

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**CWP No.23215 of 2015
Date of Decision: 31.10.2015**

Hari Parkash

.....Petitioner

Versus

The State of Haryana & others

....Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Surinder Gandhi, Advocate for the petitioner.

RAJIVE BHALLA, J (ORAL)

The petitioner challenges the retrospectivity assigned to the Haryana Municipal Corporation (Amendment) Act, 2015 (hereinafter referred to as the “Act”), notified on 15.09.2015.

Counsel for the petitioner submits that by an amendment in Section 45 of the Act, power has been conferred on the Government to appoint an HCS Officer as a Commissioner, of a Municipal Corporation, with retrospective effect. The amendment conferring retrospective power to appoint an HCS Officer as a Commissioner of a Municipal Corporation, operates to the detriment of the petitioner as on the date of passing of the order sanctioning prosecution, there was no provision in the Act authorising the Government to appoint an HCS Officer as a Commissioner of a Municipal Corporation. The amendment enacted with retrospective effect, to rectify this defect, operates to the detriment of the petitioner, and must, therefore be held to be beyond legislative power.

Counsel for the petitioner relies upon following judgments:-

- (1) **Virender Singh Hooda & ors. Vs. State of Haryana & anr., 2004 (4) SCT 793.**
- (2) **State of Gujarat & anr. Vs. Raman Lal Kashav Lal Soni & ors., 1984 AIR (SC) 161.**
- (3) **Raj Pal Chhabra Vs. State of Haryana, 1998 (4) RCR (Civil) 608.**
- (4) **M/s Shiv Shanker Industries Vs. State of Haryana & ors., 2011 (3) RCR (Civil) 1.**
- (5) **Nirbhai Singh Vs. State of Punjab & ors., 2011 (3) PLR 393.**
- (6) **S.Udhayakumar Vs. State of Tamil Nadu, 2002 (3) CTC 705.**

We have heard counsel for the petitioner, perused the paper book and provisions of the amended Act as well as judgments cited by counsel for the petitioner.

The point, that calls for an answer and would determine the outcome of the present petition, is the nature of power to legislate retrospectively? The power of Legislature to legislate retrospectively is too well settled for us to amplify. Even the precedents cited by counsel for the petitioner, hold that legislative power may be exercised retrospectively. An impediment in the exercise of power to legislate retrospectively is that it shall not take away a vested right. The judgments cited by counsel for the petitioner relate to situations where statutory provisions were amended retrospectively with the sole object of divesting a person of a vested right or nullifying a resolution passed by a Municipal Committee. The legislature has in the exercise of its power to

legislate retrospectively conferred power upon the Government to appoint an HCS Officer as Commissioner. The order granting sanction to prosecute the petitioner was passed by an HCS Officer, exercising the power of the Commissioner of the Municipal Corporation. The retrospective conferment of power cannot be said to be illegal or contrary to the statute or divest the petitioner of any vested right.

Consequently, finding no merit the writ petition is dismissed.

[RAJIVE BHALLA]
JUDGE

31.10.2015
Vinay

[REKHA MITTAL]
JUDGE