
(1982) 08 P&H CK 0062
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 540 of 1982

Ashok Kumar Mittal and others	Vs	APPELLANT
The State of Punjab and others		RESPONDENT

Date of Decision : 20-08-1982

Acts Referred:

Punjab Municipal Act, 1911 — Section 13(2)

Citation : (1982) 08 P&H CK 0062

Hon'ble Judges : D.S. Tewatia, J

Bench : Single Bench

Advocate : Vinod Kataria, for the Appellant; M.S. Dhillon, for the Respondent No. 1 and 2, Mr. O.P. Goyal, for the Respondent No. 3 and Mr. J.R. Mittal, for the Respondent No. 4, for the Respondent

Final Decision : Dismissed

Judgement

D.S. Tewatia, J.—Two citizens and two Municipal Commissioners of Jaitu have sought a writ of mandamus, directing the respondent-State Government and the Director, Local Government, Punjab, Chandigarh, to take steps to hold the election to the Municipal Committee, Jaitu, as the term of the existing members of the Municipal Committee had expired on June 16, 1980.

2. The relief sought by the petitioners has to be considered in the light of the facts which are not in dispute; that the present Municipal Commissioners were elected on May 11, 1975. They were summoned into a meeting on June 17, 1975, in which the elected members were administered oath of office. However, on that date, as per next item of agenda, the co-opting of the members that were required to be co-opted, could not be carried out on account of likelihood of breach of peace. The State Government then initiated steps to fill up the seats of would be co-opted members by nomination as the elected members had failed to co-opt the members. This step of the State Government was challenged in this Court on the writ side. The said writ petition was, however, withdrawn and the co-opted members came to be nominated on December 8, 1977, who took oath of

allegiance on December 22, 1977.

3. The President of the Municipal Committee sought clarification regarding the term of the Municipal Committee from the Director, Local Government respondent No. 2, who vide his letter Annexure P-2, informed him that the term of the Municipal Committee would start from the date on which the elected members were given oath of their office i.e. June 17, 1975. The Municipal Committee through its President, challenged that position in this Court through C.W.P. No. 1532 of 1980. That petition came to be disposed of on an undertaking given on behalf of the respondent Punjab Government that a decision regarding the fixation of the term of the Municipal Committee would be taken after affording hearing to the Municipal Committee. No such decision has so far been taken.

4. Since according to the position that the Director Local Government, respondent No. 2 had taken in his letter Annexure P 2, the term of the elected member and for that matter, of the Municipal Committee, expired on June 16, 1980 and thereafter in terms of the undertaking given in C.W.P. No. 1532 of 1980 the Government took no decision so this led the petitioners herein to seek a writ of mandamus.

5. The short question that falls for consideration is as to from which date the terms of the members of the Municipal Committee starts. The relevant provision of the Punjab Municipal Act, 1911, (hereinafter referred to as "the Act") bearing upon the said question deserve noticing at the very outset. Section 13(2) of the Act, which provides for the term of office of the members, is in the following terms:--

13(2) Save as otherwise provided under this Act, the term of office of the elected members shall be five years and the State Government shall cause fresh elections to be held and completed before the expiry of the aforesaid term.

Sub-sections (2-A) and (2-B) of Section 13 of the Act, provide for the term of associate members and co-opted members respectively, and are in the following terms:--

(2-A) The term of office of an associate member shall be coterminous with his term as member of the Legislative Assembly.

(2-A) The term of office of a co-opted member shall be coterminus with the term of elected member fixed under sub-section (2).

Section 24 of the Act, which provides for the notification in the Official Gazette of the election or co-option or appointment of a member and for the taking of oath of allegiance or affirmation, is in the following terms:--

24(1) Every election, co-option and appointment of a member or election and appointment of a President of a Committee shall be notified in the Official Gazette and no member shall enter upon his duties until his election, co option or

appointment has been so notified and until he has taken or made at a meeting of the committee an oath or affirmation of his allegiance to India in the following form, namely ;--

"1, AB, having been elected (or appointed or co-opted) member of the municipal committee of.....do solemnly swear (or affirm) that I will be faithful and bear true allegiance to India and the Constitution of India as by law established and I will faithfully, discharge the duties upon which I am about to enter.

(2) If any such person omits or refuses to take or make the oath or affirmation as required by sub-section (1) within three months of the date of the notification of his election or (appointment or co-option), his election or (appointment or co option) as the case may be, shall be deemed to be invalid unless the (State) Government for any reason which it may consider sufficient extends the period within which such oath or affirmation may be taken or made

6. The provision of sub-section (2) of Section 13 of the Act would show that it provides for the term of office of the elected members and not the term of elected members. The expression "term of office", it appears had been used purposely and designedly by the legislature. The legislature wished that the five years" term was to start after the elected members had positioned themselves in office and not from the date they merely stood elected. The reason is not far to seek for so providing. A member is elected for a purpose He has some functions to perform A perusal of section 24 would show that unless his election is notified in the Official Gazette and he has subscribed to the oath of allegiance or affirmation in the manner prescribed, he cannot enter upon his duties. So mere election or co option is of no avail to a member as that cannot enable him to perform his statutory duties unless his name is notified and he has been enabled to subscribe to oath of his office That is why the statute fixes the term of his office as five years and not his own term as such. If in an eventuality after election he had not been able to enter upon his office for reasons beyond his control, he cannot be told after the expiry of five years that five years term having expired he must face a fresh election, for during those five years he had not been enabled to act and discharge his functions as an elected member.

7. The next question that arises for consideration is as to when does he enter upon his office. In the entire Act, there is no provision whatsoever that requires an individual member of the Municipal Committee to discharge any function or perform any duty. He does so only as a member of the collective body called Municipal Committee in a meeting or otherwise as a delegate of the Municipal Committee, which means that unless the Municipal Committee has been positioned into office, a member thereof does not enter upon his office. He does so only when the Municipal Committee has entered upon its office. So, it would have to be seen in the present case as to whether the Municipal Committee, Jaitu had entered upon its office at all and if it had done, then from which date?

8. It has been contended that the moment the elected members were

administered oath of their office, the Municipal Committee stood constituted and deemed to have entered upon its office and by virtue of that fact, the individual member would also be deemed to have entered upon their respective office. It may be observed that the elected members do not always constitute the Municipal Committee. In the present case, the Committee was to comprise of elected members, co-opted members and associate members. The co-option could not take place in the present case. The members which were to be co-opted had to be nominated by the State Government. That came about December 8, 1977, and the members who were so nominated took oath of allegiance on December 22, 1977.

9. The reasonable and common sense view can be only this that if a body has three components, it does not stand properly constituted unless all the three components, to begin with, assemble. In the present case, as already observed, co-option did not take place and those members who had to be co-opted, had to be nominated by the State Government in terms of sub-section 12-E more than two years after the election of the elected members. If the Committee was not constituted till December 22, 1977, there was no question of the committee having entered upon its office earlier there to.

10. Now lastly, the question that arises for consideration is as to from which date Municipal Committee, Jaitu, can be said to have entered upon office. The Act does not indicate as to when does a committee enter upon its office, nor the Act defines expression "Office". So far as the Committee is concerned there is no special formality, procedure or ceremony fixed for its entering upon the office. The only formality or procedure that has been prescribed is regarding the members to enter upon their duties as prescribed by section 24 of the Act i.e. that they cannot enter upon their duties unless their election or co-option has been notified and they have subscribed to oath of affirmation of their allegiance in the prescribed manner.

11. Since the statute does not give any definitive indication as to when and how a member enters upon his office or for that matter the Municipal Committee enters upon, its office, and I being of the opinion that a member does not enter upon office unless the Municipal Committee enters upon its office and the purpose of entering upon office being to discharge the statutory functions which the Committee does so when it assembles in a meeting, so a Municipal Committee enters upon its office the moment it is in a position to assemble in a meeting. That happens when the requirements of section 24 of the Act are complied with, as thereafter they can be called into a meeting any time to transact any business. Hence it is logical to assume that the moment the election or co-option or appointment of the members is notified and they are administered oath of allegiance that very moment they constitute the Municipal Committee, which thereby is also put with a position to assemble at any time for the purpose of transacting its business. Hence, in the present case the term of the office of the members of the Municipal Committee started from December 22,

1977, and the term of their office being five years, the same would be expiring on December 21, 1982. That eventuality is still ahead The petition is, therefore, premature and is dismissed as such No order as to costs.