
(1970) 04 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : C.W. No. 3014 of 1969

Brij Lal and others

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 03-04-1970

Acts Referred:

Punjab Municipal Act, 1911 — Section 20

Citation : (1970) 04 P&H CK 0003

Hon'ble Judges : H.R. Sodhi, J

Bench : Single Bench

Advocate : Hira Lal Sibal and Mr. S.C. Sibal, for the Appellant; D.S. Boparai, Asstt. Advocate-General, Mr. A.S. Anand and Mr. M.S. Sethi, for the Respondent

Final Decision : Allowed

Judgement

H.R. Sodhi, J.—In this writ petition the notification dated 7th November, 1969, whereby the State Government, in exercise of the powers vested in it u/s 20 of the Punjab Municipal Act, 1911 (hereinafter called the Act), appointed Respondent 4 as president of Municipal Committee, Rampuraphul, District Bhatinda, is sought to be quashed.

2. Facts which led to the petition may be stated in a narrow compass. Elections to the Municipal Committee, Rampura phul (hereinafter called the Committee, were held some time in October, 1967, when thirteen persons were elected as Municipal Commissioners of whom seven are the Petitioners in the present writ petition. The first President of the Committee was one Shri Teja Singh but he was latter removed from his office by an order of the State Government passed on 24th September, 1963. He preferred Civil Writ 3169 of 1968 in this Court. The Motion Bench while admitting the writ petition directed status quo to continue which obviously implied that Shri Teja Singh was to remain the President of the Committee till decision of the writ petition. This writ petition was withdrawn on 22nd August, 1939, in presence of the then Advocate-General for the State of Punjab. The Committee was not represented in that case. As a result of the

withdrawal of the writ petition, the vacancy created by the removal of Shri Teja Singh had to be filled up.

3. On 26th September, 1969, a letter (copy whereof is Annexure A/1 with the writ petition) was issued by the Director, Local Self Government, Punjab, Respondent 2 addressed to the Executive Officer of the Committee Respondent 3 asking him to take necessary action for election of a new President according to law, since the writ petition filed by Shri Teja Singh, had been dismissed as withdrawn. A meeting of the Committee can be convened u/s 25 of the Act by its President or, in his absence or during the vacancy of his office, by a Vice-President. The other mode of convening a meeting is by means of a requisition made in writing by not less than one-fifth of the members of the Committee. The Committee has its by-laws and it is not disputed before me that according to these by-laws it was the Vice-President, Respondent 4 who could convene a meeting. It appears that no meeting was convened by him and on 3rd October, 1969, the Petitioners made a requisition that a special meeting of the Committee be held on 6th October, 1969, to elect a new President, The Executive Officer sent a reply to the requisitionists. a copy of English translation whereof is Annexure B/I, whereby it was communicated to them that the Vice-President was of the view that unless a written order was received from the High Court (meaning thereby a copy of the judgment of this Court in Civil Writ 3169 of 1968), no such meeting could be held. The suggestion was that the Vice-President did not want to take any step when the High Court had earlier stayed elections and withdrawal of the writ petition of Shri Teja Singh was not officially conveyed to him.

4. The Deputy Commissioner, Bhatinda, then wrote a letter on 9th October, 1969, to the Executive Officer, Respondent 3, giving him the substance of the order of this Court as passed on 22nd August, 1969, and telling him further that in the light of the information that was being conveyed to him, he should have a meeting convened immediately for election of the new President. It may be mentioned here with the Deputy Commissioner had also sent thirteen ballot papers for purpose of holding the election but they had been signed by his predecessor somewhere in December, 1968. Respondent 4 objected to the validity of these ballot papers as well with the result that Respondent 3 sent them back on 16th October, 1969, with a request that fresh ballot papers signed by the Deputy Commissioner be sent for holding elections. The Deputy Commissioner accordingly issued thirteen fresh ballot papers on 21st October, 1969, as is clear from the letter of that date filed as Annexure "D" by the Petitioners. It is alleged that Respondent 4 was approached by the Executive Officer with an office letter No. 69/ 694, dated 23rd October, 1969, containing a request that a special meeting be called immediately as fresh ballot papers as required by the Vice-President had been received with the signatures of the then Deputy Commissioner. This letter is said to have been taken by one Tej Bhan, peon who was deputed to deliver the same to Respondent 4 but the latter refused to receive it on the ground that it was a holiday and that the peon should

bring the letter on a working day. The peon again went to the house of Respondent 4 on 27th October, 1969, but was informed that Respondent 4 had left for Amritsar and would be back after 5/6 days. These facts are to be found in the letter Annexure E/1 addressed by the Executive Officer to the Deputy Commissioner. A copy of this letter was forwarded to the Director, Local Self Government, Punjab, for information and necessary action. The Executive Officer was probably keeping the higher authorities in touch with regard to the state of affairs in the Committee in the matter of election of the new President.

It is admitted by the State in its return that a copy of the letter Annexure E/1 was received by it and the Executive Officer, Respondent 3, has also affirmed what is stated in this letter. Respondent 4 has, however, denied that Tej Bhan peon ever went to him on 25th October, 1969, and attempted to deliver the letter from the Executive Officer regarding the holding of the election. He has stated that he had gone to Amritsar on 22nd October, 1969, where he remained for a week or so and the question of Tej Bhan taking a letter to him does not, therefore, arise.

5. On 4th November, 1969, the Deputy Commissioner addressed a letter directly to Respondent 4 warning him that his conduct in avoiding to call a meeting for the election of a president might render it necessary to take action against him for abuse of power. He was, therefore, advised to hold a meeting within a week of the receipt of the said letter. A copy of this letter was forwarded to the Executive Officer with reference to his correspondence on the subject. Respondent 4 denies receipt of this letter as well from the Deputy Commissioner though the Executive Officer admits the same.

6. Respondent 4 issued a notice on 7th November, 1969, calling a meeting of the Committee for 25th November, 1969, at 9. 30 A. M., though the Deputy Commissioner had suggested to him to do so within a week. Be that as it may, the fact remains that a notice for a meeting to elect a President was after all issued but the same was not allowed to be held as on the same day an order was passed at Chandigarh by Shri C. D. Cheema, Director, Local Self Government, Punjab, who purporting to act in exercise of his delegated authority u/s 20 of the Act appointed Respondent 4 as President of the Committee. The impugned notification was issued on 11th November, 1969.

7. In the writ petition filed by seven Municipal Commissioners, it is averred that the order of 7th November, 1969, followed by the impugned notification was passed mala fide and without any authority of law by Respondent 2 because of certain political influence and must, therefore, be quashed.

8. Mr. Hira Lal Sibal, learned Counsel for the Petitioners, adopting the averments of the writ petition in his submissions and relying on various circumstances vehemently contended that the Director, Respondent 2, acted mala fide, It is also contended by the learned Counsel that the conduct of Respondent 4 shows that he was deliberately trying to avoid holding of a meeting and that in the mean

time he managed to get his appointment made as President of the Committee from the State Government acting through the Director, Respondent The submission further is that the State Government could not appoint a President in the circumstances of the instant case, as the period of one month after the vacancy arose had not expired In this connection, it is urged that the stay order though deemed to have been vacated on 22nd August, 1969, was not, according to the showing of Respondent 4 himself, communicated to the Committee till 9th October, 1969. The submission is that till the order vacating the stay had been communicated, it could not be said that a vacancy had arisen and the Municipal Committee had failed to elect its President for a period of one month. He, thus, wants the period of one month to be counted from the date of communication of the order to the Committee. At any rate, it is urged by him that Section 20 is not intended for a situation as it arose in the present case and the same has been misused by the State Government only to install Respondent 4 in office as a president. The suggestion made by the Petitioners is that one Ajit Singh, M.L.A., a member of the Akali party, and a relation of Respondent 4, is responsible for getting this notification issued.

9. There is no affidavit filed by the Director, Respondent 2. It is true that Shri C.D. Cheema, who passed the impugned order, has not been impleaded by name, but when allegations were made against him and the State Government wanted to rebut the same, it was incumbent on the Government itself to have filed an affidavit of this officer by way of return.

10. It is contended on behalf of the Respondents that there was no lack of bona fides on the part of Respondent 2 or any other officer of the State and the allegations are highly vague. The main stand of the learned Counsel for the State is that Respondent 4 was appointed by the State Government in the exercise of its statutory powers as no election was in fact made by the Committee within one month from the date of occurrence of the vacancy. I find no data on the record to connect Ajit Singh M.L.A. with the passing of the impugned order, and it is, thus, not possible to accept the averments" of the Petitioners on this point, the circumstances of the case, of course leave no manner of doubt that the order" must have been passed by the the director for extraneous reasons and it is not a bona fide exercise .of authority by the State Government. The power to appoint a President is given to the State Government under" Section 20 of the Act which reads as under:

20. (1) Every Committee shall from time, to time elect one of its members to be; president, and the member so elected shall, if approved by the State Government become president of the committee:

Provided that the committee, instead of electing a president and submitting his name for approval to the State Government, may apply to the State Government to appoint a president from among its members, and that the State Government may, by notification, exclude any committee from the operation of this Sub-section, and that in either of these cases, or if no election has been made within

one month from the occurrence, of a vacancy in the office of president, or if the person elected be, not approved, the state Government may, if it shall think fit, appoint one of the members of the committee to be president.

(2) Every committee may also, from time to time, elect one or two of its members to be vice-president or vice-presidents, and when the two vice-presidents are elected on the same date, shall declare which of them shall be deemed to be the senior.

(3) Every member elected or appointed under this section to be president or vice-president may be elected or appointed by office if he was appointed a member of the committee in the same way

A bare reading of this provision of law shows that the State Government can appoint a President from amongst members of a Municipal Committee in the following four contingencies:

(1) When the Committee itself applies to the State Government to appoint a President;

(2) When the State Government has by notification excluded any Committee from the operation of Sub-section (1) of Section 20;

(3) If no election is made by a Committee within one month from the occurrence of a vacancy in the office of President; and

(4) If the person elected be not approved by the State Government.

In my opinion, it is implied in the aforesaid provision of law relating to non-filling of a vacancy that the Committee had been afforded an opportunity to elect its President within one month but it failed to do so. The expression "if no election has been made" does suggest some amount of conscious default or indifference on the part of the member; of the Committee. The election of a President by the Committee may be subject to approval by the State Government or a Committee; can be exempted from the operation of Sub-section (1) of Section 20. whereby it loses its right to elect the President but the existence of any Such power with the State Government does not mean that the Committee has initially no such right. Section 20 is only an enabling one so that the work of the Committee does not suffer for the failure of its members to elect a President within the prescribed period but it cannot be intended to give an arbitrary power to the State Government. The statutory power so given has to be exercised reasonably honestly and in public interest keeping in view the facts of each case. There cannot be said to be a reasonable and honest exercise of power in public Interest if the State Government takes advantage of the technical default, if any, without applying its mind to the causes which led to that default. It is not a matter of assertion of any rights of the State Government but one of exercise of power entrusted to it as a custodian of the rights of both the inhabitants of the area declared to be a municipality and the elected members of the Committee. It could not be intended that if president, Vice-President or any other officer

authorised under the Act or by-laws; of the Committee to convene a meeting, misconducts himself and does not convene a meeting and for: which abuse of power renders himself liable to removal from. office by the State Government, the whole. Committee should he denied its statutory right to elect a President and the delinquent member appointed as President. .

11. The stay order was vacated on:22nd August 1969 and respondent 4, when cabled upon to hold a meeting, raised various objections from time to time. It is not possible to disbelieve the version given by the Executive Officer, Respondent 3 when he says in his letter (Annexure E/I) addressed to the Deputy Commissioner that Respondent 4 refused to receive the letter on 25th October, 1969, when Tej Bhan peon took the same to him. The Executive Officer could not have conveyed false information to the Deputy Commissioner whereas conduct of Respondent 4 is highly suspicious. He claims to have left Rampura Phul on 22nd October, 1969, and remained at Amritsar for a week. No meeting was ordered to be convened by him till the Deputy Commissioner gave him a warning that he was abusing his authority and then too he did not fix a date of the meeting within a week but a long way off on 25th November, 1969. He issued notice of the meeting, curiously enough, on 7th November, 1969. when on the same day Respondent 2 had passed an order at Chandigarh appointing him President of the Committee. I do not accept the statement of Respondent 4 that he did not know about what was happening at Chandigarh or that he was not deliberately avoiding to hold the meeting He was probably doing so because he was banking upon getting the office of the President from the back door without seeking election. As a matter of fact, the executive file shows that some application dated 20th October, 1969, purporting to be signed by some members of the Committee, and conveying a request on their behalf that Respondent 4 be appointed as President, was received by the Director from the Deputy Director at Patiala It was on this application that action was taken and the Director appointed Respondent 4 as President. It does not lie in the mouth of this Respondent to say that he did not know anything about the matter of his appointment as President by the State Government. It is equally inconceivable that the Director was acting just innocently and without any extraneous reasons He was bound to satisfy himself about the reasons for which the members of the Committee were not able to elect a President within a period of one month and not that unknown to some members of the Committee he should have entertained an application from others recommending appointment of Respondent 4 as President. It was the Vice-President, Respondent 4 himself who was not holding a meeting and the Deputy Commissioner had threatened him that he would be proceeded against for abuse of power. The Director, Respondent 2, for reasons best known to him, seemed to be in haste to take action u/s 20 of the Act and appoint Respondent 4 as President on the pretext that vacancy had not been filled up by the Committee within one month. The Director made this appointment presumably without the Deputy Commissioner coming in the picture or taking him in confidence The executive file has been produced before me but

many of the letters are not traceable, as for instance the State admits in its return that a copy of the letter written by the Executive Officer to the Deputy Commissioner and endorsed to the Director was received by it but the same has not been produced with the file. Again, the matter of appointment of Respondent 4 was initiated on some letter from the Deputy Director and that too is not available on the file. Mr. Bhoparai appearing for the state admits that no other file has been given to him by the department

12. From the circumstances, as are writ large in this case, one is driven to the irresistible conclusion that Respondent 2 did not act honestly and bona fide in the exercise of the powers delegated to him u/s 20 of the Act. Even if it be assumed that the Committee failed to elect its President within one month of the occurrence of the vacancy, still the order of the State Government cannot be upheld as it has been passed arbitrarily and lacks bona fides. In our democratic set up, where rule of law is to prevail, an authority, howsoever high it may be, must act bona fide and within the limits defined by the statutes. Every member of the Committee had a right to contest the office of the President but this right has been denied to the members by Respondent 2 acting in an arbitrary manner and appointing Respondent 4 as President by misusing the authority given by Section 20 of the Act thereby giving to this Respondent a benefit for which he was abusing his power by not holding a meeting it was virtually permitting in a partisan manner, Respondent 4 who might have by his conduct rendered himself liable to removal from office u/s 22 of the Act, to take advantage of his own wrong or fraud which is shocking to the conscience of any reasonable man. It could not possibly be said that the Committee was to blame for not electing its President within one month from the occurrence of the vacancy and, as a matter of fact, a requisition made by several members for holding the meeting was rejected by the Vice-President Respondent 4. Moreover, on facts of the present case, it cannot be held that no election had been held within one month from the occurrence of a vacancy within the meaning of Section 20. Stay order was vacated on 22nd August, 1969. The State Government had, in obedience to the order of the High Court; directed the Committee to let status quo continue which meant that Shri Teja Singh should continue as President till, of course, 22nd August, 1969, when the writ petition was decided. The order of the High Court dismissing the writ petition was conveyed by the Deputy Commissioner in his letter of 9th October, 1969, addressed to the Executive Officer till which date, according to the Vice-President, Respondent 4, no election could be held. May be that legally there was no bar to hold an election even before the communication of the vacation of the stay order but the fact remains that Respondent 4 wanted official and authentic information about the result of the writ petition. The Committee might have been persuaded to believe that election could not be held till the order of the High Court vacating the stay was communicated or else it would amount to contempt of Court. No doubt that Respondent 4 was interested in delaying the holding of the meeting but apart from that the period of one month in the circumstances of the instant case

should have been, in all reasonableness, counted from the receipt of the letter dated 9th October, 1969, when the order of the High Court was conveyed. It is submitted on behalf of the Respondents that the vacancy occurred on 22nd August, 1969, and the period of one month must be reckoned from there. As observed by their Lordships of the Supreme Court in *Bachhittar Singh v. State of Punjab*, it is of the essence that the order has to be communicated to the person who would be affected by that order.

13. Mr. A. S. Anand, learned Counsel for Respondent 4, has strenuously contented that the issue of any writ or direction by this Court quashing the appointment of the Respondent as President will be futile since no member of a Committee can be elected as President unless his election is approved by the State Government which virtually gives the sole authority to the said Government to accept any person as President or not. I am afraid the argument of the learned Counsel is wholly mis-conceived. Section 20 of the Act is mandatory and directs that every Committee shall elect one of its members to be the President and the mere fact that the election has to be approved by the State Government, as in *Bachhittar Singh Vs. The State of Punjab*, cannot take away the right of the members to elect one. Whenever an election is held and a member elected as President, it is at that stage that the State Government applies its mind to decide whether the appointment be approved or not. For the sole reason that the State Government has the power not to accept the election of a particular member as President, it cannot be said to follow that the members have no right to elect a President. The State Government is expected to apply its mind properly and not capriciously or mala fide in the exercise of statutory powers of approving or disapproving an election of a President in a particular case, and we cannot pre-judge the issue before an election is allowed to be held or any of the situations arises which enables the State Government to appoint a President.

14. In the result, from whatever aspect the matter be looked at, the impugned notification appointing Respondent 4 as President of the Municipal Committee, Rampura Phul, cannot be sustained. The writ petition is accordingly allowed with costs, and the notification dated (sic) 11th November, 1969 (Annexure "H"), quashed. A meeting of the Committee is directed to be held as early as possible so that a new President is elected in accordance with law. It will be open to Respondent 4 or any other member of the Committee, if otherwise eligible, to seek election to the office of the President.