APPELLATE CIVIL

Before Gurdev Singh, J.

MUNICIPAL COMMITTEE, KALKA,—*Appellant*

versus

DR. DES RAJ AND OTHERS,—*Respondents*

Regular Second Appeal No. 1292 of 1963.

February 10, 1967

Punjab Municipal Act (III of 1911)—Ss. 33 and 50—Payment made by President of Municipal Committee negligently and by by-passing the rule and legal provisions—Civil suit for recovery of the same—Whether competent—Limitation Act (IX of 1908)—S. 10 and Schedule I—Articles 36, 48, 49 and 90—Suit against President of Municipal Committee for misfeasance or non-feasance—Which article is applicable—President of Municipal Committee—Whether an agent or trustee—Code of Civil Procedure (Act V of 1908)—S. 100—Concurrent finding as to negligence supported by evidence—Whether can be re-opened in second appeal.

Held, that section 50 of the Punjab Municipal Act does not bar a civil suit against the President of the Municipal Committee for the recovery of the amount given by him negligently and by by-passing the rule and the legal provisions. The Municipal Committee, in such a case, cannot be said to be confined to the course indicated in this section which merely provides a speedy remedy for recovering loss of funds of the Municipal Committee in certain circumstances. It in no way limits the course of action open to the Municipal Committee nor does it bar the remedy by way of a civil suit against the person guilty of causing loss, wastage or mis-application of the money of the Municipal Committee for the recovery of that money.

Held, that there is no provision in the Punjab Municipal Act, or any other law, which goes to show that the President of the Municipal Committee is an agent of the committee in the mater of making payments nor can he be said to be a trustee in respect of the funds of the Committee. Section 10 of the Limitation Act, 1908, has no application to a suit by the Municipal Committee against its President for the recovery of the amount spent illegally or negligently. Such a suit will be governed by Article 36 of the First Schedule to the Indian Limitation Act, 1908 on the basis of misfeasance or non-feasance.

Held, that the concurrent finding of the trial Court and the first appellate Court, that a person has not only acted negligently but has also deliberately ignored

and by-passed the relevant rule and the legal provisions, supported by evidence cannot be re-opened in second appeal.

Regular Second Appeal from the decree of the Court of Shri Ishwar Das Pawar, Additional District Judge, Ambala, dated the 11th day of April, 1963, modifying that of the Sub-Judge 1st Class, Ambala at Kharar, dated the 4th May, 1961 (granting the plaintiff a decree for the recovery of Rs. 3,000 against the defendants and further ordering that defendants Nos. 2 to 5 would be liable to pay the costs of the suit to the plaintiff and defendent No. 1 was not burdened with costs) to the extent of affirming the decree of the trial Court so far as Dr. Des Raj was concerned, and dismissing the suit of the plaintiff against Kanti Kumar and making no order as to costs, and further ordering that Dr. Des Raj would pay the costs of the respondent.

H. L. Sibal and G. P. Jain, Advocates, for the Appellant.

B. R. Aggarwal, Advocate, for the Respondents.

JUDGMENT

Gurdev Singh, J.—This order will dispose of two Regular Second Appeals Nos. 1292 and 1324 of 1963, which are directed against the judgment and decree of the Additional District Judge, Ambala, dated 11th April, 1963.

The facts giving rise to these appeals, in brief, are as follows:—

In the year 1956, the Government of India introduced a multi-purposes scheme to promote the cause of scientific and technical education. One of the institutions selected for this purpose was the Municipal Board, High School, Kalka, which was being run by Municipal Committee, Kalka (appellant in Regular Second Appeal No. 1292 of 1963). A sum of Rs. 50,000 was sanctioned for teaching Science and constructing buildings, etc., and this amount was ordered to be paid to the Municipal Committee through the Punjab Government in the year 1956. In this connection the Municipal Committee, Kalka, passed the resolution, Exhibit D. 3, dated 4th March, 1956, stating *inter alia* that the Head Master should proceed with the purchase of the necessary furniture and scientific instruments and material under the supervision of the Municipal Committee. With

regard to the amount of Rs. 50,000 that had been sanctioned for the project by the Government of India, the resolution stated:—

"It is agreed that Rs. 50,000 be kept apart and this be spent in accordance with the instructions of the Education Department."

The funds sanctioned by the Government of India were received by the Municipal Committee, Kalka, through the Punjab Government, and an account in that connection was opened with the Punjab National Bank, Kalka, in the name of the Municipal Committee on 16th July, 1956, by Dr. Des Raj (appellant in R.S.A. 1324 of 1963), who was then its President. That very day a bearer cheque (copy Exhibit P.W. 5/2), for Rs. 3,000 was issued by the said Dr. Des Raj in favour of Shri O. P. Goyal, Manager, Modern Furnishers. As under the rules it could not be cashed without the signatures of the Vice-President or another member, it was signed by Kanti Kumar, defendant No. 2 (respondent in R.S.A. 1292 of 1963). The very next day, i.e., 17th July, 1956, the term of Dr. Des Raj as President of the Municipal Committee expired, and on the following day (18th July, 1956) this cheque was got cashed.

No furniture was ever supplied by the Modern Furnishers to whom this cheque of Rs. 3,000 had been issued as advance. It subsequently came to light that no such firm existed and the Municipal Committee had been defrauded. Accordingly, on 15th July, 1959, the Municipal Committee instituted the suit out of which this appeal has arisen for recovery of Rs. 3,000 not only from the said Des Raj and Kanti Kumar defendants 1 and 2, respectively, but also from Dharam Pal Sehgal, O. P. Goyal, defendants 3 and 4, alleged partners of Messrs Modern Furnishers (defendant No. 5). It was pleaded that a loss to the extent of Rs. 3,000 had been caused to the plaintiff-Municipal Committee by commission of fraud which came to light subsequently after the cheque had been cashed and the term of Dr. Des Raj had expired. Besides asserting that Dr. Des Raj had abused his position as President of the Municipal Committee, giving the particulars of the fraud, it was stated in para 10 of the plaint that no order for the supply of furniture could be placed without receiving the list of the necessary furniture from the Director of Public Instruction, Punjab, that there was no resolution of the Municipal Committee sanctioning the purchase, that the President could not purchase anything exceeding Rs. 100 in value without the resolution of the Municipal Committee, that the Municipal Rules with regard to the purchase

of goods were not complied with, that no tenders were invited nor 10 per cent security obtained from the firm concerned, that no agreement was executed by the Modern Furnishers nor could any advance be paid to it and that no such firm as Modern Furnishers existed. Despite best efforts the firm Modern Furnishers (defendant No. 5) was not traceable and defendants 3 and 4, its alleged partners, failed to appear at the trial despite service. The suit was contested by Dr. Des Raj and Kanti Kumar, who besides objecting that the suit has not been filed by duly authorised person and was barred under section 50 of the Punjab Municipal Act, denied the allegation of fraud and their responsibility for the loss of Rs. 3,000. The trial proceeded on the following issues:—

(1) Is the resolution of the Municipal Committee authorising Sardari Lal to file this suit illegal as alleged in para No. 1 of the written statement ?

(2) Is section 50 of the Punjab Municipal Act a bar to the present suit?

(3) Did the defendant No. 1 cheat the plaintiff as per allegations in paras Nos. 3 to 10 of the plaint and caused loss of Rs. 3.000 to the plaintiff by the practice of fraud as alleged?

(4) Were defendants Nos. 2 to 4 parties to the said fraud alleged to have been committed by defendant No. 1?

(5) Is defendant No. 5 liable to the plaintiff for any amount ? If so, the extent thereof ?

(6) Is the suit within time ?

(7) Relief ?

The learned trial Judge, Shri H. S Ahluwalia, overruling the legal objections, found that though Dr. Des Raj, was not guilty of fraud, he had occasioned loss of Rs. 3,000 to the plaintiff-Municipal Committee because of his gross negligence and carelessness in paying this amount of Rs. 3,000 to the Modern Furnishers in disregard of the proper procedure and without due compliance with the relevant rules. He accordingly, awarded a decree for Rs. 3,000 against all the defendants and costs of the suit against defendants 2 to 5.

Against this decree, Dr. Des Raj and Kanti Kumar, alone preferred a joint appeal. The learned Additional District Judge, before whom it came up for hearing, affirmed the finding of the trial Court regarding the liability of Dr. Des Raj, for the loss of Rs. 3,000 to the Municipal Committee, but held that Kanti Kumar had acted *bona fide* in counter-signing the cheque without being in league with Dr. Des Raj. Accordingly, he accepted the appeal so far as Kanti Kumar was concerned, but upheld the decree against the defendants. including Dr. Des Raj. It is against this appellate decree, dated 11th April, 1963, that Dr. Des Raj has preferred Regular Second Appeal No. 1324 of 1963, and the Municipal Committee challenges the dismissal of the suit against Kanti Kumar by way of Regular Second Appeal No. 1292 of 1963.

In the latter appeal, learned counsel for the Municipal Committee has frankly conceded that except for the fact that Kanti Kumar had countersigned the cheque for Rs. 3,000 that had been issued by Dr. Des Raj, in favour of Modern Furnishers, there is nothing to indicate that he had conspired with Dr. Des Raj to defraud the Municipal Committee or was even aware of the circumstances in which the cheque was issued. It is admitted that the cheque issued by the President of the Municipal Committee could not be cashed unless it was signed by another member of the Committee. In these circumstances, the finding of the learned Additional District Judge, that Kanti Kumar, acted *bona fide* in counter-signing the cheque appears to be correct and must be upheld. Accordingly, relief against him has been rightly refused by the Courts below.

In assailing the decree against Dr. Des Raj, his learned counsel, Shri Babu Ram Aggarwal, has contended:—

(1) that the Courts below having found that Dr. Des Raj had not committed the fraud on which alone the plaintiff's suit was based, were not entitled to set up a new case for the plaintiff—and award a decree on the ground of negligence or non-compliance with the rules especially when no such issue was raised at the trial,

(2) that the evidence on the record does not justify the finding that Dr. Des Raj had deliberately acted in disregard of the relevant rules or was negligent; and

(3) that the claim for compensation on the basis of negligence, non-compliance of the rules and misconduct was barred by time on the date the suit was instituted.

In dealing with the first contention, the learned counsel has referred to some of the passages in the judgments of the Courts below while dealing with issue No. 3. The relevant observations of the trial Court are as follows:—

"In my opinion, the circumstances do not show that the first defendant practised any fraud in the present case. No doubt, there has been some departure from the various provisions of law and the rules in opening the account, entering into the transactions and issuing the cheque, but this does not establish fraud because it cannot be said that the whole proceedings in the matter were bogus."

After dealing with the evidence bearing on the point, the learned trial Judge proceeded on to say:—

"All this shows that the first defendant may have been grossly negligent and careless in not proceeding in the proper manner as required by rules, but he had no dishonest intention ..... That there is something black in the bottom about the firm is certain because even up to now no goods have been supplied nor has any suit been brought for the specific performance of the contract and it has not been possible to locate the firm. But this much is certain that at that time there was some firm in existence at Jullundur and got its goods prepared at Kartarpur, and it cannot be said that the cheque was given to a ghost firm though it might be said that the first defendant had been negligent in not making sure about the soundness of the firm ....."

In the concluding portion of this judgment, the learned Judge summed up his findings in these words:—

"So far as defendant No. 1 is concerned, I have already observed that he committed various irregularities while withdrawing the money from the treasury. Again, he did not care to make sure about the soundness or otherwise of the firm

to which the order was being placed. Lastly, no proper resolution as required by section 46 to give the said order had been passed in this case and no contract in writing for the supply of the furniture was executed as required by section 47. The payment of the advance has, therefore, been made in pursuance of an agreement which is not at all binding upon the Committee under sub-section (3). The cheque was drawn by defendant No. 1. The Committee, in my opinion, is certainly entitled to recover the amount from all the defendants and defendant No. 1 (even though he has acted honestly) cannot escape liability because he has in his over-enthusiasm ignored the various provisions of the law applicable to the giving of the advance."

On perusing the evidence, the learned Additional District Judge endorsed the finding of the trial Court that the defendant Des Raj had not committed fraud, but was guilty of various acts of omission and commission in issuing the cheque of Rs. 3,000 in favour of Modern Furnishers. After referring to the various rules governing the matter and the provisions of section 54 of the Punjab Municipal Act, the learned Additional District Judge recorded his conclusions in paragraph 9 of his judgment in these words:—

"There is not enough evidence on the record to prove fraud on the part of the applicant but there is a strong suspicion against him because he had been guilty of culpable negligence in dealing with the public money. Anyhow the negligence and misconduct on the part of the appellant in dealing with the amount is quite evident. Under section 50 of the Municipal Act, every person is liable for the loss, waste, or misapplication of any money or other property belonging to a Committee, if such loss, waste or misappropriation is found to be a direct consequence of his neglect or misconduct in performance of his duties while a member of the Committee. The learned counsel for the appellants contended that as fraud alleged by the respondent-Committee had not been established, his clients cannot be held liable on any other ground, e.g., negligence or misconduct. I am unable to accept this contention. Fraud and culpable negligence belong to the same specie. The appellant is lucky enough to be exonerated of the allegation of fraud, but he cannot escape his liability for the consequence of his gross negligence and misconduct in the matter of

public funds. As found by the trial Court, the appellant has tried to lead false evidence to prove the existence of the defendant-firm. Thus, the conduct of the appellant has not been above board even during the trial of the case."

Relying upon section 50 of the Punjab Municipal Act, 1911, to which the learned Additional District Judge has referred in the passage of his judgment reproduced above, Shri Babu Ram Aggarwal argued that in view of this provision a civil suit for recovery of the amount in dispute was not competent. According to his submission, the only course open to the Municipal Committee to recover the amount was that indicated in this section, and that too if a report had been submitted by the Examiner of the Local Funds or other auditing authorities empowered by the State Government in this behalf that as a direct consequence of neglect or misconduct in discharge of the duties of Dr. Des Raj as President of the Municipal Committee the amount had been lost, wasted or misapplied. This contention is clearly untenable. Section 50 of the Punjab Municipal Act merely provides a speedy remedy for recovering loss of funds of the Municipal Committee in certain circumstances. It in no way limits the course of action open to the Municipal Committee or bars the ordinary remedy by way of a civil suit against the person guilty of causing loss, wastage or misapplication of money to the Municipal Committee.

There is concurrent finding of both the Courts below that Dr. Des Raj has not committed fraud, but in issuing the cheque for Rs. 3,000 in favour of the Modern Furnishers he had not only been negligent but had also deliberately ignored and by passed the relevant rule and legal provisions. These findings are amply supported by evidence and cannot be reopened in second appeal. Even otherwise, no error in the same has been brought to my notice with reference to the relevant evidence. Thus, the position as it emerges today is that Dr. Des Raj has been held liable for payment of Rs. 3,000 to the Municipal Committee because of causing loss to it by his negligence, failure to comply with certain byelaws and rules governing such payments and placing orders for the supply of furniture, etc. Shri Babu Ram has argued that in awarding a decree on these findings the Courts below had made out a new case, which was never pleaded by the plaintiff-Municipal Committee. It is true that the averment made in the plaint was that Dr. Des Raj, defendant, had practised fraud, thereby causing loss to the Municipal Committee. The facts

on which this allegation is based are found in paragraph 10 of the plaint. Most of those facts have been held to be proved by both the Courts below. They have, however come to the conclusion that those facts do not go to substantiate the plea of fraud but go to establish that Dr. Des Raj was negligent and he had deliberately failed to comply with various rules and procedure in issuing the cheque for Rs. 3,000 to the Modern Furnishers. In holding that he had misconducted himself and had deliberately failed to comply with the rules, both the learned Additional District Judge and the Trial Judge have based their conclusions on facts stated in paragraph 10 of the plaint. They have not adverted to any new fact nor did the plaintiff-Municipal Committee introduce facts which were not found in the plaint itself. It is thus obvious that the case which has been held to be proved against Dr. Des Raj is not a new one. The only difference between the allegations in the plaint and the conclusions arrived at by the Courts below is about the inference to which the allegations contained in paragraph 10 of the plaint lead.

This brings me to the consideration of the question of limitation. In the suit, as framed, relief was sought on the basis of fraud. Admittedly, the suit was instituted within three years from the date on which the cheque was issued. Accordingly, the relief on the basis of fraud was perfectly within time, but that relief has not been granted to the Municipal Committee. Its claim has been decreed on the finding that because of his failure to comply with the rules governing the placing of an order for supply of material to the Municipal Committee and the payment to the supplier, Dr. Des Raj was negligent. According to the findings of the learned Additional District Judge, he had not only failed to observe certain byelaws and procedure prescribed under the rules while issuing cheque for Rs. 3,000 in favour of Modern Furnishers, but had also opened an account in a suspicious and doubtful manner. It is thus evident that what has been found against Dr. Des Raj is that he had been guilty of malfeasance, misfeasance and non-feasance. Accordingly, Article 95, which provides a period of three years from the date the fraud becomes known to set aside a decree obtained by fraud or for other relief on the ground of fraud has no applicability. Mr. Babu Ram has urged that the relief on the basis of misfeasance or non-feasance, which has been granted to the Municipal Committee, would fall under Article 36 of the First Schedule to the Indian Limitation Act, 1908, which is in these words:—

> "For compensation for any malfeasance, misfeasance or non-feasance independent of contract and not herein specially

provided for, two years, when the malfeasance, misfeasance or non-feasance takes place."

In this connection, he has relied upon two Division Bench authorities of the Allahabad High Court. In *Kirpa Ram* V. *Kunwar Bahadur* (1), a Bench of Sulaiman and Young, JJ., held that Article 36 is a general Article applicable to suits for compensation for any malfeasance, misfeasance or non-feasance independent of contract, and it was observed:—

"It refers to action which may be on account of the commission of some act which is in itself unlawful, or being the improper performance of some lawful act, or the omission of some act which a person by law is bound to do. It is a general article for suits for compensation for all acts and omissions amounting to torts which are not provided for elsewhere."

It was further held in that case neither Article 48 nor Article 49 of Schedule 1 of the Indian Limitation Act governed such a suit. Referring to Article 49, the learned Judges said:—

"We think that having regard to its language Article 49 also is intended to apply to cases where the plaintiff had a right to the possession of the immovable property which was wrongfully taken from him, injured or wrongfully detained. The plaintiff's remedy is to sue for the recovery of the specific movable property or in the alternative for its compensation for wrongfully taking, injuring or wrongfully detaining."

In *Khairul Bashar* V. *Thannu Lal and others* (2), another Division Bench of that Court (Desai and Beg, JJ.) held:—

"The words 'malfeasance', 'misfeasance' and 'non-feasance' cover a wide range of cases. Malfeasance would apply to a case where an act prohibited in law is done by person. Non-feasance would apply to a case where a person omits to do some act prescribed by law, and misfeasance would apply to a case where a lawful act is done, in an improper manner."

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(1) A.I.R. 1932 All. 256.
(2) A.I.R. 1957 All. 553.

Both these authorities are fully applicable to the facts of the case in hand. Mr. Babu Ram has also referred to the observations of a Division Bench of this Court in *East Punjab Province (State of Punjab)* v. *Modern Cultivators* (3), that a liability arising out of an omission to do a certain act, which is not a statutory duty would not fall under Article 2 but under Article 36 of the Limitation Act. This case, in my opinion has no relevancy. I, however, agree with Shri Babu Ram that the relief that had been granted to the Municipal Committee on the basis of the finding that Dr. Des Raj had issued the cheque without complying with certain provisions of law and had paid the advance without any authority falls under Article 36 of the Limitation Act, 1908.

On behalf of the Municipal Committee it has been urged that the case would be governed either by Article 48 or Article 49 or Article 90. So far as the last two mentioned Articles are concerned (49 and 90), a bare reading of those provisions is enough to reject the contention. Article 48 relates to a suit for specific movable property lost or for compensation for wrongfully taking or detaining the same. Article 49 is residuary Article relating to specific movable property or for compensation for wrongfully taking or injuring or wrongfully detaining the same. The suit in this case is not for specific movable property but for compensation for loss. The relief sought against the defendants is not the recovery of specific money that was entrusted to any one of them but they are asked to make good the loss which the Municipal Committee had suffered by Dr. Des Raj's wrongfully issuing the cheque.

Article 90 governs "other suits by principals against agents for neglect or misconduct." It is thus obvious that it is a residuary Article governing suits between agents and principals founded on neglect or misconduct. This article would apply only if it can be held that Dr. Des Raj was agent of the plaintiff-Municipal Committee. Admittedly, when he issued the cheque, he was acting as President of the Committee. There is nothing on the record nor has any provision in the Municipal Act or any other law been brought to my notice which goes to show that the President of the Municipal Committee was an agent of the committee in such matters. Apart from this, there is no such allegation in the plaint itself. In fact, *Tavoy Municipal Committee* v

(3) A.I.R. 1960 Punj. 66.

U Khoo Zun Nee (4) is a direct authority against the contention raised by Shri Babu Ram. In that case, it has been ruled that agency is the creation of contract, and since there can be no contractual relationship between a Municipal Committee and its President, a suit against the President by the Municipal Committee for loss caused by him to the Municipal Committee by his negligence, misfeasance or non-feasance, etc., was not governed by Article 90 Schedule I of the Indian Limitation Act, 1908. This is also the view taken by the Madras High Court in *Srinvasa Ayyangar* v. *Municipal Council of Karur* (5). In that case the Municipal Council had sought to recover money which its Chairman during the tenure of his office was alleged to have embezzled. The learned Judges held that the relationship of principal and agent did not exist, and neither Article 89 nor 90 of the Schedule II of the Limitation Act XV of 1877 applied, but the case was governed by Article 36.

As against these authorities, the counsel for the Municipal Committee has cited *Daulat Ram* v. *Bharat National Bank Ltd., and others* (6), *Peoples Bank of Northern India Ltd.* v. *Har Gopal and others* (7), *A.C. Mukerji* v. *The Municipal Board, Benares* (8), *Sankaranarayana Ayyar and another* v. *Trichendur Dharmaparipalana Sathithara Bhajana Sabha* (9), and *Peoples Bank of Northern India* v. *Des Raj* (10). None of these cases is, however, a direct authority on the point. In *Peoples Bank of Northern India Ltd.* v. *Har Gopal and others* (7), *Daulat Ram* v. *Bharat National Bank Ltd., and other* (6), *A. C. Mukerji* v. *The Municipal Board, Benares* (8) and *Peoples Bank of Northern India* v. *Des Raj* (10), the suit was against Directors of the Company or a Bank. In ruling that Article 90 applied to such suits, the learned Judges relied upon the well-known proposition that the Directors were acting as agents of the Bank or the Company concerned. If I may say so with respect, that is the correct proposition, and I have no reason to differ with the conclusions arrived at in those cases. In *Sankaranaryana Ayyar and another* v. *Trichendur Dharmaparipalana Sathithara Bhajana Sabha* (9), the suit was against the Secretary by the Sabha of which he was

(4) A.I.R. 1936 Rangoon 310.
(5) I.L.R. 22 Mad. 342.
(6) A.I.R. 1924 Lah. 435.
(7) A.I.R. 1936 Lah. 271.
(8) A.I.R. 1924 All. 467.
(9) A.I.R. 1939 Mad. 114.
(10) A.I.R. 1935 Lah. 705.

the office-holder. Again, it was found in that case that he was functioning as agent of the Sabha. In *A. C. Mukerji* v. *The Municipal Board, Benares* (8), the Municipal Committee sued its Executive Officer, who, it appears, was its salaried employee for loss sustained by it owing to disregard of directions amounting to negligence or overconfidence in the honesty of others. In dealing with the question of limitation, the learned Judges, after observing that Article 2 of the Indian Limitation Act did not apply, merely said:—

> "This branch of the suit is, in our opinion, governed by Article 90 of the Schedule to the Indian Limitation Act, and there is no need even to invoke the provisions of section 18 of that Act in order to make the suit within time."

Except for this solitary observation, there is nothing in this judgment to indicate on what basis their Lordships proceeded to hold that Article 90 was applicable. There is no discussion about the applicability of this provision nor reference to any authority dealing with the matter.

As a last resort, Shri Sibal attempted to take cover under section 10 of the Limitation Act, which provides that no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time. He contended that the President of the Municipal Committee was in the nature of a trustee and thus a suit against him would never be barred and can be brought at any time. Except for the ingenuity of the argument, I am unable to find any merit in it, and I fail to see how the President of the Municipal Committee can be considered a trustee. No such averment was made in the plaint nor in any of the Courts below and the contention raised is clearly untenable.

In view of the above discussion, I am of the opinion that the relief which has been granted to the Municipal Committee against Dr. Des Raj could not have been decreed as a suit for the relief was governed by Article 36 of Schedule I to the Indian Limitation Act, 1908, which provides a period of two years from the date when the

malfeasance, misfeasance or non-feasance takes place. The cheque having been issued on 18th July, 1956, the suit which was instituted on 15th July, 1959, was clearly barred by time. Accordingly, the appeal of Dr. Des Raj (R.S.A. 1324 of 1963) must succeed. I accept the same, and setting aside the judgment and the decree of the trial Court dismiss the plaintiff's suit. So far as the other appeal (R.S.A. 1292 of 63), instituted by the Municipal Committee against Kanti Kumar is concerned, it must fail for the reasons already indicated and the same is hereby dismissed. In the circumstances of the case, I consider it just and proper to leave the parties to bear their own costs throughout, especially in view of the fact that the appeal of Dr. Des Raj succeeds on a technical point, though the allegations of misconduct and negligence have been held to be proved against him.

R. N. M.

LETTERS PATENT APPEAL

Before Mehar Singh, C.J., and A. N. Grover, J.

PREM CHAND AND OTHERS,—*Appellants*

versus

BISHAN SINGH AND OTHERS,—*Respondents*

Letters Patent Appeal No. 352 of 1966

February 22, 1967

Punjab Gram Panchayat Act, 1952 (*IV of* 1953)—*S.* 6(5)—*Person holding part time employment or office of profit under Government—Whether debarred from seeking election to Panchayat or Samiti—Constitution of India* (1950)—*Article* 191—*Representation of the People Act* (*XLIII of* 1951)—*S.* 8—*Disqualifications prescribed therein—Whether apply to persons seeking election to Panchayats or Samitis.*

Held, that a person who holds part-time employment or office of profit under the Government is not disqualified for election to the Panchayat or the Samiti owing to the limited nature of the work and functions of these bodies. Section 8 of the Representation of the People Act, which deals with disqualifications on conviction for certain offences, would be attracted by virtue of clause (a) of section 6(5) of the Punjab Gram Panchayat Act but the disqualifications embodied in