
(2008) 11 P&H CK 0148
In the Punjab And Haryana At Chandigarh

Amandeep Singh Gill

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 06-11-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2009) 3 PLR 737 : (2009) 1 RCR(Civil) 466

Hon'ble Judges : Satish Kumar Mittal, J;Jaswant Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish Kumar Mittal, J.—This petition has been filed by Amandeep Singh Gill, a Councilor of Municipal Council, Raikot, District Ludhiana, under Articles 226/227 of the Constitution of India for quashing the notification dated 1.9.2008 (Annexure P-4), issued by the Director & Special Secretary, Local Government Department, Punjab (respondent No. 2 herein), whereby name of Vijay Kumar Jain (respondent No. 4 herein) has been notified as President of the Municipal Council after rejecting the part of the resolution dated 27.8.2008, passed by the Municipal Council, Raikot, electing respondent No. 4 herein as President for the initial 2-1/2 years and the petitioner Amandeep Singh Gill for the remaining 2-1/2 years.

2. The brief facts of the case are that the Municipal Council, Raikot consists of 15 elected members and one Member of Legislative Assembly being the ex-officio member. Election of the Municipal Council, Raikot took place on 30.6.2008. The petitioner was elected as Municipal Councilor from Ward No. 9, whereas respondent No. 4 was elected as such from Ward No. 10. After the declaration of result, names of the elected Municipal councillors were notified. Thereafter, the Deputy Commissioner, Ludhiana, authorised the Sub Divisional Magistrate, Raikot to convene the first meeting of the elected members under Rule 3 of the Punjab Municipal (President and Vice-President) Election Rules, 1994 (hereinafter referred to as "the Rules"), to administer the oath of allegiance to the newly

elected Municipal councillors and to conduct the election of the President and Vice President of the Municipal Council. The first meeting was fixed for 23.7.2008, but the said meeting was adjourned. Thereafter, the second meeting was fixed for 13.8.2008, which was also cancelled. Subsequently, the third meeting was called by the Convener-cum-SDM, Raikot for 27.8.2008. Notice of the said meeting was duly served on all the members of the Municipal Council, Raikot. On 27.8.2008, all the 15 elected members of the Municipal Council came present. However, the Member of Legislative Assembly, who is ex-officio member, did not attend the said meeting. After administering oath to all the elected members, the process for election of the office of President and Vice President was started. One Raj Kumar, Municipal Councilor, proposed the name of respondent No. 4 for the office of President, which was seconded by Charanjit Singh, another Councilor. Simultaneously, one Mulkh Raj, Municipal Councilor, proposed the name of the petitioner for the office of President, which was seconded by Buta Singh, Municipal Councilor. Thereafter, instead of proceeding for voting as required under Rule 4 of the Rules, the convener permitted all the Municipal councillors to pass the resolution that the first term of President for 2-1/2 years will be given to respondent No. 4 and the second term of the remaining period of 2-1/2 years will be given to the petitioner. In the said meeting, Shri Mulakh Raj was unanimously elected as Vice President of the Municipal Council. The convener sent the said resolution dated 27.8.2008 to the Government for notification u/s 24 (2) of the Punjab Municipal Act, 1911 (hereinafter referred to as "the Act"). Respondent No. 2, while exercising the powers of the Government, vide notification dated 1.9.2008 (Annexure P-4), notified election of respondent No. 4 as President of the Municipal Council, Raikot, by accepting part of the said resolution dated 27.8.2008, electing respondent No. 4 herein as President for the initial 2-1/2 years and however rejecting part of the said resolution, whereby petitioner Amandeep Singh Gill was elected for the remaining 2-1/2 years. The petitioner has filed the instant petition for quashing the aforesaid notification issued by respondent No. 2.

3. At the first instance, learned Counsel for the respondents raised the preliminary objection that since name of respondent No. 4 as President of the Municipal Council, Raikot, has been notified, therefore, this writ petition is not maintainable, as the petitioner has the alternative remedy of challenging the election of respondent No. 4 by way of filing the election petition u/s 76 read with Section 89 of the Punjab State Election Commission Act, 1994.

4. On the other hand, learned Counsel for the petitioner, while referring to a Division Bench decision of this Court in Shimla Rani and Ors. v. State of Punjab and Ors. 2008(3) RCR 138, submits that against the election of the office of President and Vice President of Nagar Panchayat or Municipality, no election petition is maintainable and the only remedy is to challenge the election by filing a writ petition.

5. After hearing counsel for the parties on the preliminary objection, in view of

the decision of this Court in Shimla Rani's case (supra) and the fact that in this petition, the action of respondent No. 2 u/s 24 (2) of the Act has been challenged, we do not find any merit in the preliminary objection, raised by learned Counsel for the respondents. We have accordingly heard learned Counsel for the parties on the merits of the case.

6. Learned Counsel for the petitioner contends that though under the Act, there is no bar for the members of a Municipal Council to elect 2 persons for two terms of 2-1/2 years each, but in the instant case, if respondent No. 2 was of the opinion that in terms of Section 21 of the Act, the term of the office of the President has to be co-terminus with the term of the Municipality, i.e. for 5 years, and that the office of the President cannot be divided for specific terms of two or more candidates, then the whole of the proceedings of the meeting dated 27.8.2008 should have been set aside, with a direction to hold the election as per Rule 4 of the Rules between the two candidates, namely, petitioner and respondent No. 4, who were nominated for the office of President of the Municipal Council, as no election had taken place as per Rule 4 of the Rules. Thus, respondent No. 2 has acted illegally and arbitrarily, while notifying the name of respondent No. 4 as the elected President of the Municipal Council, Raikot. Learned Counsel further submits that u/s 24 (2) of the Act, the Government can refuse to notify the election of an elected person as President of the Municipal Council only on the ground that such person has incurred a disqualification under the Act or under any other law for the time being in force, subsequent to his election as member of the Municipality, and the second proviso to Section 24(2) of the Act further provides that before refusing to notify the election of a person as President, an opportunity of hearing is to be provided to the concerned person. Therefore, learned Counsel submits that in the instant case, respondent No. 2 has committed grave illegality, while refusing to notify the name of the petitioner for the second term of 2-1/2 years, without providing any opportunity of hearing to him. In support of his contention, learned Counsel has relied upon a judgment of the Supreme Court in Gurdeep Singh and Others Vs. State of Punjab and Others, wherein it has been held that in case, members of the Municipal Council want the voting to be conducted in a manner inconsistent with the Rules, the convener should have overruled any such demand and should have proceeded to hold the election in the manner contemplated by the Rules.

7. While relying upon this judgment, learned Counsel submits that if the Municipal Council could not have elected two persons as President for 2-1/2 years each, then the convener should have rejected their decision and should have put both the nominated members for voting. Learned Counsel for the petitioner further relied upon a Division Bench decision of this Court in Charanjit Singh v. State of Punjab 2004(1) RCR 218, in which it was held that once two candidates secure equal number of votes, then the convener is duty bound to at once decide between the candidates by drawing a lot in the presence of the Members attending the meeting, instead of adjourning the meeting to seek

guidelines from the Election Commission.

8. On the other hand, learned Counsel for the respondents submit that in view of Section 21(1) of the Act, the term of the office of President of a Municipality is co-terminus with the term of the Municipality. According to the learned Counsel, term of the office of President cannot be divided by simultaneously elected two persons to the effect that the first term of 2-1/2 years will be held by one person and the second term of 2-1/2 years by the other person. Therefore, respondent No. 2 was fully justified in rejecting the part of the resolution dated 27.8.2008, which provides for such an arrangement and accepting the part vide which, respondent No. 4 was elected for the first term of 2-1/2 years, therefore, his name was notified as the elected President of the Municipal Council. Learned Counsel contended that Section 20(1) of the Act clearly provides that the members of the Municipal Council shall elect one of their members as President of the Municipality, but they have no right to fix the term of their President. In fact, the term of the President has already been fixed, as defined in Section 21(1) of the Act, which provides that the term of office of President of a Municipality shall be co-terminus with the term of the Municipality unless curtailed as per provisions of the Act. Learned Counsel for the respondents submit that since the newly elected members unanimously elected respondent No. 4 and the petitioner as their President by fixing their term as 2 = years each, therefore, the second part of the resolution, which was totally against the provisions of the Act, was rejected. Learned Counsel submitted that in view of Section 236 of the Act, it is the discretion of the Government to accept one part of the resolution and to reject another part thereof. The Government is not required to reject the whole resolution, as contended by learned Counsel for the petitioner. Learned Counsel for the respondents have contended that the resolution passed by the members of the Municipal Council, electing respondent No. 4 as President for the first term of 2-1/2 years and further electing the petitioner as such for the next term of the remaining period of 2-1/2 years, was totally illegal, therefore, there was no occasion for respondent No. 2 to provide opportunity of hearing to the petitioner, while notifying the name of respondent No. 4 as President of the Municipal Council.

9. After hearing learned Counsel for the parties, in our opinion, the impugned order dated 1.9.2008, passed by respondent No. 2, is liable to be quashed.

10. Section 20(1) of the Act provides as under:

Every Municipality shall, from time to time, elect one of its members to be its President, and the member so elected, on being notified by the State Government, become President of the Municipality.

Section 21 of the Act is being re-produced hereunder:

21. Term of office of President and Vice-President:- The term of office of President of a Municipality shall be coterminous with the term of the Municipality.

(2) The term of office of Vice-President of the Municipality shall be such as the Municipality may fix under its bye-laws.

(3) An outgoing President or the Vice-President shall, if otherwise qualified, be eligible for the re-election.

Rule 3 of the Rules provides that within a period of fourteen days of the publication of the notification of election of members of a newly constituted Municipality, the Deputy Commissioner or any other officer authorised by him in this behalf shall fix a date for convening the first meeting of the elected members of such Municipality, for the purpose of administering the oath of allegiance to the members present and to elect the President and the Vice-President or Vice-Presidents, as the case may be. Rule 4 of the Rules further provides that the voting for the offices of President and Vice-President or Vice-Presidents, as the case may be, shall be by show of hands.

Rules 3 and 4 provide as under:

3. Manner of election.- (1) The Deputy Commissioner or any other officer authorised by him in this behalf (here-in-after referred to as the Convener) shall, within a period of fourteen days of the publication of the notification of the election of members of a newly constituted Municipality, fix, by giving not less than forty-eight hours notice to be served at the ordinary place of residence of all the elected members, a date for convening the first meeting of the elected members of such Municipality by stating in the notice that at such meeting, the oath of allegiance will be administered to the members present and also stating that the President and Vice-President or Vice-Presidents as the case may be, shall be elected:

Provided that all subsequent meetings to fill casual vacancies of the offices of President and Vice-President or Vice-Presidents as the case may be, shall be convened by the Convener.

(2) If due to any reason, the elected member is unable or refuses to take oath of allegiance as required by Sub-rule (1) within the stipulated period, then he will be allowed to take such oath of allegiance in the subsequent meeting unless he is debarred from taking the same by the Government for any reason. In case any such member does not take the oath of allegiance as aforesaid, then a fresh election to the constituency to which that member represents, shall be held.

4. Voting by show of hands.- (1) The voting for the offices of President, Senior Vice-President and Vice-President, as the case may be, shall be by show of hands.

(2) The person presiding over the meeting convened under Rule 3, shall keep a brief record in writing.

10. In the present case, in the duly convened meeting held on 27.8.2008, out of 16 members, 15 elected members came present for the election of the President and the Vice-President. From the proceedings of the meeting, copy of which has

been annexed as Annexure P-3, it is clear that the petitioner and respondent No. 4 were duly proposed and seconded by the different Municipal councillors for the election of the office of President, but the convener, instead of proceeding for voting, permitted the members to resolve that the first term of President for 2-1/2 years will be given to respondent No. 4 and the second term of the remaining period of 2-1/2 years will be given to the petitioner. Under the provisions of the Act, the members of the Municipal Council cannot elect two persons as their President for two different terms, as Section 20(1) of the Act provides that only one member can be elected as President of the Municipality. The members of the Municipality have no right to elect two persons simultaneously as President for two different terms. They have to elect only one person as President and the term of the office of such President shall be co-terminus with the term of the Municipality, as provided u/s 21(1) of the Act, unless curtailed by the provisions of the Act. In our opinion, the convener of the meeting, who was duly authorised by the Deputy Commissioner to convene the meeting and hold the election of President, was duty bound to conduct the election strictly in accordance with the provisions of the Rules. It was his duty to ask the members to cast their votes in favour of either of the two candidates for the purpose of election of the President and to send the name of the elected candidate to the Government for notification of his name as President. In this case, instead of proceeding for voting, the convener permitted all the members of the Municipality to pass the resolution electing respondent No. 4 as well as the petitioner as President for 2-1/2 years each. In our opinion, the convener of the meeting should not have permitted the members on their demand to elect two persons as Presidents for two different terms. He should have overruled any such demand and should have proceeded to hold the election in the manner contemplated by the Rules. Thus, in our opinion, respondent No. 2 was right while coming to the conclusion that all the members of the Municipal Council were not empowered to elect two persons for the office of President for two different terms, as according to Section 20 of the Act, a Municipality can elect only one of its members as President and according to Section 21 of the Act, term of the office of President of a Municipality shall be co-terminus with the term of the Municipality. However, at the same time, in our opinion, respondent No. 2 was not justified at all while notifying the name of respondent No. 4 as elected President of Municipal Council, Raikot, because no election of the office of President had taken place in the meeting held on 27.8.2008. Names of two councillors i.e. respondent No. 4 and the petitioner were proposed and seconded by the different members of the Municipal Council, but instead of proceeding for voting, all the Municipal councillors were permitted to resolve that respondent No. 4 and the petitioner will be the President of the Municipal Council for 2-1/2 years each, which is not permitted by law. Respondent No. 2, while totally ignoring this aspect, in our opinion, has illegally and arbitrarily notified the name of respondent No. 4 as elected President, on the ground that the first part of the resolution to the effect that respondent No. 4 will be the President of the Municipal Council for the first 2-1/2 years was in consonance with the provision

of Section 20 (1) of the Act. In our opinion, respondent No. 2 should have rejected the entire resolution, whereby respondent No. 4 and the petitioner were elected as President for two different terms, as the whole resolution is not in accordance with the provisions of the Act. We cannot accept the contention of learned Counsel for the respondents that the Government, in its wisdom or in exercise of its power u/s 236 of the Act, could, in the facts and circumstances of the case, accept one part of the resolution dated 27.8.2008 and rejected the other. In our opinion, the entire resolution passed by the members of the Municipal Council should not have been accepted by respondent No. 2 and he has committed grave illegality while accepting its first part and notifying the name of respondent No. 4 as the elected President of the Municipal Council.

11. In view of the above, the impugned notification dated 1.9.2008 (Annexure P-4) issued by respondent No. 2 is hereby set aside. Since the convener of the meeting has not proceeded for voting, which he ought to have in accordance with the Rules, when the two candidates were proposed and seconded for the election of the office of President, therefore, we direct the convener-SDM Raikot to convene the meeting of the members of the Municipal Council, Raikot and conduct the election of the office of President between the petitioner and respondent No. 4, within a period of one month from today, in accordance with law. After the election is held, respondent No. 2 shall notify the name of the elected person as President in accordance with law.

12. Consequently, the writ petition is allowed.