

Municipal Committee, Amritsar & Ors vs State Of Punjab & Anr on 12 September, 1969

**Equivalent citations: 1970 AIR 2182, 1970 SCR (2) 375, AIR 1970 SUPREME
COURT 2182**

Author: A.N. Grover

Bench: A.N. Grover, J.C. Shah, V. Ramaswami

PETITIONER:
MUNICIPAL COMMITTEE, AMRITSAR & ORS.

Vs.

RESPONDENT:
STATE OF PUNJAB & ANR.

DATE OF JUDGMENT:
12/09/1969

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
SHAH, J.C.
RAMASWAMI, V.

CITATION:
1970 AIR 2182 1970 SCR (2) 375
1969 SCC (2) 823

ACT:
Constitution of India, 1950, Art. 31A (1)(b) and
31(2)--Management schools taken over for limited
period--Property pertaining also acquired--Acquisition in
violation of Art. 31(2)--If protected by Art. 31A(1)
(b)--Punjab Municipal Act (3 of 1911), ss. 52(1)(g) and 59
Constitutional validity of--Punjab Local Authorities (Aided
Schools) Act (22 of 1959), ss. 3(2) and 6--Scope of--Act
retrospective--Whether notification issued thereunder also
retrospective.

HEADNOTE:
The appellant-Committee was constituted under the Punjab
Municipal Act 1911, and was running a number of municipal

schools, for some of which it was getting grant-in-aid from the respondent-State. The respondent took an administrative decision, without any statutory authority, to provincialise all the schools run by the local bodies in the State with effect from October 1, 1957, and till June 1959, various steps in the process of provincialisation were taken. In June 1959, the Punjab Local Authorities (Aided Schools) Act, 1959, was passed after obtaining the assent of the President. The Act was deemed to have come into force with effect from October 1, 1957.

The scheme of the Act is that it is initially left to the local authority to pass a resolution to transfer the management and control of aided schools to the State Government. In order to employ compulsive persuasion the State Government can withdraw the grant-in-aid in respect of the aided schools if such authority does not pass a resolution in terms of s. 3 within a period of 3 months from the date of the enactment of the statute. Section 5 gives power to the State Government to take over aided schools where the local authority neglects to perform its duty or if it is considered necessary in public interest to take over the management for a period not exceeding ten years, but only after giving the local authority a reasonable opportunity for showing cause. The proviso to the section arms the State Government with powers, in case of emergency and in the interests of students, to take over the management straight away after publication of a notification to that effect. There is no provision, however, for an automatic retransfer of the property after lapse of the period of 10 years. Section 6 introduces amendments in ss. 52 and 59 of the Punjab Municipal Act. Clause (g), introduced in s. 52(1), enables the State Government to get an annual contribution from the local bodies, and the amendments to s. 59, vest in the State not only the management of the schools taken over but also the interests in the movable and immovable properties pertaining thereto.

As the appellant decided not to pass the resolution under s. 3 the respondent issued a notification on September 26, 1960, taking over for a period of 10 years, the management of the aided schools specified in the schedule to the notification. On the question of payment of the contribution it was resolved on January 3, 1962, that the payment be made with effect from October 1, 1957, while retaining the proprietary rights in the schools; but the appellant subsequently passed several resolutions practically rescinding this resolution with respect to the payment of any

376

contribution. On April 10, 1964, the appellant was required by order to pay about Rs. 53 lakhs on account of the contribution for the maintenance of the provincialised schools for the period 1957-58 to 1963-64. Thereupon, the

appellant filed a petition under Arts. 226 and 227 in the High Court, challenging the orders and the constitutional validity of the Act. The petition was dismissed.

In appeal to this Court it was contended: (1) The taking over of the movable and immovable property of the appellant did not fall within Art. 31A(1)(b) and the action was in direct contravention of Art. 31(2); (2) The notification dated September 26, 1960, was not protected by the proviso to s. 5, because, there was no question of any emergency, nor was such emergency pleaded or proved by the respondent; (3) The notification could not and did not validate the action prior to the date when it was issued; (4) Section 6 of the Act which effected amendments of the provisions of the Punjab Municipal Act could not be attracted; and (5) Section 3(2) and the amendments which would become operative under s. 6 in respect of ss. 52(1) and 59 of the Punjab Municipal Act, are void and unconstitutional.

HELD: (1) Under Art. 31A(1)(b) it is only the management and control of the aided schools, that could be taken over for a limited period in the public interest or in order to secure their proper management, but proprietary interests in movable and immovable properties pertaining to the schools and belonging to the appellant could not be acquired. In the present case in view of the terms of the resolution of January 3, 1962 and the subsequent resolutions of the appellant it could not be said that the resolution fell within the first part of s. 3 and that action was taken by the State pursuant to such resolution. The action was taken by the respondent only under s. 5 and when once action was so taken all the properties, movable and immovable, belonging to the local body pertaining to the schools taken over, became the property of the State, by virtue of the amendments made in s. 59 of the Punjab Municipal Act. When the proprietary interest in the movable and immovable property pertaining to the schools and belonging to the Committee is thus acquired, the action is not protected by Art. 31A(1)(b) as it is nothing short of compulsory acquisition within the meaning of Art. 31(2) of the Constitution and is in violation of that Article when there is no provision for payment of compensation. [386; A--F; 387 F--G]

(2) In the notification there was no indication that the management of the schools was being taken over because any emergency existed. The State could not show by placing material before the court that it was a case of emergency justifying the action under the proviso, to s. 5. when no foundation in that behalf had been laid, in the writ petition. [388 B--C; D--E]

(3) The mere fact that the Act in terms was retrospective would not make the notification issued under the proviso. to s. 5, retrospective, in the absence of express words or appropriate language from which

retroactivity would be implied. The notification only meant that the management was taken over from the date of the notification and not from any prior date. Therefore, whatever was done before the date of the notification regarding the assumption of management and vesting of the Committee's property was void and illegal. [389 A--C]

(4) Under s. 6 of the Act it is only after the local authority has passed a resolution under s. 3 or the State Government has taken over management of the aided schools under s. 5, that ss. 52 and 59 of the ' Punjab Municipal Act would be deemed to have been amended in the

377

manner specified in the Schedule with effect from October 1, 1957. If the notification in the present case, could. not be given retrospective operation, the amendments in the Punjab Municipal Act would be effective only after the date of the notification and not for the prior period. Thus, even on the assumption that the provisions of the Act are valid the State could not ask for any contribution from the Committee for the period prior to the date of the notification. [389 D--F]

(5) By asking the Committee to make contributions from its funds under the newly introduced el. g in s. 52(1), to the cost of the schools which have been taken over by the State, part of its funds are being compulsorily acquired by the State, which could not be done except in accordance with the provisions contained in Art. 31(2). [390 C--D, E-F]

When the State Government makes a direction under s. 3(2) that the aided schools shall be taken over, the proprietary and ownership rights of the Committee also vest in the State Government. Further, s. 6 comes into operation as soon as a local authority has passed a resolution under s. 3 or the State Government has taken over management under s. 5, and the provisions relating to acquisition of property of the Committee as also of its funds by way of contribution, come immediately into operation by virtue of the amendments effected in ss. 52(1) and 59 of the Punjab Municipal Act. [391 A--D]

Since there is no provision for compensation in the Aided Schools Act or s. 59 of the Municipal Act, s. 3(2).of the Aided Schools Act and the amendments in ss. 52(1) and 59 of the Punjab Municipal Act are void and unconstitutional. [391 D]

Hence, the order by which, the movable and immovable property of the Committee has been transferred to the State contribution was sought be recovered, and the sum of Rs. 53 lakhs was demanded, is illegal, [391 D--E]

Municipal Committee, Amritsar v. State of Punjab, [1969] 3 S.C.R. 447, followed.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1321 of 1966. Appeal by special leave ,from the judgment and order dated November 15, 1965 of the Punjab High Court in Civil Writ No. 878 of 1964.

Niren De, Attorney-General and Naunit Lal, for the appellants.

Hardev Singh and R.N. Sachthey, for the respondents. The Judgment of the Court was delivered by Grover, J. This is an appeal by special leave from a judgment of the Punjab High Court dismissing a petition under Arts. 226 and 227 of the ConStitution which had been filed by the appellant Municipal Committee challenging the taking over by the State of all the schools which were being run by it together with all the buildings in which the schools were functioning and other movable and immovable properties connected with these institutions which belonged to the Committee. The order of the State for payment of an annual contribution which upto the date of the filing of the writ petition i.e. May 10, 1964 had reached the figure of 53 lakhs was also challenged.

The appellant Committee is a first class. Municipal Committee and has been in existence from a long time. It has been managing its local affairs through the elected representatives from the city who are called Municipal Commissioners. It is constituted and functions under the provisions of the Punjab Municipal Act 1911. A number of primary schools were being run by the Committee within the municipal limits of the town of Amritsar for which it was getting grant-in-aid from the Punjab Government. It was, however, running schools upto the middle and high standards for girls and boys for which all the expenses were incurred by itself without any grant from the Government. The primary liability, however, for incurring the extra expenditure even in connection with the aided schools was of the Committee. The Punjab Government took an administrative decision. to provincialise all the schools run by all local bodies in the State with effect from October 1, 1957. This information was conveyed by means of a letter dated July 19, 1957 by the Secretary to the Government, Education Department, through the Deputy Commissioners in Jullundur and Ambala Divisions. At a meeting of the appellant Committee held on July 31, 1957 a resolution was passed that a strong representation be made to the Government against the decision to provincialise the schools run by the local bodies. On September 26, 1957 the Assistant Director of Schools wrote to the District Inspector that "as all the local body schools are being provincialised with effect from October 1, 1957 the tuition fees etc. to be realized in such schools after that date should be credited to the Government in the treasury under the head " Without enacting any legislation the State took over all the schools run by the local bodies on October 1, 1957. A memorandum from the Director of Public Instructions, Punjab to the District" Inspector of Schools sent on October 5, 1957 conveyed the following direction:

"All the erstwhile Local Body Schools which have been provincialised with effect from the 1st October, 1957 will henceforth be known. as Government High/ Middle/Primary Schools for Boys or Girls as the case may be".

The Executive Officer of the appellant Committee (appointed under the Punjab Municipal Executive Officers Act 1931) wrote to the Deputy Commissioner, Amritsar on November 21, 1957 that no formal orders had been received from the Government requiring the Committee to give up

possession of the schools and it appeared that no procedure had so far been devised in that behalf or for the settlement of terms and conditions on which the buildings, furniture, fittings and other materials were to be transferred. He pressed for proper steps being taken. The Secretary to the Government, Punjab, Health and Local Government Department sent a memorandum dated September 10, 1958 to all the Deputy Commissioners saying that the work of proper maintenance of the buildings of the provincialised schools of the local bodies would be entrusted to the Public Works Department, Buildings and Roads. A letter was addressed by the same authority dated September 30,/October 4, 1958 to the Deputy Commissioners requesting them to supply immediate information showing the contributions actually deposited into the treasuries by the local bodies in respect of the provincialisation of the schools. This was followed by the memorandum dated December 12, 1958 to the effect that all local bodies "be advised to execute the transfer notes in respect of the school buildings etc. by their respective Engineering Establishments in favour of the Superintending Engineers concerned". By means of another memorandum dated December 26, 1958 orders of the Government were conveyed that immediate steps should be taken for getting the contribution from local bodies and also for obtaining transfer of buildings and equipment. The Deputy Commissioners were requested to get the requisite resolutions passed by the local bodies in the prescribed form. The appellant Committee at its meeting held on January 10, 1959 decided not to pay any contribution for the time being. It was also resolved that the Committee was not in favour of transferring the proprietary rights in movable and immovable property which was in possession of the schools.

It appears that up till June 17, 1959 the State continued the process of provincialisation of the schools mentioned before without any authority of law. There was no statutory provision which entitled the State to take over the schools of the local bodies including the buildings in which the schools were being run as. also furniture etc. which belonged to the local bodies. Moreover the extraordinary step of demanding annual contribution was also taken without any sanction or authority of law. The appellant Committee which is one of the biggest Committees in the State seems to have resisted the attempt on the part of the Government to take over the schools and acquire or requisition its properties in the manner in which it was done. Legislation was for the first time enacted in the shape of the Punjab Local Authorities (Aided Schools) Act 1959, (Act No. XXII of 1959), hereinafter called the Act. It received the assent of the President on June 9, 1959. According to the preamble the Act was enacted to provide for the management and control of local authorities' schools receiving grants in aid from the. State of Punjab. By a deeming provision the Act was to come into force with effect from October 1, 1957. Section 2 gave the definition of "aided schools", "local authority". and "school". "School" has been defined to include land, buildings, play-grounds and hostels of the school and the movable property such as furniture, books, apparatus, maps and equipment pertaining to the school. The following provisions of the Act as amended may be reproduced:

S. 3 "Power of local authorities to transfer management and control of aided schools to State Government.

(1) A local authority may pass a resolution to transfer the management and control of aided school to the State Government and communicate the same to the State

Government.

(2) On receiving such a resolution, the State Government may direct that the aided schools shall be taken over under its management and control and thereafter all rights and interests including the right of maintenance, management and control shall be transferred to and vest in the State Government and the rights and interests of the local authority in respect of such schools shall cease."

S. 4 "Power to withdraw grant-in-aid.--The State Government may withdraw the grant-in- aid from any local authority in respect of aided schools if the resolution mentioned in section 3, has not been passed and communicated to the State Government within a period of three months from the date on which this Act is published in the Official Gazette."

S. 5 "Power to take over aided schools where local authority neglects to perform duty.--(1) Whenever the State Government is satisfied that a local authority has neglected to perform its duties in respect of aided schools or that it is necessary in public interest to take over their management for a period not exceeding ten years, it may after giving the local authority a reasonable opportunity for showing cause against the proposed action, make an order to take over the management:

Provided that in cases of emergency, where the State Government is satisfied that such a course is necessary in the interests of the students, it may, without giving such notice, take over the management of such schools after publication _of a notification to that effect in the.

Official Gazette." :

(2) & (3)

S. 6 "Amendment of Punjab Acts No. III of 1911 and No. XX of 1883.--Where a local authority has passed a resolution under s. 3 or the State Government has taken over management of aided schools of a local authority under section 5, the Punjab Municipal Act, 1911, and the Punjab District Boards Act, 1883, shall be deemed to have been amended in the manner specified in the Schedule appended to this Act with effect from the 1st October, 1957."

Section 52(1) of the Punjab Municipal Act relates to the setting apart of the municipal funds and apply the same for different purposes as mentioned in clauses (a) to (f). By means of the Schedule to the Act after clause (f) of sub-s. (1), cl. (g) was added which is in the following terms:

"(g) seventhly, such sum to be paid annually by the committee to the State Government by way of contribution as is equivalent to--

(i) the total provision made in the budget for the year 1957-58 under the main head 'Education' excluding educational grants and the provision made for 'original works' relating to schools; and

(ii) a sum representing one per centum of the total income from its own resources for the year 1957-58, in lieu of the deductions made for 'original works' made under clause (i):

Provided that in respect of the financial year 1957-58 the committee shall make a payment to the State Government of the sums which have remained unexpended on 31st March, 1958, out of the provisions under the head 'Education' in the budget of 1957-58".

Section 59 of the Punjab Municipal Act provides that the Committee may with the sanction of the State Government transfer to the Government any property vesting in the Committee under s. 56 or s. 57 but not so as to affect any trusts or public rights subject to which the property is held. A proviso was added to the section by the Schedule which was as follows :--

"Provided that where a committee has passed a resolution under section 3 of the Punjab Local Authorities (Aided Schools) Act, 1959, or the State Government has taken over the management of aided schools of a committee under section 5 of that Act, all rights and interests in the establishment, maintenance and management of the aforesaid schools immediately before the 1st October 1957, including all interests in the lands, buildings, play grounds, hostels of the said schools as also in the movable properties like furniture, books, apparatus, maps and equipment pertaining thereto shall be deemed to have been transferred to the State Government on that date, and all unspent balances in respect of grants and contributions received for the maintenance and promotion of these schools shall be deemed to have been surrendered to the State Government."

After the promulgation of the above legislation the appellant Committee passed a resolution on February 24, 1960 reiterating the decision taken in the Local Bodies Conference held at Jullundur and its own decision to request the Punjab Government to restore the schools run by the local bodies to them. At another meeting held on June 9, 1960 the appellant Committee decided not to pass the resolution under s. 3 of the Act transferring its schools and property to the State Government. The Punjab Government, however, issued a notification dated September 26, 1960 saying that the Governor was satisfied that it was necessary in the interests of the students to take over for a period of ten years the management of the schools specified in the schedule and administered by the Municipal Committee, Amritsar, and therefore in exercise of the powers conferred by the proviso to s. 5 of the Act the Government took over for a period of ten years the management of the said schools. The schedule contained the list of 42 such schools. The question of the payment of the contribution which was being demanded by the Government came up for consideration at a meeting of the appellant Committee on January 3, 1962. It was decided that the payment be made on the basis of a formal laid down by the State Government in that behalf with effect from October 1, 1957 but that the proprietary rights of the Committee in the school buildings be retained and the use of these buildings free of charge be allowed to the Government for the purpose of running the schools. At a subsequent meeting held on March 28, 1963, the appellant Committee, however, revised its previous decision in view of a resolution passed in the meeting of the Standing Committee of Urban

Local Bodies Conference held on June 21, 1962. It was decided that the State Government was not entitled to charge contributions from the Municipal Committee. On April 10, 1964 the Deputy Commissioner, Amritsar, made an order in exercise of the powers vested in him under s. 234(1) of the Punjab Municipal Act requiring the appellant Committee to pay an amount of Rs. 53,66,146/- on account of contribution for the maintenance of the provincialised schools for the period 1957-58 to 1963-64 failing which realization was to be made under sub-s. (2) of that section. Thereupon the petition under Arts. 226 and 227 of the Constitution was filed by the appellant Committee in which apart from other matters the validity and constitutionality of the Act were challenged. In the return filed on behalf of the State reliance was placed on the pro-visions of the Act, the resolution passed by the Committee itself on. January 3, 1962 agreeing to pay the contribution and allow the use of school buildings to the Government free of charge and the notification which had been issued under s. 5 of the Act on September 26, 1960 whereby the management of the schools of the: Committee had been taken over for a period of 10 years.

The High Court was of the view that since the Government had taken over the control and management of the aided schools it was considered necessary that the property in possession of these institutions should also be taken over and managed for a limited period. of 10 years. Since no compensation was being paid for what may be called compulsory acquisition the legislation could be struck down as being in contravention of Art. 31(2) of the Constitution. In the present case, however, the management of the property in possession of the schools was being taken over for a period of 10 years in the public interest by virtue of the provisions of Art. 31A(1)(b), and the contravention of Art. 31(2) was of no consequence. The argument raised on behalf of the State that the resolution of the appellant Committee dated January 3, 1962 consenting to the payment of the contribution with effect from October 1, 1957 had been passed in terms of s. 3 of the Act was refuted. As regards the notification issued on September 26, 1960 under the Act the High Court was of the opinion that although it did not contain any provision for retrospective operation it should be considered that it had retroactive effect since the Act itself had been enforced from October 1, 1957. It was conceded before the High' Court that the notification did not apply to. those schools which did not receive any aid from the Government.

The learned Attorney General for the appellant Committee, raised the following main contentions: (1) The material provisions of the Act were ultra vires Art. 31 (2) of the Constitution (2) The taking over of movable and immovable property of the Committee could not possibly fail within Art. 31A(1)(b) and such action was in direct contravention of Art. 31(2). (3) The notification dated September 26, 1960 could not have been issued under the proviso to s. 5 because there was no question of any emergency nor such an emergency has been pleaded or proved by the State. (4) The said notification could not and did not validate the action taken prior to the date when it was issued nor s. 6 of the Act could be attracted which effected amendments of the provisions of the Punjab Municipal Act as per the Schedule. (5) The annual contributions which were being demanded from the appellant Committee were wholly illegal and could not be levied on account of legislative incompetence.

Now the scheme of the Act is that it is initially left to the local. authority to pass a resolution to transfer the management and con--

trol of aided schools to the State Government. In order to employ compulsive persuasion the State Government can withdraw the grant-in-aid from any local authority in respect of aided schools if such authority does not pass a resolution in terms of s. 3 within a period of three months from the date of enactment of the Act (vide s. 4). Section 5 gives the power to the State Government to take over aided schools where the local authority neglects to perform the duty but that can be done only after the local authority has been given a reasonable opportunity for showing cause against the proposed action and also if it is considered necessary in public interest to take over the management for a period not exceeding 10 years. The proviso, however, arms the State Government with powers in case of emergency and in the interests of students to take over the management straightaway after publication of a notification to that effect. The amendments which are effected in ss. 52 and 59 of the Punjab Municipal Act enable the State Government to get an annual contribution from the local bodies and further to vest in the State not only the management of the school taken over but also all interests in the lands, buildings etc. of the school along with the movable properties pertaining thereto which shall be deemed to have been transferred to the State. There is no provision whatsoever for an automatic retransfer of these properties after a lapse of a period of 10 years for which the taking over of the schools can be effective. This means that once action is taken under s. 5 which can be done pursuant to a resolution passed under s. 3 or after giving a notice to the local authority or without giving such notice in case of emergency all the properties movable and immovable belonging to the local body pertaining to the schools taken over become the property of the State. This is nothing short of compulsory acquisition within the meaning of Art. 31(2) of the Constitution. Under that Article no property can be so acquired or requisitioned unless it is under an authority of law which either fixes the amount of compensation or specifies the principles on which and the manner in which the compensation is to be determined and given. There is no provision in the Act or in the amendment of s. 59 of the Punjab Municipal Act made by the Act for payment of any compensation. On the assumption that taking over of the property for a period of 10 years would be an act of requisitioning, the requirements of Art. 31(2) must be satisfied to sustain the validity of the law. The High Court entertained no doubt that under that Article property could not be acquired or requisitioned without complying with its provisions but it fell into an error in applying Art. 31(A)(1)(b) to the provisions under consideration. Under the above Article, it is only the management of any property which can be taken over for a limited period either in the public interest or in order to secure its proper management. Ac-

cording to the High Court the Committee was indisputably the owner of the property which was being taken over by the State: but P.C. Pandit J, who delivered the judgment of the division bench proceeded to say :--

"In the present case, the management of the property in possession of the schools was being taken over for ten years in public interest and, as such, by virtue of the provisions of Article 31 A (1)(b), the contravention of Art. 31(2) was of no.

consequence. Learned Counsel for the petitioner submits that Art. 31A(1)(b) does not apply to the facts of the instant case, because here the management and control of an institution namely, the school, was being taken over by the Government, whereas this Article applied where the management of any property was being taken over by the

Government for a limited period in the public interest. This argument is without any merit, because the property may belong to anybody, whether it be an individual, or a Committee or an industrial or commercial undertaking or any kind of other institution. In all these cases, where the management of the property is taken over for a limited period in public interest, this Article would be attracted and the legislation would not be hit by the provisions of Article 31 of the Constitution".

Clause (b) in Art. 31A(1) came to be inserted for the first time by the Constitution (Fourth Amendment) Act 1955. It was intended apparently to counteract the effect of the decisions in the two Sholapur cases, Charanjit Lal Chowdhuri v. The Union of India & Ors.(1) and Dwarkadas Shrinivas of Bombay v. The Sholapur Spinning & Weaving Co. Ltd., & Ors.(2). The purpose, therefore, of inserting this provision was to remove any legislation from the pate of attack on the ground of contravention not only of Art. 3 but also of Arts. 14 and 19. Although management and control of the aided schools under the impugned legislation could be taken over for a limited period in the public interest it is not possible to understand how even the proprietary interests in the movable and immovable property pertaining to the schools, which have been found to belong to the Committee, could have been acquired under clause (b) of Art. 31-A(1). With all deference to the High Court we have not been able to. properly appreciate the decision on this point given in the paragraph extracted above. The High Court did not consider the true import and effect of the amendment made in s. 59 of the Punjab Municipal Act by virtue of which all rights and interests in the lands, buildings, playgrounds, hostels of the schools as also in the movable property like furniture, books, apparatus, maps and equipment pertaining thereto (1) [1950] S.C.R. 869. (2) [1954] S.C.R.476.

shall be deemed to have been transferred to the State Government with effect from October 1, 1957. We are, therefore, unable to uphold the view which leads to the result that property can be acquired while taking over management and control under Art. 31-A (1)(b) in complete negation and contravention of Art. 31(2) of the Constitution.

The next question is whether there was due compliance with the provisions of the proviso to s. 5 of the Act. In the notification which was issued on September 26, 1960 there is no indication that the management of the schools was being taken over because of certain emergency having arisen. If any emergency existed it was the creation of the government itself which had proceeded to take over management and control of the aided schools along with the properties pertaining to them without any authority of law prior to the enactment of the Act. That was the reason why the Act had to be given retrospective operation. According to the High Court the moment the State Government was satisfied that it was in the interest of the students to take over the management of the schools it became a case of emergency. It also relied on the principle that it was not necessary to mention the actual emergency which had arisen in the notification itself or to make a recital that an emergency had arisen. The State could not show by placing material before the court that it was a case of emergency justifying the action under the proviso to s. 5 because no foundation in this behalf had been laid in the writ petition. The third point pressed by the learned Attorney General, therefore, cannot be acceded to.

The fourth point of the learned Attorney General may now be considered. There was some argument before the High Court and the same has been repeated before us on behalf of the State that the question of validity of the notification and the action taken thereunder did not arise because the Committee itself had passed a resolution on January 3, 1962 which should be regarded as having been passed under the provisions of s. 3 transferring the management and control of the schools to the Government and agreeing to pay the contribution with effect from October 1, 1957. The High Court has rightly pointed out that a reading of the resolution would show that the Committee agreed to the payment of contribution with effect from October 1, 1957 in accordance with the formula laid down by the State Government. It was, however, made clear that the proprietary rights of the Committee in the movable and immovable property pertaining to the schools would be retained by it. The Committee had subsequently passed several resolutions which had the effect of almost rescinding the previous resolution. The submission on behalf of the State that the resolution dated January 3, 1962 passed by the Committee fell within the first part of s. 3 of the Act is wholly devoid of merit and has rightly not been accepted.

As regards the notification having retrospective operation we are unable to agree with the High Court that any such effect could be given to it. There is nothing to indicate in the notification that it was intended to operate retroactively. The mere fact that the Act in terms was retrospective would not make the notification issued under the proviso to s. 5 retrospective in the absence of express words or appropriate language from which retrospectivity would be implied. All that the notification says is that the Governor of Punjab is taking over for a period of 10 years the management of the schools of the Committee in exercise of the powers conferred by the proviso to s. 5 of the Act. This clearly means that the management is taken over from the date of the notification and not from any prior date. It would follow that whatever was done before the date of the notification regarding the assumption of management and vesting of the Committee's properties was wholly void and illegal.

Under s.6 of the Act it is only after the local authority has passed a resolution under s.3 or the State Government has taken over management of the aided schools under s.5 that ss. 52 and 59 of the Punjab Municipal Act would be deemed to have been amended in the manner specified in the schedule with effect from October 1, 1957 or from the date aided schools are taken over as the case may be. If the notification dated September 26, 1960 could not be given retrospective operation the amendments in the aforesaid provisions of the Punjab Municipal Act would be effective only after the date of the notification and not for the prior period. Thus even on the assumption that the provisions of the Act are valid the State could not ask for any contribution from the committee for the period prior to the date of the notification. But, the addition of cl.(g) after cl.(f) in sub-s.(1) of s.52 of the Punjab Municipal Act is void and wholly ineffective for the reasons which will be presently noticed.

Chapter IV of the Punjab Municipal Act relates to municipal fund and property. Section 51 deals with the constitution of the municipal fund. Section 52 provides for the application of the fund. Before the amendment made by the Act sub-s.(1) had six clauses containing the provisions for the application of the fund. It is noteworthy that although the State Government has been empowered to require the Committee to make contributions but in each case that is confined to an eventuality or a situation where certain cost has been incurred by the Government which had to be defrayed by the

Committee, e.g., clauses (b), (d) and (f). According to clause (e), however, the Committee may be required by the State Government to contribute towards the maintenance of pauper lunatics or lepers sent from any place in the State to mental hospitals or public asylums whether in or outside the State. Sub-section (2) says that subject to the charges specified in sub-s. (1) the municipal fund shall be applicable to the payment of the matters set out in clause (a) to (1). Clause (c) is in these terms:

"the constitution; establishment and maintenance of schools, hospitals and dispensaries, and other institutions for the promotion of education or for the benefit of the public health" "

In the context of s.52 it is difficult to envisage that the municipal fund of a particular Committee could be diverted to such institutions which had no connection with the Committee. We are, however, not called upon to pronounce upon the true scope, ambit and validity of all the provisions in s. 52. Clause (g) which has now been inserted by means of s. 6 of the Act has to be tested by the guarantees in Part III of the Constitution. By asking the Committee to make contributions from its funds to the cost of the schools which have been taken over by the State part of its funds are being compulsorily acquired by the State. This is something which could not be done except in accordance with the provisions contained in Art. 31(2) of the Constitution. In Writ Petition No. 295 of 1968, Municipal Committee, Amritsar v. State of Punjab⁽¹⁾ in which the provisions of the Punjab Cattle Fairs (Regulation) Act 1968 came up for examination, it was laid down by this Court that the State was incompetent to declare land belonging to the Municipal Committee as falling within the fair area and to take possession of that land in exercise of the power conferred by the Act without providing for payment of compensation guaranteed by Art. 31(2). Clause

(g), therefore, which has been inserted in s. 52 of the Punjab Municipal Act is void and illegal as it contravenes Art. 31 (2) of the Constitution.

It may be mentioned that the learned Attorney General has also pointed out that the State legislature did not have the competence, under any of the entries in List II of the Seventh Schedule, to enact legislation of the nature embodied in clause (g) which was inserted in s. 52 relating to compulsory contribution by the Committee to the State Government. Counsel for the State has sought to rely on entries 5 and 11 in List II which relate to local government and education. It is unnecessary to decide this matter since it has been held by us that the impugned provisions with regard to contribution contravene Art, 31 (2) of the Constitution.

We may now determine the provisions of the Act which are unconstitutional and invalid. There is nothing in ss. 3(1), 4 and 5 of the Act per se which would bring them into conflict with the constitutional provisions, particularly, in view of Art. 31 A (1)(b) (1) [1969] 3 S.C.R. 447.

under which the management of the schools could be taken over by the State for a limited period in public interest. But the difficulty arises about ss. 3(2) and 6 which have to be read together. When the State Government makes a direction under s. 3(2) that the aided schools shall be taken over. all rights and interests of the Committee including the right of maintenance, management and control

shall be transferred to and vest in the State Government. This essentially has reference to proprietary and ownership rights apart from the rights pertaining to management and control. Section 6 comes into operation as soon as a local authority has passed a resolution under s. 3 or the State Government has taken over management under s. 5. Then the provisions relating to acquisition of property of the Committee as also of its funds by way of contribution come immediately into operation by virtue of the amendments effected in ss. 52(1) and 59 of the Punjab Municipal Act. These provisions are clearly unconstitutional as they contravene Art. 31 (2) of the Constitution. In the result the appeal is allowed with costs and the judgment of the High Court is set aside. It is declared that s. 3(2) of the Act and the amendments which would become operative under s. 6 in respect of ss. 52(1) and 59 of the Punjab Municipal Act are void and unconstitutional. The orders by which the movable and immovable property of the Committee have been transferred to the State are hereby quashed and such transfers are declared to be wholly void. The respondents are further directed not to recover any contribution in accordance with clause (g) of s. 52 of the Punjab Municipal Act as also the sum of Rs. 53 lakhs mentioned in the order of the. Deputy Commissioner dated April 10, 1964. from the appellants Committee. Appropriate writs and directions. shall issue in this behalf.

V.P.S.
Sup. CI/70--13

Appeal allowed.