

CHAPTER XII CONTROL

245. Control by Deputy Commissioner.-- (1) The Deputy Commissioner or any officer not below the rank of Extra Assistant Commissioner authorised in writing by him or any person empowered by the State Government in this behalf by a general or special order, may --

- (a) enter on, inspect and survey, or cause to be entered on, inspected and surveyed, any immovable property occupied by any committee or joint committee, or any work in progress under its direction;
- (b) by order in writing addressed to the ²[Secretary] call for and inspect or cause to be inspected any book or documents in the possession or under the control of any committee or joint committee and the member or employee of the committee in possession of such book or document shall immediately place such book or document at the disposal of the ³[Secretary], who shall immediately comply with such order and shall immediately inform the president of the requisition. He shall also bring the matter to the notice of the committee at its meeting next following;

1. Substituted vide Haryana Act No.3 of 1994.

2. Substituted for "Chief Executive Officer" by Haryana Act No. 15 of 1989.

3. Substituted for "Chief Executive Officer" by Haryana Act No. 15 of 1989.

- (c) by order in writing addressed to the ¹[Secretary] require any such committee or joint committee to furnish within a specified period such statements, accounts, reports and copies of documents relating to the proceedings or duties of the committee as he may think fit to call for;
- (d) inquire generally into the affairs of a committee or joint committee with a view to ascertaining whether a municipality is being satisfactorily administered, and for the purposes of such inquiry make use of any property of the committee, and of the powers mentioned in clauses (a), (b) and (c), and the members and employees of the committee shall render such assistance in the inquiry as may be deemed necessary.

Explanation.- Any person so empowered shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860.

(2) The Deputy Commissioner may record in writing for the consideration of any such committee or joint committee any observations that he may think proper in regard to the proceedings or duties of the committee.

(3) Every committee shall submit such periodical reports to the Deputy Commissioner or other authority as the State Government may direct.

246. Powers to suspend any resolution or order of committee.-- The Deputy Commissioner may, by order in writing, suspend the execution of any resolution or order of a committee, or joint committee or prohibit the doing of any act which is about to be done, or is being done in pursuance of or under cover of this Act, or in pursuance of any sanction or permission granted by the committee in the exercise of its powers under this Act, if, in his opinion, the resolution, order or act is in excess of the powers conferred by law or contrary to the interests of the public or likely to cause waste or damage of municipal funds or property, or the execution of the resolution or order, or the doing of the act, is likely to lead to a breach of the peace, to encourage lawlessness, or it causes injury or annoyance to the public or to any class or body of persons.

Comments

Resolution for renewal of lease – Suspension of resolution – Allotment of plot in favour of the petitioner was cancelled and he was in illegal occupation of the same -
 - Suit for not dispossessing him from the shop in question was dismissed and the ejection proceedings were initiated by the Committee under the Public Premises Act
 – Renewal of lease in not in interest of Committee – Deputy Commissioner was fully justified in cancelling/suspending the said resolution. *Arjun Dev v. State of Haryana and others*, 2008(2) L.A.R. 237 (P&H DB).

1. Substituted for "Chief Executive Officer" by Haryana Act No. 15 of 1989.

Resolution for renewal of lease – Suspension of resolution – Opportunity of hearing – Deputy Commissioner and Commissioner rejected the resolution – No opportunity of hearing is required to be given to the petitioner. Arjun Dev v. State of Haryana and others, 2008(2) L.A.R. 237 (P&H DB).

Suspension of resolution – Deputy Commissioner has the jurisdiction to suspend a resolution, if he is satisfied that the resolution of the committee was either in excess of the powers conferred by law or contrary to the interests of the public or was likely to cause waste or damage of municipal funds or property – After such order, he is to forthwith forward a copy thereof, to the Commissioner with a statement of reasons for making it and the Commissioner may thereupon confirm, modify or rescind the order. Arjun Dev v. State of Haryana and others, 2008(2) L.A.R. 237 (P&H DB).

Suspension of resolution – Provisions of sections 246 and 249 of the Act do not require providing of an opportunity of hearing to a third party, who may likely to be effected by passing of the order – Only requirement to exercise the power under section 246 of the Act is that the Deputy Commissioner should record his satisfaction that the facts forming the basis of an order did actually exist and the said resolution is in excess of powers conferred by law or contrary to the interests of the public or likely to cause waste or damage of municipal funds or property. Arjun Dev v. State of Haryana and others, 2008(2) L.A.R. 237 (P&H DB).

247. Extraordinary power of Deputy Commissioner in cases of emergency.-- (1) In case of emergency the Deputy Commissioner may provide for the execution of any work, or the doing of any act which a committee is empowered to execute or do, and the immediate execution or doing of which is, in his opinion, necessary for the service or safety of the public, and may direct that the expense of executing the work or of doing the act shall be forthwith paid by the committee.

(2) Should the expense be not so paid, the Deputy Commissioner may make an order directing the person having the custody of the balance of the municipal fund to pay the expense, or so much thereof as may from time to time be possible, from that balance, in priority to all other charges against the same.

248. Powers to provide for performance of duties in case of default of committee.-- (1) When the Deputy Commissioner after due enquiry is satisfied that a committee has made default in performing any duty imposed upon it by this Act, or by any order or rule under this Act, he may, by an order in writing, fix a period for the performance of that duty; and, should it not be performed within the period so fixed, he may appoint some person to perform it, and may direct that the expense thereof shall be paid, within such time as he may fix, by the committee.

(2) Should the expense be not so paid, the Deputy Commissioner may make an order directing the person having the custody of the balance of the municipal fund to pay the expense, or so much thereof as may from time to time be possible, from that balance in priority to all other charges against the same.

249. Action of Deputy Commissioner to be immediately reported.—

When the Deputy Commissioner makes any order under section 246

or section 247 or section 248 he shall forthwith forward it to the Commissioner a copy thereof, with a statement of reasons for making it with such explanation, if any, as the committee of such municipality may wish to offer and the Commissioner may thereupon confirm, modify or rescind the order:

Provided that if an officer subordinate to the Deputy Commissioner under the delegated powers makes an order under section 246 or section 247 or section 248 in the case of a ¹[Municipal Committee], the power of confirmation, modification or rescission of such order shall vest in the Deputy Commissioner, who shall, before exercising such power, consider the explanation of the Committee of such municipality which it may wish to offer and the Deputy Commissioner may thereupon confirm, modify or rescind the order.

250. Power of State Government to give directions.-- The State Government may issue directions to any committee for carrying out the purposes of this Act and in particular with regard to –

- (a) various uses to which any land within a municipal area may be put;
- (b) repayment of debts and discharging of obligations;
- (c) collection of taxes;
- (d) observance of rules and bye-laws;
- (e) adoption of development measures and measures for promotion of public safety, health, convenience and welfare;
- (f) sanitation and cleanliness;
- (g) establishment and maintenance of fire-brigade.

251. Exercise of committee's power pending establishment of committee.-- (1) When a new municipality is constituted under this Act, the State Government may appoint a person to exercise the powers, discharge the duties and perform the functions of the committee until the committee is established and he shall for the purpose aforesaid be deemed to be the Committee.

(2) The person so appointed under sub-section (1) shall comply with such directions as may be given to him by the State Government, from time to time, for carrying out the said purposes.

252. Power of State Government and its officers over committee.—

(1) The State Government and Deputy Commissioners, acting under the orders of the State Government, shall be bound to require that the proceedings of committees shall be in conformity with law and with the rules in force under any enactment for the time being applicable to

1. Substituted for the words "municipality of B class or C class, as the case may be" vide Haryana Act No.3 of 1994.

Haryana generally or the areas over which the committees have authority.

(2) The State Government may exercise all powers necessary for the performance of this duty, and may among other things, by order in writing, annul or modify any proceeding which it may consider not to be in conformity with law or with such rules as aforesaid, or for the reasons which would in its opinion justify an order by the Deputy Commissioner under section 246.

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

Comments

Constitution of India, Article 226, 227 -- Alternative remedy -- Director had in exercise of powers of the State Government u/s 252 (2) of the Act had annulled the 'no confidence motion' -- Same shall not be amenable to the power of superintendence, direction and control of the State Government u/s 253 of the Act -- Preliminary objection that alternative remedy u/s 253 is available to the petitioner is liable to be rejected. Tarun Bhandari v. State of Haryana and others, 2006(1) L.A.R. 421 (P&H DB) = 2006(1) P.L.J. 193 = 2006(2) R.C.R.(Civil) 817.

Power of -- Power exercisable under Section 252 (2) of the Act is that of the State Government and is, therefore, not amenable to power of superintendence, direction and control of the State Government under Section 253 of the Act. Tarun Bhandari v. State of Haryana and others, 2006(1) L.A.R. 421 (P&H DB) = 2006(1) P.L.J. 193 = 2006(2) R.C.R.(Civil) 817.

253. General powers of State Government over officers.-- Notwithstanding anything in this Act, the State Government shall have the power of reversing or modifying any order of any officer of the State Government passed or purporting to have been passed under this Act, if it considers it to be not in accordance with the said Act or the rules to be for any reason inexpedient, and generally for carrying out the purposes of this Act the State Government shall exercise over its officers all powers of superintendence, direction and control:

Provided that the power of reversing or modifying any order of any officer of the State Government shall not apply to the orders passed by the ¹[Tribunal] or the District Judge in an election petition.

Comments

Constitution of India, Article 226, 227 -- Alternative remedy -- Director had in exercise of powers of the State Government u/s 252 (2) of the Act had annulled the 'no confidence motion' -- Same shall not be amenable to the power of superintendence, direction and control of the State Government u/s 253 of the Act -- Preliminary objection that alternative remedy u/s 253 is available to the petitioner is liable to be rejected. Tarun Bhandari v. State of Haryana and others, 2006(1) L.A.R. 421 (P&H DB) = 2006(1) P.L.J. 193 = 2006(2) R.C.R.(Civil) 817.

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1. Substituted for the word "Commission" vide Haryana Act No.3 of 1994.

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254. Power of State Government to ¹[dissolve] committee in case of incompetence, persistent default or abuse of powers.-- (1) Should a committee be incompetent to perform, or persistently makes default in the performance of, the duties imposed on it by or under this or any other Act, or exceed or abuse its powers, the State Government may, by notification, in which the reasons for so doing shall be stated, declare the committee to be ²[dissolved]:

³[Provided that no notification declaring the committee to be ⁴{dissolved} shall be made unless the matter has been enquired into by an officer, not below the rank of an Extra Assistant Commissioner, appointed by the State Government and the committee concerned has been given a reasonable opportunity of being heard.]

(2) When a committee is so ⁵[dissolved], the following consequences shall ensure:-

- (a) all members of the committee shall, from the date of the notification, vacate their seats;
- (b) all powers and duties of the committee may, until the committee is reconstituted, be exercised and performed by such persons as the State Government may appoint in this behalf;
- (c) all property vested in the committee shall, until the committee is reconstituted, vested in the State Government.

(3) ⁶[---]

255. Taking over of certain branches or departments of the committee.-- When the State Government, after due enquiry, is satisfied that a committee has committed default inasmuch as its particular branch or a department is incompetent of performing or does not adequately perform any or all of its functions, it may take over the control of such branch or department of the committee under its control and may appoint additional staff, if necessary, for the efficient discharge of the functions of such branch or department and may direct that the expenses thereof shall be paid by the committee within such time as the State Government may fix in this behalf:

1. Substituted for the word "supersede" vide Haryana Act No.3 of 1994.
2. Substituted for the word "superseded" vide Haryana Act No.3 of 1994.
3. Inserted by Haryana Act No.12 of 1979.
4. Substituted for the word "superseded" vide Haryana Act No.3 of 1994.
5. Substituted for the word "superseded" vide Haryana Act No.3 of 1994.
6. Omitted vide Haryana Act No.12 of 1979.

256. Disputes.— (1) If any dispute, for the decision of which this Act does not otherwise provide, arises between two or more committees constituted under this Act, or between any such committee and a Zila Parishad or a Panchayat Samiti or a Cantonment Authority, the matter shall be referred –

- (a) to the Deputy Commissioner if the local authorities concerned are in the same district;
- (b) to the State Government if the local authorities concerned are in different districts.

(2) The decision of the authority to which any dispute is referred under this section shall be final:

Provided that where a dispute referred to the State Government under clause (b) or sub-section (1) is between a committee and a Cantonment authority, the decision of the State Government shall be subject to the concurrence of the Central Government.

257. Power of State Government to frame norms and make rules.—

(1) The State Government may frame norms for any proceeding of a committee and may make any rules consistent with this Act to carry out the purposes thereof and in particular and without prejudice to the generality of the foregoing power may make rules –

- (a) with respect to the powers and duties of committees ¹[----];
- (b) as to the division of municipalities into wards, or of the inhabitants into classes, or both;
- (c) as to the number of representatives proper for each ward or class;
- (d) as to the qualifications of electors and of candidates for election;
- (e) as to the registration of electors;
- (f) as to the nomination of candidates, the time of election and the mode of recording votes;
- (g) regulating the procedure for elections under this Act, the contribution towards election expenses by candidates, the deposit of security by candidates and the conditions of forfeiture of such deposits;
- (h) prescribing the qualifications requisite in the case of persons appointed by a committee to offices requiring professional skill;
- (i) as to the priority to be given to the several duties of the committee;

1. The words "in municipalities of the first and second class" omitted vide Haryana Act No. 12 of 1979.

- (j) as to the authority on which money may be paid from the municipal fund;
- (k) as to the appointment, promotion, suspension, reduction, fining and dismissed of municipal watchmen;
- (l) as to the formation and working of municipal fire-brigades and the provision of implements, machinery or means of communicating intelligence for the efficient discharge of their duties by such brigades;
- (m) as to the procedure to be observed for the employment, punishment, suspension or removal or other conditions of services of members of Municipal Services and other employees of the committee and as to appeals from orders of punishment or removal;
- (n) as to the conditions on which property may be acquired by the committee or on which property vested in the committee may be transferred by sale, mortgage, lease, exchange or otherwise;
- (o) as to the intermediate office or offices, if any, through which correspondence between committees or members of committees and the State Government or officers of that Government shall pass;
- (p) for the preparation of plans and estimates for works partly or wholly to be constructed at the expense of committees, and for the preparation and periodical revision of maps and registers made under section 62 and for the authorities by which and the conditions, subject to which such plans, estimates, maps and registers are to be prepared and sanctioned;
- (q) for the regulation of contracts with electric supply companies for the supply of electric energy;
- (r) for the assessment and collection of, and for the compounding for, refunding or limiting refunds of taxes imposed under this Act, and for preventing evasion of the same; and for fixing the fees payable for notices of demand;
- (s) as to the conditions on which a municipal committee may receive animals or articles into a bonded-warehouse and as to the agreements to be signed by traders or others wishing to deposit animals or articles therein;
- (t) as to the accounts to be kept by committees, as to the conditions on which such accounts are to be open to inspection by inhabitants paying any tax under this Act, as to the manner in which such accounts are to be audited and published, and as to the power of the auditors in respect of disallowance and surcharge;
- (u) as to the preparation of estimates of income and

- expenditure of committees, and as to the persons by whom, and the conditions subject to which, such estimates may be sanctioned;
- (v) as to the returns, statements and reports to be submitted by committees;
 - (w) as to the powers to be exercised by Deputy Commissioners under section 252 and the powers to be exercised by such Local Self-Government Board or Inspectorate as the State Government may establish;
 - (x) as to the language in which business shall be transacted, proceedings recorded and notices issued;
 - (y) as to the publication of notices;
 - (z) to regulate the proceedings of persons empowered to accept composition under section 244 for alleged offences;
 - (zi) mode of assessment, apportionment of compensation under section 154 amongst, and payment to, the persons entitled thereto;
 - (zii) mode of communication of the order under section 154 to the persons affected thereby;
 - (ziii) the manner in which the compost is to be made;
 - (ziv) as to the establishment of training institution for employees of committees and course of training for different classes of employees;
 - (zv) as to the imposition of fine where owners do not take advantage of amenities provided by the committees, such as electricity, tap-water-supply, sewerage, etc.;
 - (zvi) as to regulate the charges to be paid to the safai mazdoors engaged in house scavenging;
 - (zvii) to regulate the erection and setting up of substantial boundary marks, defining the limits or altered limits of the area subject to its authority;
 - (zviii) as to the penalty for cutting streets or removal of obstruction or encumbrances obstructing streets or drains;
 - (zix) as to the exemption to a committee from liability to any forfeiture, penalty or damages for cutting of the supply of water or not supplying water in case of draught or other unavoidable cause or accidents, etc.
 - (zx) as to regulate the licensing of markets, forming of markets, collection of rents and fees and removal of such persons who occupy stalls or space in markets in an unauthorised manner;
 - (zxi) as to the constitution of committees consisting of official and non-official members at Divisional and District Headquarters, to examine and discuss the annual accounts

and the reports of the committees and to suggest remedial measure thereto;

¹[(zxii) as to the manner in which the seats in the District Planning Committees shall be filled in;

(zxiii) as to the manner in which the Chairpersons of the District Planning Committees shall be chosen;

(zxiv) as to the functions relating to the District Planning Committees;

(zxv) generally for carrying out the purposes of this Act.]

(2) The rules under clause (g) of sub-section (1) may among other matters provide -

- (i) for the definition of corrupt practices at elections held under the provisions of this Act which are to be deemed to be corrupt;
- (ii) for the investigation of allegations of corrupt practices;
- (iii) for making void the election of any person proved to the satisfaction of the State Government to have been guilty of a corrupt practice or to have connived at or abetted the commission of a corrupt practice or whose agent has been so proved guilty, or the result of whose election has been materially affected by the breach of any law or rule for the time being in force;
- (iv) for rendering incapable of municipal office, any person who may have been proved guilty as aforesaid of a corrupt practice or of conniving at or abetting the same;
- (v) for prescribing the authority by which questions relating to the matters referred to in clauses (d), (e) and (f) of sub-section (1) shall be determined; and
- (vi) for authorizing courts to take cognizance of the breach of any such rules on the complaint of the Deputy Commissioner or some person authorised in writing by the Deputy Commissioner.

(3) The Municipal Account Code at present in operation in the municipalities in the State of Haryana shall be deemed to have been made in pursuance of the powers conferred upon the State Government by sub-section (1) of this section.

(4) In making rules under clauses (d) to (g), and clauses (l) and (r), of sub-section (1), the State Government may direct that a breach of any provision thereof shall be punished with a fine which shall not be less than fifty rupees and more than five hundred rupees.

(5) All rules made under this Act shall be subject to previous publication.

¹ Clause (zxii) substituted by clauses (zxii) to (zxv) vide Haryana Act No.3 of 1994.

(6) A rule under this section may be general for all municipalities or may be special for the whole or any part of any one or more municipalities as the State Government directs.