
(1998) 10 P&H CK 0078
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2061 of 1998

B.K. Vermani and Another	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 09-10-1998

Acts Referred:

Haryana Municipal Corporation Act, 1994 — Section 36(2)

Citation : (1999) 122 PLR 326 : (1999) 4 RCR(Civil) 364

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : M.L. Sarin and Mahesh Grover, for the Appellant; Ashok Aggarwal and Manoj Bajaj, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jhanji, J.—In this petition, prayer made by the petitioners is to issue a writ in the nature of Certiorari quashing impugned orders, Annexures P-6 and P-7 vide which petitioners have been intimated that election of the Sr. Deputy Mayor and Deputy Mayor of Municipal Corporation, Faridabad, will be held on 20.2.1998 at 3.00 P.M.

2. Municipal Corporation, Faridabad, came into existence in pursuance of enactment of Haryana Act, namely, Haryana Municipal Act Corporation (in short "the Act"). The Act came into force w.e.f. 31.5.1994 and it provided for the establishment of Municipal Corporations for certain municipal areas in the State of Haryana. Sub-section 24 of Section 2 of the Act defines a member to be a member of the Corporation while Section 4 of the Act deals with the incorporation and constitution of Corporation. As per sub-section(2) of Section 4, all seats in the Corporation shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal Area and for this purpose, the Municipal area shall by a notification issued in this behalf be divided into territorial constituencies to be known as wards. Section 5 provides that the Corporation shall continue for five years from the date appointed for its first

meeting. Sub-section (5) of Section 11 provides that the office of Mayor shall be filled up from amongst the members belonging to the general category, Scheduled Castes, Backward Classes and Women by rotation and by lots in the manner as may be prescribed. Sub-section (6) of Section 11 provides that reservation of seats for the office of Mayor, Senior Deputy Mayor and Deputy Mayor from the Scheduled Castes shall cease to have effect on the expiration of the period specified in Article 334 of the Constitution. Section 36 provides for the election of Mayor, Senior Deputy Mayor, Deputy Mayor and their term of office. The relevant provision of Section 36 so far as it relates to the election and term of office of Senior Deputy Mayor and Deputy Mayor is concerned, is reproduced below:-

"xxx xxx xxx (2) The Corporation shall also elect every year in the manner prescribed, two of its members to be the Senior Deputy Mayor and Deputy Mayor;

Provided that election for the offices of Senior Deputy Mayor and Deputy Mayor shall be held every year and the offices of Senior Deputy Mayor and Deputy Mayor shall be filled up from amongst the members belonging to General Category, Scheduled Castes and Women by rotation and by lots in the manner as may be prescribed.

Provided further that if the office of the Senior Deputy Mayor or Deputy Mayor is vacated during his tenure on account of death, resignation or no confidence motion, a fresh election for the remainder period shall be held within one month of the vacancy."

3. By virtue of the afore-mentioned provision of law, election of Municipal Corporation, Faridabad, was held on 26.11.1994 and petitioners were duly elected as members. The election to the post of Deputy Mayor and Senior Deputy Mayor was held on 28.2.1995 and petitioners 1 and 2 were elected as such. Petitioners were to hold office for one year.

4. On 17.4.1995, Haryana Municipal Corporation Act, 1994 and the Rules were amended, By virtue of amendment carried out to Section 36, the term of office of Mayor, Senior Deputy Mayor and Deputy Mayor was extended from one year to five years. The following amendment was made in Section 36:

"In Section 36 of the principal Act:- (a) for sub-section (1), the following sub-sections shall be substituted, namely:-

"(1) The Corporation shall elect one of its members to be Mayor for such period and in the manner as may be prescribed and the member so elected shall become Mayor of the Corporation.

Provided that if the office of Mayor is vacated during his tenure on account of death, resignation or no confidence motion, a fresh election within a period of one month of the vacancy shall be held from the same category, for the remainder period."

(b) for sub-section (2), the following sub-section shall be substituted, namely: -

(2) The Corporation shall also elect in the manner prescribed two of its members to be the Senior Deputy Mayor and Deputy Mayor. The term of office of the Senior Deputy Mayor and Deputy Mayor shall be for a period of five years or for the residue period of their offices as a member, whichever is less;

Provided that if the office of the Senior Deputy Mayor or Deputy Mayor is vacated during his tenure on account of death, resignation or no confidence motion, a fresh election for the remainder period shall be held within one month of the vacancy."

5. Petitioners have averred that the State of Haryana subsequent to the amendment issued Ordinance No. 3 of 1997 substituting word "five" with word "one". The effect of the Ordinance was that the term of the office of Mayor, Senior Deputy Mayor and Deputy Mayor was reduced from five years to one year. Petitioners have averred that they challenged the said Ordinance by way of Civil Writ Petition No. 9588 of 1997, but after filing of writ petition, the State of Haryana on 20.7.1997 withdrew Ordinance No. 3 of 1997. Consequently, Civil Writ Petition No. 9588 of 1997 was rendered infructuous. The fact remains that the amendment increasing the term from one year to five years holds the field. Petitioners have contended that since the term of office of Senior Deputy Mayor and Deputy Mayor was extended to five years, petitioners continued to hold office. It is contended that the Corporation Secretary issued notice to the petitioners intimating that the election to the office of Senior Deputy Mayor and Deputy Mayor shall be held on 20.2.1998 at 3 p.m. It is contended that the term of the office of Senior Deputy Mayor and Deputy Mayor having been extended from one year to five years, the election to the said office is being held without any justification. It is further contended that the State has taken a stand in response to notice of Civil Writ Petition No. 3112 of 1996 that continuity is the main objective in increasing the term from one year to five years and therefore, it does not lie in the mouth of the State to wriggle out of the situation. It is contended that the petitioners have put in more than three years and, therefore, it does not appeal to logic to disturb the continuity of the Municipal Corporation at this juncture.

6. In response to the notice of the writ petition, three sets of written statement have been filed; one by respondents 1 to 3; second by respondent No. 4 and third one by respondent No. 5. In their respective written statements, respondents have stated that the petitioners were elected as Deputy Mayor and Senior Deputy Mayor of Municipal Corporation, Faridabad, respectively in February, 1995 when under sub-section (2) of Section 36 the term of these offices was one year. Respondents have submitted that the said term was extended by amending Section 36(2) of the Act on 17.4.1995. It is contended that the amendment dated 17.4.1995 cannot be construed to be retrospective in operation and, therefore, election of both these offices was required to be held after completion of one year term. In this regard, respondents have made

reference to a judgment of Division Bench of this Court in Civil Writ Petition No. 3746 of 1996 (Gian Chand Kalra v. State of Haryana,) dated 20.8.1996.

7. After hearing the learned counsel for the parties and going through the record, we are of the view that the issue involved in this Writ Petition is squarely covered by decision dated 20.8.1996 rendered in Gian Chand Kalra's case. In Gian Chand Kalra's case (supra) vide Act No. 4 of 1995 (The Haryana Municipal Corporation Amendment) Act, 1995, the term of office of Vice President of the Municipal Committee was extended to five years. Under the unlamented section the term of the office of Vice President was one year. In the said case, it was contended that in view of the amendment there was no necessity to hold fresh election to the office of Vice President because the amendment will be applicable not only to the newly constituted municipal committee but will also be applicable to the existing municipal committee. Against this, it was contended that the amended provisions can have only a prospective effect and the person who had been appointed as Vice President to hold office of Vice President for a period of one year, has no right to hold office after the expiry of the period and it is incumbent upon the Municipal Committee to hold fresh election to the office of Vice-President. The learned Judges of the Division Bench replying on a judgment of the Humble Supreme Court in Punjab Tin Supply Co., Chandigarh and Others Vs. Central Government and Others, held that the provisions cannot be construed to be retrospective in operation. In para 9 and 10 of the judgment, it was held as under-

"9. Whether a statute is prospective or retrospective in character is a matter which cannot be decided easily. Normally, procedural statutes are treated as retrospective in nature. The statutes which take away or impair the existing rights or create new obligations or impose new duties or attach new disabilities are ordinarily regarded as prospective. The apex Court in case reported as Punjab Tin Supply Co., Chandigarh and Others Vs. Central Government and Others, , has held as under:-

"All laws which affect substantive rights generally operate prospectively and there is a presumption against their retrospectively if they affect vested rights and obligations unless the legislative intent is clear and compulsive such retrospective effect may be given where there are express words giving retrospective effect or where the language used necessarily implies that such retrospective operation is intended. Hence the question whether a statutory provision has retrospective effect or not depends primarily on the language in which it is couched. If the language is clear and unambiguous effect will have to be given to the provisions in question in accordance with its tenor. If the language is not clear then the Court has to decide whether in the light of the surrounding circumstances retrospective effect should be given to it or not."

10. In the present case, election of Vice-President of Municipal Committee, Shah bad, was held on 17.2.1995. At the time of election, term of office of Vice-President as per Section 18(3) of the Act was one year. So respondent No. 4 had

the necessary mandate to discharge the duties of Vice-President for a period of one year. Subsequently, vide Act No. 9 of 1995, amendment has been effected in Section 18(3) of the Act, whereby the term of the office of Vice-President has been increased to 5 years or for the residue period of his office as member, whichever is less. The Amending Act nowhere specifically states that the same is retrospective in its operation. Otherwise too, this amendment increases the tenure of the office of Vice-President from one year to five years, taking away rights of the members of the Municipal Committee to elect some one else as a Vice-President. Thus, such a provision cannot be construed to be retrospective in operation. In this view of the matter, we are of the view that the term of office of respondent No. 4 as Vice-President of Municipal Committee, Shah bad, stood expired on 16.2.1996."

8. In the present case, the amended provisions being pari-materia to the one amended in the Haryana Municipal Act, we do not find any ground to take a view contrary to the one taken by the Division Bench of this Court in Gian Chand Kalra's case. Petitioners thus, cannot derive any benefit from the amended provisions because at the time of their election, the term of office was for one year only and the amendment in the Act had not been given retrospective effect either expressly or by necessary implication.

9. Consequently, the writ petition fails. It is accordingly dismissed.