elected by the Municipal Committee.

The relevant provisions of the Act are as follows:—

“3. The duty of carrying out the provisions of this Act in any local area shall, subject to the conditions and limitations hereinafter contained, be vested in a board to be called ‘The (name of town) Improvement Trust’ hereinafter referred to as ‘The Trust’ and every such board shall be a body corporate and have perpetual succession and common seal, and shall by the said name sue and be sued.

3-A. *New trusts.*—Notwithstanding anything contained in this Act, if and when a new trust is created for a local area where a trust was dissolved under section 103 and the functions referred to in clause (c) of subsection (2) of that section have not been duly discharged.

- (a) all properties, funds and dues vested in or realisable by the State Government under section 103 shall stand transferred to, vested in and realisable by the new trust;
- (b) all liabilities enforceable against the State Government under section 103 or incurred by it under this Act shall be enforceable against the new trust; and
- (c) the new trust shall deal with any scheme sanctioned under this Act, which has not been fully executed by the officer appointed by the State Government under section 103, in accordance with the provisions of this Act as fully as if it had been sanctioned at the instance of the new trust.

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4. *Amendment of section 4 of Punjab Act 4 of 1922.*—In the principal Act, in section 4, for sub-sections (1), (2), (3) and (4), the following sub-sections shall be substituted, namely:—

(1) The Trust shall consist of a Chairman and nine other Trustees, namely :—

(a) three officers serving under the State Government, one of whom shall be a Town Planner, the other an officer not below the rank of an Extra Assistant Commissioner and the third an Engineer not below the rank of an Executive Engineer taken from the Buildings and Roads Branch or the Public Health Branch of the Department of Public Works of the State Government;

(b) three members of the Municipal Committee or the Corporation, as the case may be, and,

(c) three other persons.

(2) The Chairman and the Trustees referred to in clauses (a) and (c) of sub-section (1) shall be appointed by the State Government by notification:

Provided that if none of the Trustees, is a member of the Scheduled Castes, appointment of Trustees referred to in the aforesaid clause (c) shall be so made that one of these is a member of such castes.

(3) The members of the Municipal Committee or the Corporation referred to in clause (b) of sub-section (1) shall be elected by the Municipal Committee or the Corporation, as the case may be.

(4) If the Municipal Committee or the Corporation does not by such date as may be fixed by the State Government, elect a person to be Trustee, the State Government shall, by notification, appoint a member of the Municipal Committee or the Corporation, as the case

may be, to be a Trustee, and any person so appointed shall be deemed to be a Trustee as if he had been duly elected by the Municipal Committee or the Corporation, as the case may be."

(5) The reply given on behalf of the State Government is that when a Trust is constituted, then it has to have a complete body and with this end in view, the State Government sent several requests to the Municipal Committee to pass resolution in terms of section 4(3) of the Act and when no steps were taken by the Municipal Committee, the State Government acquired powers of nominating three members of the Municipal Committee as Trustees of the Trust. It was further stated that enough opportunity was given to the Municipal Committee right from September, 1982 till 12th January, 1983 to elect three members and when the Municipal Committee failed to elect the members within the time prescribed by the last opportunity, dated 12th January, 1983, the State Government took action under section 4(4) of the Act in nominating three members as Trustees from amongst the members of the Municipal Committee.

(6) After hearing the learned counsel for the parties, we are of the opinion that first a Trust has to be created under section 3 of the Act. Then the Trust is constituted under section 4 of the Act. When the State Government considers expedient that the Trust should cease to exist, it issues a notification in exercise of the powers conferred by section 103 of the Act declaring that the Trust shall be dissolved from such date as may be specified. The resultant effect of dissolution of the Trust is contained in sub-section (2) of section 103 of the Act. If for such a dissolved Trust, a new Trust is created, notification has to be published under section 3-A of the Act. Whether it is an originally created Trust or a newly created Trust, for both, the incidence of constitution of the Trust is under section 4 of the Act. On a reading of sections 3, 3-A and 4 of the Act, we are of the opinion that unless a Trust or a new Trust is created the question of electing or nominating members or nominating a Chairman would not arise. The nomination of Chairman and members and the selection of three members by the Municipal Committee would arise only after the Trust or the new Trust is created. Unless a notification under section 3 or 3-A of the Act is published by the State Government, the nomination of Chairman

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and members by the State Government under section 4(1)(b) and (c) read with sub-section (2) would be wholly ineffective and of no avail. Similarly, before the creation of the Trust or a new Trust, any resolution passed by the Municipal Committee electing three of its members to be Trustees under section 4(1)(b) read with sub-section (3) of the Act, would be of no avail and will serve no useful purpose. There can be no nomination or election for a body which does not exist. Therefore, on the interpretation of the relevant provisions, we are of the considered view that a Trust or a new Trust has to be created first and then it has to be constituted under section 4 of the Act. Accordingly, since new Trust itself was created in this case on 18th January, 1983, the Municipal Committee had no powers to elect three members as Trustees at any time before the publication of notification under section 3-A of the Act. Hence, the nomination of three members of the Municipal Committee as Trustees published by the State Government on 18th January, 1983, in exercise of its powers under section 4(4) of the Act has clearly denied an opportunity to the Municipal Committee to elect three of its members as Trustees as provided by section 4(3) of the Act. Notification No. 1020-USLG-II-82/1365, by which respondents Nos. 5 to 7, who are members of the Municipal Committee, Batala, were nominated as Trustees, is clearly illegal and cannot be allowed to stand. The rest of the notification nominating three official members as Trustees under section 4(1)(a) is valid and since this part is severable, this portion of the notification would stay.

(7) Coming to the point raised on behalf of the State Government that when the Trust is created, it is to have a complete body and with this end in view, several requests were made from September, 1982 till 13th January, 1983 to elect three members and when the Municipal Committee failed to elect, the Government made the nominations. We do not find any merit in this contention on the facts of this case. Section 4 provides that the Trust shall consist of the Chairman and nine other Trustees. The State Government has the power to nominate a Chairman and three other members covered by section 4(1)(c) of the Act by virtue of powers given under section 4(2). Another set of three members covered by section 4(1)(a) are official members and the last set of three members are the representatives from the Municipal Committee who are normally to be elected by the concerned Municipal Committee and if they fail to do so inspite of granting an opportunity, only then the

State Government acquire powers to nominate. So far what the State Government has done is that it has nominated three official members by their designations and has also nominated three members from the Municipal Committee. It is the admitted case at all hands that till today neither the Chairman has been nominated by the State Government, nor the three other members covered by section 4(1)(c) of the Act. By this time, nearly three months and three weeks have passed since the creation of the Trust and the nomination of the official and Municipal Committee members were notified. Therefore, the keenness of the Government to constitute complete body of the Trust has not been proved on the facts of the present case. Hence even the haste in nominating three members of the Municipal Committee did not fulfil the wish of the State Government to have a complete body of the Trust.

(8) Coming to the last argument, namely, that unless the Municipal Committee meets to elect three members as Trustees and fails to elect all or some, only then the State Government acquires the powers to nominate under section 4(4) of the Act and not otherwise, the counsel for the petitioners has placed reliance on two earlier decisions of this Court in *Shri Ramishar Lal v. The Municipal Committee, Kapurthala and others* (1) and *Parshotam Lal, etc, v. The State of Punjab, etc.*, (2). In both the aforesaid cases, the point arose with regard to the co-option of members for the Municipal Committee. In case the elected members fail to co-opt the members, the State Government was empowered to co-opt by nomination. In *Ramishar Lal's case* (supra), interpreting the provisions, it was held as follows :—

“However, the intention of the Legislature is also very clear that the Government has been given the right to make the nominations only when a committee has failed to perform its duty in making the co-option and not otherwise. This power of nomination by the Government, however, cannot be allowed to be used for the purpose of depriving the elected members of a committee of their valuable democratic right to make the co-option of the backward sections of the society.”

(1) 1977 P.L.R. 77 (DB).

(2) I.L.R. (1975) II Punjab and Haryana, 264.

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(9) In *Parshotam Lal's case* (supra), it was held as under:—

“The expression ‘fail to co-opt’ means that a body which is entrusted with this task consciously and knowingly omits to co-opt a member. When the Convener presiding over the meeting does not afford to the newly elected members any opportunity to make the co-option, it cannot be said that such members fail to co-opt a member within the meaning of sub-rule (11) of rule 3 of the Rules.

.....
.....

In short, if these Rules are interpreted in the manner in which the Government has interpreted them in the instant case, then the newly elected members could be deprived of an important right at the whim and fancy of the Convener. The entire scheme of the Act shows that the Municipal Committees are formed by elected members. The amendment introduced in the year 1972 has for the first time made a provision for the representation of some of the backward classes, but there again the element of election has not been dispensed with. The newly elected members are allowed to make co-options. The State Government steps in only when they fail to perform their duty. When the elected members are not given any chance to make the co-option because of a faulty decision given by the Convener, the State Government should not be allowed to step in and to make a nomination. In that event, the State Government should again inform the newly elected members of their right to make a co-option and proceed to nominate a member only when such members fail to perform their duty.”

According to the view taken in the aforesaid two decisions, we are of the opinion that unless the Municipal Committee meets to elect the three members as Trustees and fails to elect all or some, only then the State Government can step in to exercise its powers to nominate under section 4(4) of the Act.

(10) This brings us to the consideration of the stand of the State Government that right from 29th September, 1982, till within three

days of 12th January, 1983, the Municipal Committee was requested time and again to elect three members as Trustees and when they failed to do so, only then nomination was made by the State. The President of the Municipal Committee admitted the receipt of communications from the State Government from time to time in the aforesaid period and pleaded in his separate written statement that the State Government's communications were formally discussed with the members of the Municipal Committee and all were of the view that the right to send the nominees would accrue only after the Trust is created as throughout the aforesaid period, no Trust was in existence and as such the necessity to elect persons was not felt. On the other hand, the petitioners have highlighted that when they came to know that the State Government was thinking of creating the Trust, 13 members of the Municipal Committee including the petitioners, applied to the President of the Committee,—vide move, dated 12th November, 1982 to convene a meeting of the Municipal Committee well in time so as to elect its representatives for the Trust. A copy of the application has been attached as Annexure 'P-1'. On that move, the President of the Municipal Committee called a meeting for 20th January, 1983 at 3.00 P.M. One of the notices issued for the meeting has been attached as Annexure 'P-2'. The President of the Municipal Committee issued agenda on 18th January, 1983 for the meeting fixed for 20th January, 1983. A copy of the same is attached as Annexure 'P-3'. These facts were admitted by the President of the Municipal Committee in his separate written statement. Before the members of the Municipal Committee could meet on 20th January, 1983, the Executive Officer of the Municipal Committee circulated on 20th January, 1983 a communication recorded in a register intimating the members that the Punjab Government has already made nominations of the three members of the Municipal Committee as Trustees and, therefore, the meeting fixed for 20th January, 1983 at 3.00 P.M. has been cancelled. Hence the meeting was not held on that date. While the State Government had been writing to the Municipal Committee to elect three members for the Trust from time to time, the 13 members (who constitute the majority of the members, the total strength being 25) moved for convening the meeting in the month of November, 1982, and the President of the Municipal Committee fixed the meeting for 20th January, 1983. The President fixed a long date probably because he was in touch with the State Government about the approximate time by which date the Trust would

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have been created. The written statement filed by the President shows that he and the other members of the Municipal Committee were under the impression that till the Trust is created, no need for holding the meeting had arisen and since the Government was writing from time to time to elect the members without creating the Trust, no action was taken by the President for accelerating the meeting. However, the President of the Municipal Committee has failed to state or furnish any document to show that on receipt of the communications from the State Government during December, 1982 and January, 1983, he informed the State Government that the meeting has already been fixed for 20th January, 1983, and, therefore, they should wait for the result of the meeting. We have no doubt that if the President has done so, the Government would not have nominated the members of the Municipal Committee on 18th January, 1983. Therefore, the facts of the present case clearly go to show that majority of the members had started the process of electing three members for the Trust in November, 1982, that is, well in advance and the President of the Municipal Committee fixed 20th January, 1983 as the date of the meeting and in case the State Government had not nominated the members on 18th January, 1983, the election would have been held on 20th January, 1983 and without loss of time since the creation of the Trust the Municipal Committee would have elected three members as Trustees. On facts also, it is a case where the Municipal Committee was in the process of electing three members and because of the illegal notification issued by the State Government under section 4(4) of the Act, they were deprived of their right under section 4(3) to elect three members as Trustees. Therefore, even if sections 3, 3-A and 4 of the Act are interpreted in the way the counsel for the State wished to interpret, yet on the facts of the present case there was no fault on the part of the Municipal Committee to elect the three Trustees.

(11) For the reasons recorded above, this writ petition is allowed with costs payable by respondent No. 1, counsel fee being Rs. 300 and notification No. 1020-USLG-II-82/1365, dated 18th January, 1983. is hereby quashed to the extent by which the State Government nominated respondents 5 to 7 as Trustees in exercise of its powers under section 4(4) of the Act. However, it is made clear that the nomination of the official members is valid and would remain in force. Since the meeting of the Municipal Committee had already been

fixed for 20th January, 1983 and the State Government is desirous of constituting the Trust without loss of time, we order that the meeting of the members of the Municipal Committee, Batala, should take place on 4th May, 1983 at 11.00 A.M. in the office of the Municipal Committee where the meetings are usually held and the agenda for the meeting would be to elect three members of the Municipal Committee for the Trust under section 4(3) of the Act. The President of the Municipal Committee is represented by a counsel and he is directed through his counsel, to issue agenda and serve notices to all the members of the Municipal Committee for the aforesaid meeting. Out of the 25 members, only six are parties to this writ petition, otherwise the formality of issuing notices to the members would also have been dispensed with. It will be the sole duty and responsibility of the President, Municipal Committee, to see that the notices are served on all the members of the Municipal Committee.

N. K. S.

Before S. S. Sandhawalia, C.J. & S. S. Kang, J.

LAL CHAND and another—*Petitioners.*

versus

STATE OF HARYANA,—*Respondent.*

Criminal Miscellaneous No. 3837-M of 1981.

April 20, 1983.

Code of Criminal Procedure (II of 1974)—Sections 193, 227 and 228—One of the persons accused of an offence not sent up by the Police for trial—Magistrate committing the other accused for trial by the Court of Session—Sessions Judge—Whether has the power to summon the person left out by the Police and direct his trial without itself recording any evidence—Summoning of an additional accused by the Court of Session—Whether barred by section 193 of the Code.

Held, that a Magistrate trying a warrant case as also a Court of Session having once validly taken cognizance of the offence on the basis of a police report (when considering the materials before it for framing a charge), is not only entitled but indeed duty bound to summon a person as an accused to stand trial before it, if it is fully satisfied of the existence