
(2001) 05 P&H CK 0163

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11510 of 2000

Ashok Kumar Gupta

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 28-05-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144
Punjab Municipal Act, 1911 — Section 20, 22, 232, 236, 24

Citation : AIR 2001 P&H 282 : (2002) 1 ILR (P&H) 63 : (2001) 4 RCR(Civil) 223

Hon'ble Judges : V.S. Aggarwal, J; Amar Bir Singh Gill, J

Bench : Division Bench

Advocate : Mr. S.P. Jain and Mr. Vijay Chaudhary, for the Appellant; Mr. N.D.S. Mann, DAG, Mr. A.K. Khunger and Mr. S.C. Pathela, for the Respondent

Final Decision : Allowed

Judgement

Amar Bir Singh Gill, J.—These two Civil Writ Petitions No. 11510 of 2000 and 4608 of 2001 are being disposed of by a common judgment since an identical relief of issuance of mandamus to the respondent-State for notifying the election of Ashok Kumar Gupta, petitioner, in CWP No. 11510 of 2000 and that of Dharam Singh Aulakh, petitioner in CWP No. 4608 of 2001 as President of Municipal Council, Ferozepur City in the election held on two dates i.e. 21.8.2000 and 25.9.2000 respectively is claimed. The relevant facts pertaining to the controversy in these two writ petitions are being taken from C.W.P. No. 11510 of 2000.

2. In the Meeting of Municipal Council, Ferozepur on 24.4.2000 no confidence motion was passed against Dharam Singh, the then President of the Municipal Council which resolution was challenged in C.W.P. No. 6727 of 2000. A Division Bench of this Court disposed of the said writ petition by order dated 9.6.2000, Annexure P-1 in the following terms :-

"i) within 3 days from today, the petitioner No. 9 may tender his resignation from the office of the President before the competent authority of the Municipal

Council, Ferozepur;

ii) on receipt of the letter of resignation, the competent authority of the Municipal Council, Ferozepur, shall convene the meeting by giving notice of the prescribed duration to all the members;

iii) if the resignation of petitioner No. 9 is accepted, then fresh election to the office of the President, be held strictly in accordance with law within a period of four weeks."

3. Dharam Singh tendered his resignation on 20.6.2000 and the same was accepted by the Government and the Executive Officer was informed by the State on 7.7.2000. In view of the mandate of this Court in its order, Annexure P-1 election of the President of the Council was to take place within four weeks therefrom i.e. on or before 7.8.2000. The then Vice President, however, was not issuing any notice for election meeting. Six Municipal Councillors then on 25.7.2000 submitted a letter, Annexure P-2, to the Executive Officer for requisitioning an election meeting. The Executive Officer thereafter informed respondent No. 4 - Senior Vice President of the Municipal Council in respect of acceptance of the resignation of Dharam Singh and requirement of holding of election within four weeks. He also requested for issuance of ballot papers from the Deputy Commissioner, Ferozepur on 21.7.2000 and the ballot papers duly signed by the Deputy Commissioner, Ferozepur were later on received in the office on 3.8.2000. The Deputy Commissioner, Ferozepur also appointed the Sub Divisional Magistrate, Ferozepur-respondent No. 2 as an Observer of the meeting. Respondent No. 4, however, instead of holding the election within four weeks of the receipt of the date of acceptance of the resignation, called a meeting for 21.8.2000 at 3 pm in the Town Hall for the purpose of election of the President. Notice, Annexure P-3, in this respect was issued on 7.8.2000 to the Councillors intimating the agenda of the meeting. However, on 20.8.2000, respondent No. 4 passed order, Annexure P-5, which reads as under:

To

The Executive Officer, Municipal Council, Ferozepur.

Sub : About cancellation of election of the President, Municipal Council, dated 21.8.2000.

Dear Sir,

It is submitted that to-day on 20.8.2000, I suddenly became un-well and have got myself checked up by the doctor. The doctor told me that I appear to be a heart patient and he advised me to immediately go to Delhi and get all the necessary tests carried out from a good hospital. Therefore, in view of the advice of the doctor I have suddenly to go to Delhi, to-day on 20.8.2000 for getting myself checked up. Therefore, I cancel the meeting of the Municipal Council for electing the President, scheduled to be held on 21.8.2000. Next date for the election of the President shall be intimated later on. All the Municipal Councillors

be informed about it immediately.

Sd/- Kinder 20.8.2000 Smt. Kinder Hans, Sr. Vice President, Municipal Council, Ferozepur."

The Executive Officer issued letters on the same day informing the cancellation of the meeting by the Vice President. However, 15 out of 25 Councillors without caring for the cancellation of the meeting assembled at the Town Hall on 21.8.2000 at 3.00 pm in accordance with the meeting agenda. The Sub Divisional Magistrate, Ferozepur i.e. the observer appointed by the Deputy Commissioner also arrived at the same time and meeting was held under the chairmanship of Chander Mohan Handa, the then junior Vice President of the Council. The proceedings register and the ballot papers were asked for through a letter, Annexure P-8, from the office of the Executive Officer. Since the attendance register and the proceedings book were not supplied, the Chairman of the meeting started a fresh proceeding book which was duly signed by the members present there. The members also marked their attendance in the new register, Annexure P-9. Thereafter, the election of the President was held and the name of Ashok Kumar Gupta was proposed, duly seconded and unanimously elected as the President for which resolution was drawn in proceedings book, Annexure P-10. The junior Vice President of the Municipal Council-Chander Mohan Handa sent a copy of the proceedings to the Executive Officer through letter Annexure P-11 on the same day at 4 pm. Thereafter, the senior Vice President who had earlier cancelled the meeting came to the Town Hall alongwith some of the Councillors on the same day and held a meeting. However, no President was elected. On 24.8.2000, Junior Vice President also sent a letter, Annexure P-12, to the Director, Local Government informing of the election meeting dated 21.8.2000 and election of Ashok Kumar Gupta as President and requested for notifying his name as such. The Observer i.e. the Sub Divisional Magistrate, Ferozepur also made a report to the Deputy Commissioner. Necessary notification of the election of the petitioner was, however, not issued by the State Government. The petitioner has, thus, approached this Court with the grievance that the action of respondent No. 4 - Senior Vice President in cancelling the meeting of the Municipal Council convened for election of the President on 21.8.2000, Annexure P-5, was illegal and his election in the meeting held on the same day was perfectly valid in the eyes of law and he was duly elected as President. The State Government was required to notify the election of the petitioner as President of the Municipal Council u/s 20 of the Punjab Municipal Act, 1911 (for short to be referred as "the Act") since there was no necessity of approval of the election resolution from the State Government and that the State Government is working under the pressure of respondent No. 4 and her supporters who were trying to call another meeting for election of the President. No such meeting can be called once the petitioner was elected and there was no vacancy of the office of President. The petitioner seeks the relief of issuance of a writ in the nature of mandamus directing respondent No. 1 to notify his election as President of the Municipal Council, Ferozepur held on

21.8.2000 and consequently issuance of a writ in the nature of certiorari quashing the impugned order, Annexure P-5 issued by respondent No. 4 by which the election meeting was cancelled illegally. The petitioner further prays for restraining the private respondents from convening another meeting of the Municipal Council for election as President there being no vacancy.

4. The respondents have filed their separate written statements. Executive Officer-respondent No. 3 has taken a stand that the Senior Vice President, by her order dated 20.8.2000, had cancelled the meeting convened for 21.8.2000. He had informed the Councillors accordingly. However, he came to know that some of the Councillors assembled in the Town Hall on 21.8.2000 and unanimously elected the petitioner as President.

5. The Sub Divisional Magistrate-respondent No. 2, in his written statement, stated that he was appointed as an Observer of the election meeting by order dated 2.8.2000 of the Deputy Commissioner. He received letter dated 21.8.2000 from the Deputy Commissioner, Ferozepur at 2 pm by which Tehsildar, Ferozepur was appointed as Duty Magistrate on 21.8.2000 at 3 pm in the Town Hall, Ferozepur during the election of President of the Municipal Council. He received another letter dated 20.8.2000 from the Executive Officer intimating that the election meeting dated 21.8.2000 was postponed till further orders by the senior Vice President. He reached the Town Hall at 3 pm on 21.8.2000 as Observer where 15 Councillors including Chander Mohan Handa, the then junior Vice President were present in the Town Hall and proceedings for the election were started under the chairmanship of the junior Vice President, Chander Mohan Handa who asked for the municipal staff. The Executive Officer was not available being out of station and the proceedings book and ballot papers were in his custody. According to respondent No. 2, in his presence, the name of Ashok Kumar Gupta was proposed for the President and duly seconded for his election as President of the Municipal Council where after all the Municipal Councillors left the meeting hall raising slogans in favour of the petitioner as their leader and elected President. He further stated in his written statement that thereafter Smt. Kinder Hans, Senior Vice President occupied the chair of President and 12 Municipal Councillors also occupied their seats. They also prepared a writing that the meeting fixed for 21.8.2000 had been postponed due to illness of respondent No. 4 and that the meeting held earlier on the same day was illegal. Respondent No. 2 further claimed that he had informed the Deputy Commissioner with his complete report on 22.8.2000. It is further claimed that on the day of election meeting tight police arrangements were made by the Senior Superintendent of Police, Ferozepur. Deputy Superintendent of Police, Zira was personally monitoring the law and order situation at the spot.

6. In the written statement filed by respondent No. 4, 5 and 7 to 13, preliminary objections were taken impugning the election held on 21.8.2000 by 15 of the Municipal Councillors electing the petitioner as illegal as the meeting was already cancelled and information in this respect was given to all the Councillors on

20.8.2000. They further claimed that junior Vice President obtained signatures of some of the Councillors and the same were used for forging a resolution electing the petitioner as President of the Municipal Council and that some of the Councillors have given their affidavits in this respect. It is also claimed that the Deputy Commissioner has not been impleaded which was a necessary party and that the petition is liable to be dismissed as infructuous since the senior Vice President had fixed the election meeting on 25.9.2000 at 10.35 am and on that day 13 members unanimously elected Dharam Singh Aulakh as President of the Municipal Council. Respondent No. 4 also claimed that he had cancelled the meeting fixed for 21.8.2000 on the advice of the doctor as she was to get herself checked up and she had sent intimation in this respect. Respondent No. 4 denied that any such meeting was held on 21.8.2000 at 3 pm and that Sub Divisional Magistrate, Ferozepur also attended such a meeting which was presided over by Junior Vice President-Chander Mohan Handa.

7. In the written statement filed on behalf of respondent No. 1, all the facts pleaded by the petitioner in respect of the meeting held on 21.8.2000, have since been conceded. It is also claimed that the meeting was postponed but the Sub Divisional Magistrate had attended the meeting and gave his report, Annexure R-2. It is mainly claimed that since the Deputy Commissioner has not recommended the election of the petitioner as President of the Municipal Council, his name has not been notified.

Learned counsel for the parties have been heard.

8. The case of the petitioner and the counter claim of the respondents raise a dispute mainly in respect of the election meeting held on 21.8.2000 wherein petitioner Ashok Kumar Gupta is claimed to have been elected as President of the Municipal Council, whereas the rival claim being that since the meeting dated 21.8.2000 was postponed by the Senior Vice President-respondent No. 4, any such meeting held by some of the Councillors including the petitioner had no legal consequences and the petitioner was never elected as President of the Municipal Council. It is also claimed that in the subsequent meeting held on 29.5.2000, respondent No. 5-Dharam Singh was duly elected as President of the Municipal Council.

9. In order to appreciate the rival claims, it is to be seen if the meeting held on 21.8.2000 in which the petitioner claims to have been elected as President, was a valid meeting or not and whether he was duly elected as President. Admittedly, a Division Bench of this Court, in its order, Annexure P-1, had directed that from the date of acceptance of the resignation of the then President Dharam Singh, the next President shall be elected within four weeks therefrom for which necessary meeting according to rules shall be called. It has come on record that the resignation of Dharam Singh, now respondent No. 5, was accepted on 7.7.2000 and an intimation in this respect was received by the Executive Officer on 11.7.2000. He had informed the senior Vice President-respondent No. 4 about the requirement of holding a meeting earlier to 7.8.2000 i.e. within for weeks

from the date of acceptance of resignation of the earlier President in accordance with the directions of this Court. Admittedly, respondent No. 4 did not take any step or care to call any such meeting and six of the Municipal Councillors submitted a letter dated 25.7.2000, Annexure P-2, requiring the Executive Officer to convene a meeting for holding the election of the President. Section 25 of the Act provides for times of holding meetings by the Municipal Committee as under :-

"25. Times of holding Meeting - (1) Every Committee shall meet for the transaction of business at least once in every month at such time as may, from time to time, be fixed by the bye-laws.

(2) The President or, in the absence or during the vacancy of his office or during his suspension u/s 22 a Vice-President may, whenever he thinks fit and shall on a requisition specifying the purpose of the meeting made in writing by not less than one fifth of the members of the committee, convene either an ordinary or a special meeting at any other time.

(3) if the President or the Vice-president, as the case may be, fails to call a meeting of the committee within a period of fourteen days from the date of receipt of requisition, the members who had signed the requisition may convene a meeting of the committee in accordance with the by-laws of the committee within a period of thirty days of the making of such requisition and notwithstanding anything contained in, this Act such meeting shall be deemed to be a validity convened meeting :

Provided that no business other than that specified in the requisition shall be transacted in such meeting and the quorum for such a meeting shall be as provided for a special meeting under sub-section (1) of Section 27."

10. On receipt of the requisition, no immediate action was taken by the Vice President so as to complete the election of the President within the stipulated period, rather the meeting was fixed by letter dated 7.8.2000 for 21.8.2000 at 3 pm in Town Hall. Since the requisition for holding election meeting was made on 25.7.2000, meeting could have been fixed earlier to 8.8.2000 to meet the dead line of holding election but instead it was only on 7.8.2000 by letter, Annexure P-3, that the Vice President-respondent No. 4 convened a meeting for 21.8.2000. The petitioner has placed on file, Annexure P-4 wherein the Sub Divisional Magistrate, Ferozepur was apprised of the efforts of some of the opposite Councillors to stall the holding of election meeting of the President on 21.8.2000 and it was on 20.8.2000 i.e. a day earlier to the date fixed for the meeting, the Vice President cancelled the meeting by letter, Annexure P-5. intimation of cancellation of the meeting was given by the Executive Officer to the Councillors. The reason for cancelling the meeting by letter, Annexure P-5, of the Vice President was her sudden illness and the advice of doctor for her immediate check up at Delhi since she was diagnosed of heart trouble. Whether the Vice President- respondent No. 4 could postpone the election meeting having

requisitioned a special meeting? In the circumstances, the answer obviously is in the negative. The presence in the meeting of the President or the Vice President is not obligatory and there is no provision in the Act if a meeting of the Municipal Council can not be held in the absence of the President or the Vice President. Section 28 of the Act provides as to who shall chair or preside over the meeting as follows :-

"28. Chairman of meeting - At every meeting of a committee the President, if present, or, in his absence or during the vacancy of office, or during his suspension under Section, or during his suspension u/s 22 the Senior Vice-President present, and if there be no President or Vice-President present, then such one of their members other than an associate member as the members may elect shall preside as Chairman."

11. A reading of Section 28, thus, clarifies unmistakably that in the absence of the President, the Senior Vice President and in the absence of both, then one of the members present can be elected to preside over the meeting as Chairman. In case Senior Vice President, respondent No. 4 had any reason to be not present, in the circumstances, she could not have cancelled the meeting since a valid meeting could have been held in her absence. A meeting can be postponed only if the quorum of the meeting is not complete as provided in Section 27 of the Act as under:-

"27. Quorum - (1) The quorum necessary for the transaction of business at a special meeting of a committee shall be one-half of the number of the committee actually serving at the time, but shall not be less than three.

(2) The quorum necessary for the transaction of business at an ordinary meeting of a committee shall be such number or proportion of the members of the committee as may, from time to time, be fixed by the bye-laws, but shall not be less than three :

Provided that, if at any ordinary or special meeting of a committee a quorum is not present, the chairman shall adjourn the meeting to such other day as he may think fit, and the business which would have been brought before the original meeting if there had been a quorum present shall be brought before, and transacted at, the adjourned meeting, whether there be a quorum present thereat or not."

12. It is also conceded in the written statement by respondent No. 1 in para 13(ii) wherein it is stated that "it is, however, submitted that respondent No. 4 has no right to postpone the requisite meeting u/s 27 of the Punjab Municipal Act, 1911 (as amended by Act 11 of 1994)." The cancellation of the special meeting dated 21.8.2000 was, thus, beyond the scope of powers of the Vice President. It is not the case of the respondents, in any manner, that in the meeting held under the chairmanship of the junior Vice President-Chander Mohan Handa, the quorum was not complete. If the cancellation of the election meeting was illegal and void ab initio, the election meeting held on the date fixed in the

presence of authorised observer and with requisite quorum can not be assailed in any manner. A requisitioned special meeting of the Municipal Council can not be postponed otherwise since there is no express provision in the Act or Punjab Municipal Election Rules, 1994. In *Shri Chandu Ram and others v. The State of Punjab and others*, 1985 PLJ 492, this Court has held that once the process of election is set in motion, it should be allowed to complete its course. The State Government has no power to adjourn the meeting called for election of the President, since Section 236 of the Act does not expressly or impliedly empower the State Government to postpone the election meeting. A similar view has been taken in *Ram Singh, President, Nagar Panchayat, Cheema v. State of Punjab and others* 1998(1) PLJ 246 : 1998(1) RCR 105 wherein a special meeting was convened for considering the no-confidence motion against the President. The Deputy Commissioner directed the postponement of the meeting. It was held that Section 232 of the Act under which the Deputy Commissioner can invoke his power to suspend the resolution can not take within its ambit the right of the members of the Committee to meet and decide. Further, a similar view has been taken in *Sarwan Singh, Ex- President Municipal Committee, Hoshiarpur v. State of Punjab and others* 1994 PLJ 317: 1994(2) RCR 461. In *Sh. Kala Ram, Member Municipal Committee, Kotkapura v. the State of Punjab and others* 1994 PLJ 723 : 1995(1) RCR 21 in a similar situation, a meeting of the members of the Municipal Committee was held to consider the no- confidence motion. The District Magistrate enforced Section 144 of the Code of Criminal Procedure and postponed the meeting of the Committee. However, 15 members of the Committee attended the meeting in defiance of the orders passed by the District Magistrate and passed the resolution, whereas some of the members abstained from the meeting. The members who did not attend the meeting challenged the resolution on the plea that they were prevented from attending the meeting on account of the orders of the District Magistrate. Their plea was not accepted. It was held that "no doubt, under the aforesaid provision some order could be passed postponing assembly of some persons in the public places. Otherwise the District Magistrate had no power under the aforesaid provision or under any provision of the Municipal Act to postpone the meeting of members of the Municipal Committee. Since 15 members of the Municipal Committee attended the meeting in defiance of the order passed by the District Magistrate, it would be entirely different whether any action against them on that account can be taken, but it cannot be said that they illegally held the meeting or that they could not pass the No-Confidence Motion against the petitioner in such a meeting." A similar view has also been taken in the decision of this Court in C. W.P. No. 6721 of 1999, *Sadhu Singh and others v. State of Punjab and others*, decided on January 30, 2001.

13. It would be, thus, clear that firstly the cancellation of the meeting by respondent No. 4 being un-war-ranted under the law, the meeting attended by 15 Councillors electing the petitioner as President was permissible and was valid meeting. In the written statement, the Sub Divisional Magistrate-respondent No.

2 further confirms that the State Government did not accept the cancellation of the meeting as the observer had attended the meeting so also the Duty Magistrate and all the security arrangements were made by the police and the Deputy Superintendent of Police was monitoring the situation and the meeting went off peacefully. Respondent No. 2 also confirms that only the name of petitioner-Ashok Kumar Gupta was proposed which was seconded and there was no opposition to his name and all the members present there claimed him duly elected President. One of the objections raised by the counsel for the respondents is that the impugned resolution by which the petitioner is said to have been elected was not written on the regular proceedings book and no ballot papers were used. It is itself the case of the Executive officer in his written statement that he was not present in the Town Hall and the other official informed that the ballot papers and the proceeding book were under his custody. Can non-availability of regular proceeding book obstruct the holding of meeting by the Councillors or passing a resolution on a new proceeding book ? Answer obviously is no. Proceeding book itself does not make the resolution valid. It is only the repository of the proceedings of the Municipal Council. It is on record that a copy of the proceedings was duly sent to the Executive Officer on the same day at 4 pm for onward transmission to the Government for notification. A copy of the attendance of the Councillors is Annexure P-9 and copy of the proceedings/resolution is Annexure P-10 and information to the Executive Officer is Annexure P-11.

14. It is also to be noticed if the cancellation of the meeting dated 21.8.2000 was bona fide one or not. The Senior Vice President-respondent No. 4, admittedly, issued the impugned order, Annexure P-5 which mentioned that she suddenly became un-well on 20.8.2000 and got herself checked up by the doctor who diagnosed her a case of heart problem and advised her to immediately go to Delhi and get all the necessary tests carried out from a good hospital. She suddenly had to go to Delhi on 20.8.2000 for her check up. Therefore, she cancelled the meeting of the Municipal Council for electing the President scheduled to be held on 21.8.2000. Strange enough, she came to the Town Hall on 21.8.2000 soon after the petitioner was elected as President by 14 of the Councillors and she held a meeting alongwith 12 other Councillors in which she declared the election of the petitioner as illegal. In case she had cancelled the meeting on account of her heart problem and was to leave for Delhi, it is not understandable why she came to the Town Hall herself and held a meeting, whereas she should have in the normal course at Delhi for medical check-up. It appears that the cancellation was a motivated effort to postpone the election of the petitioner as President who possibly had a majority of the Councillors on his side and was likely to have been elected to their knowledge. Moreover, in case she held a meeting on 21.8.2000, no one was elected as President and instead the election meeting was fixed for 25.9.2000. According to the case of the respondents, a special election meeting was called for 25.9.2000 wherein respondent No. 5 was elected as President. However, the election of the

petitioner in the meeting held on 21.8.2000 appears to have been accepted by the concerned authorities by necessary implication as no official recognition was given to the meeting fixed by respondent No. 4 for 25.9.2000 and no official observer was appointed nor any official order concerning that meeting was issued by the Deputy Commissioner.

15. The grievance of the petitioner is that although he was been duly elected, the State Government has failed in its duty to notify his election as such. The Contention of the respondents is that since the Deputy Commissioner did not recommend the election of the petitioner, as such the government has not notified the same. Section 232 of the Act empowers the Deputy Commissioner to suspend any resolution or order of the committee. No provision of the Act or the Rules requires the recommendation of Deputy Commissioner for the purpose of notification of the election of the President. Section 24 of the Act refers to the notification of election and oath or affirmation of allegiance. Sub section (2) of Section 24 of the Act provides as under :-

"24(2) The State Government shall notify in the Official Gazette every election of President of a Municipality and no President shall enter upon his duties as such until his election is so notified :

Provided that the State Government may refuse to notify the election as President of any person who has incurred a disqualification under this Act or under any other law for the time being in force, subsequent to his election as member of the Municipality :

Provided further that the State Government shall not refuse to notify the election of the President without giving an opportunity of being heard to the concerned person."

16. Section 24(2) of the Act, as aforesaid nowhere requires the recommendation of the Deputy Commissioner and the notification can only be refused on the ground mentioned in the first proviso. Admittedly, the petitioner has not been disqualified in any manner for the purposes of notification. It is also not the case that the State Government has issued any show cause notice in respect of its decision not to notify the election of the petitioner as President of the Municipal Council. The election meeting was held as back as on 21.8.2000, there being no legal impediment for such a notification, the State Government is holding back the notification, without sufficient cause.

17. The facts and the circumstances discussed above show the action of respondent No. 4 in cancelling the especially requisitioned special meeting on 21.8.2000 for election of President by order, Annexure P-5 as illegal and void ab initio and inconsequential. The election of the petitioner as President in the meeting held on 21.8.2000 in the presence of an authorised observer-respondent No. 2 was a valid one. Since the office of the President was no more vacant after the election of the petitioner, any such subsequent meeting convened by respondent No. 4 for 25.9.2000 was without jurisdiction.

18. In view of the discussion made above, this petition is allowed. Order of cancellation of the meeting dated 20.8.2000 as contained in Annexure P-5 is quashed being illegal and inconsequential. Respondent No. 1 is directed to notify the election of the petitioner as President of the Municipal Council, Ferozepur expeditiously say within one month of the receipt of a certified copy of this order.

C.W.P. No. 4608 .of 2000 is dismissed.

No. order as to costs.

19. Petition allowed.