

(2013) 07 P&H CK 0025
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 19261 of 2012

Buta Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 19-07-2013

Acts Referred:

Citation : (2013) 172 PLR 107 : (2013) 4 RCR(Civil) 361

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Advocate : Kulbhushan Raheja, for the Appellant; Suresh Singla, Addl. A.G., Punjab, Mr. Sanjeev Sharma, Advocate for the Respondent Nos. 6 to 8, Mr. Satya Pal Jain and Mr. V.K. Chaudhary, Advocate for the Respondent Nos. 9 to 33, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Kumar Jain, J.—This petition has been filed by the residents of Ferozepur City challenging the letter dated 20.07.2012 issued by respondent No. 1 holding that the term of Municipal Council, Ferozepur, shall be for 5 years w.e.f. 04.05.2010, which is alleged to be in violation of Section 13(1) of the Punjab Municipal Act, 1911 (hereinafter referred to as the "Act") and Article 243U of the Constitution of India. In brief, the facts of the case are that the elections of Municipal Council, Ferozepur, comprising of 25 members, was held on 30.06.2008. The list was notified by the Government of Punjab on 09.07.2008. The Deputy Commissioner, Ferozepur, vide his letter dated 11.07.2008, fixed a meeting on 22.07.2008 at 10.00 a.m. at the Town Hall, i.e. in the office of Municipal Council, for administering oath to the newly elected members and for the election of the President, Senior Vice President and the Junior Vice President. There was allegedly a commotion in the said meeting and before the oath ceremony of 18 elected members could take place, according to the official respondents, all of a sudden, some unidentified persons entered the meeting place and forcibly snatched the attendance and proceeding register and ran away

with the same and at that moment, the elected members, who were present in the Hall, started quarrelling and slapping each other and in such a pandemonium and mellee, the meeting was postponed. This action of the official respondents was challenged by 3 elected Municipal Councillors by way of CWP No. 12952 of 2008 titled as "Davinder Kapoor and others v. State of Punjab and others", in which the petitioners sought a direction to the Presiding Officer to sign the proceeding book pertaining to the special meeting of the Municipal Council held on 22.07.2008 alleging therein that on that day, 18 out of 25 members were present in the meeting, who not only took oath but also elected the petitioners in that case as President, Senior Vice President and Junior Vice President respectively. It was alleged that when the proceedings of the meeting were being signed by the members, Ashwani Grover, one of the elected Municipal Councillors, along with some other persons came in the meeting and snatched away the proceeding book as also the attendance register and ran away. In the said writ petition, the stand taken by the respondents was that before the oath could take place, the commotion had started by some unidentified persons who forcibly snatched the proceedings and attendance register and ran away, therefore, the proceedings stated for that day could not be carried out. Therefore, the said writ petition was dismissed on 15.10.2008 with a direction to the authorities to convene a fresh special meeting, immediately, for taking oath and electing President/Vice President of the Municipal Council, Ferozepur.

2. Thereafter, the meeting was held on 24.07.2009 in which 9 members of the Council were administered the oath and allegedly Ashwani Kumar Grover, one of the elected members, was elected as President in the said meeting. Ashwani Kumar Grover and some other members also approached this Court by way of CWP No. 11855 of 2009 seeking a writ in the nature of mandamus to direct the State Government to notify the election of Ashwani Kumar Grover as President of the Municipal Council, Ferozepur on the basis of meeting held on 24.07.2009. However, the said writ petition was dismissed as withdrawn on 13.01.2010 because of the stand taken by the State of Punjab that the Government has not yet taken the decision with regard to the validity of meeting dated 24.07.2009.

3. Thereafter, the Secretary, Local Government, Punjab, passed an order on 03.03.2010 about the validity of the meeting dated 24.07.2009 holding that the meeting held by some members of the Municipal Council, Ferozepur, on 24.07.2009, at their own without the chairmanship of convener appointed by the Deputy Commissioner, Ferozepur, under the rules, is void-ab-initio and directed the Deputy Commissioner, Ferozepur to immediately call the first meeting of newly elected members of the Municipal Council, Ferozepur, as per Rules 3(1) of the Punjab Municipal (President and Vice President) Election Rules, 1994. Thereafter, the meeting was held on 04.05.2010 in which remaining 16 Councillors were administered oath and the election of the President, Senior Vice President and Junior Vice President was also held.

4. The grievance of the petitioners in this case is that the respondent No. 1, vide

its impugned letter dated 20.07.2012, is considering the date of the first meeting to be 04.05.2010 and counting the tenure of the Municipal Council, Ferozepur, with effect therefrom for a period of 5 years. It is pertinent to mention that the petitioners also applied for some information under the Right to Information Act, 2005, about the aforesaid meeting which has been supplied by the Public Information Officer, Municipal Council, Ferozepur, to the effect that in the meeting dated 24.07.2009, 9 members took oath and as the quorum was not complete, it was postponed and, thereafter, held on 04.05.2010 in which 16 remaining members took oath and the election to the office of the President, Senior Vice President and Junior Vice President took place. It was also informed that the meeting for the election of President was convened on 22.07.2008, 24.09.2009 and 04.05.2010 and 9 Councillors, who took oath on 24.07.2009, are getting their pay w.e.f. 01.07.2009 and after the meeting dated 04.05.2010, the remaining 16 Councillors had also started getting their pay.

5. The petitioners, who are the residents of Ferozepur City, have expressed a great concern about the manner in which their elected representatives have been misusing the process of law for their own benefit. It is submitted that because of friction amongst the members at the time of first meeting held on 22.07.2008, 24.09.2009 which was finally held on 04.05.2010, the tenure of 5 years of the Municipal Council, Ferozepur, has been practically extended to 7 years if it is to be counted from 04.05.2010 which is neither in consonance with Section 13(1) of the Act nor Article 243U of the Constitution of India. Counsel for the petitioners has also submitted that the expression "first meeting", which has been explained in Section 13(1), does not mean the actual validly held meeting rather it would mean the meeting of a newly constituted municipality whether any business is transacted in the said meeting or not and the period of 5 years would commence from the said date. In support of his submission, he has also relied upon the various judgments in the cases of Rajiv Lochan Sah Vs. State of Uttarakhand and Others, , Kishansing Tomar Vs. Municipal Corporation of the City of Amedabad and Others, Kartar Singh and Others Vs. State of Punjab and Others, and Anugrah Narain Singh Vs. State of U.P., Ministry of Nagar Vikas Anubhag-4 and State Election Commission He has also submitted that earlier the members of the Municipal Council have been quarreling in the meetings and, in the present case, all of them have joined hands irrespective of their alliance to the particular political parties, all of them have come under one umbrella so that the letter which has been impugned herein could be maintained giving them another lease of 2 years in the office of the Municipal Council, Ferozepur, illegally.

6. While replying, facts narrated here-in-above were not disputed by the counsel for the respondents. However, the argument raised is that the word "first meeting" would mean the meeting which is validly held for the election of the President and Vice President and not the meeting in which no such transaction had taken place. The emphasis has been laid by counsel for the respondents on the word "held" to submit that it signifies a meeting legally and properly held and not merely convened. It is also submitted that the effect of the meeting dated

22.07.2008, allegedly painted by the petitioners as the first meeting, cannot be noticed in view of the order passed by the Division Bench of this Court on 15.10.2008 when the writ petition filed by 3 members of the Municipal Council bearing CWP No. 12952 of 2008 was dismissed and a special meeting was ordered to be convened immediately for administering oath. It is further submitted that even the meeting on 24.07.2009 has not been recognized because CWP No. 11855 of 2009 was withdrawn by the petitioner therein, who happened to be one of the Municipal Councillors, and order dated 03.03.2010 was passed by the Secretary, Local Government, Punjab, holding the meeting dated 24.07.2009 to be null and void and the validity of the said order has not been challenged thereafter.

7. The sum and substance of the argument raised by counsel for the respondents is that the meeting held on 04.05.2010, in which 16 members were administered oath to their office and the election of the President, Senior Vice President and the Junior Vice President took place, has to be considered to be the first meeting and according to Section 13(1) of the Act as well as Article 243U of the Constitution of India, the tenure of the present Municipal Council is to be counted for a period of 5 years from the said date i.e. 04.05.2010 when the first meeting was held.

8. I have heard counsel for the parties and perused the record with their able assistance.

9. The facts are not much in dispute, but in order to understand the controversy, it would be relevant to refer to the provisions of Section 13 of the Act as well as Article 243U of the Constitution of India, which are reproduced as under:-

13. Duration of Municipalities.--(1) Every Municipality save as otherwise provided in this Act, shall continue for five years from the date appointed for its first meeting and no longer.

Explanation.--In this section "first meeting" means the meeting of the newly constituted Municipality held for election of its President and Vice-President u/s 20 of this Act.

(2) All Municipalities existing immediately before the commencement of the Constitution (Seventy-Fourth) Amendment Act, 1992, shall continue till the expiration of their duration unless sooner dissolved by a resolution passed to the effect by the State Legislature.

(3) An election to constitute a Municipality shall be completed,

(a) before the expiry of its duration specified in subsection (1);

(b) before the expiration of a period of six months from the date of its dissolution:

Provided that when the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be

necessary to hold any election under clause (b) for constituting the municipality for such period.

(4) The first election to a Municipality constituted under this Act after the commencement of the Punjab Municipal (Amendment) Act 11 of 1994, shall be held within a period of six months of its being notified as such.

(5) Elections to the Municipalities where no elected body exists immediately before the commencement of the Punjab Municipal (Amendment) Act 11 of 1994, shall be held within a period of six months from the date of such commencement.

(6) A municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would have continued under subsection (1) had it not been so dissolved.

243U. Duration of Municipalities, etc. (1) Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer:

Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

(3) An election to constitute a Municipality shall be completed,

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of its dissolution:

Provided that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Municipality for such period.

(4) A Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would have continued under clause (1) had it not been so dissolved.

10. From a bare perusal of the aforesaid provisions, there is no shred of doubt to observe that the tenure of a municipality shall be 5 years from the date appointed for its first meeting. In order to remove all speculations for the term "first meeting", the said term has been explained as well in the said provision to mean the meeting of the newly constituted municipality held for the election of its President and Vice President u/s 20 of the Act.

11. The question which calls for an answer in the present case is as to "whether the meeting held on 22.07.2008 would be the first meeting which was disrupted due to quarrel ensued at the instance of the members themselves or would be the meeting dated 24.07.2009 when 9 members were administered the oath for their office or the meeting dated 04.05.2010 when the remaining 16 members took oath and election of the President, Senior Vice President and the Junior Vice President was successfully conducted?"

12. It may be noticed that the parliament by the Constitution (Seventy Fourth Amendment) Act, 1992, inserted Part IX A in the Constitution of India provided for the constitution and duration of municipalities etc. with a view to give a secured tenure to the municipalities of 5 years from the date appointed for its first meeting, unless it is not dissolved under any other law for the time being in force. In consonance with the mandate of the Constitution of India, an amendment was brought in the Act by way of Punjab Act No. 11 of 1994 by inserting Section 13. In this manner, there is no dispute that the tenure of a municipality cannot be extended beyond a period of 5 years from the date of its first meeting. The same view has been expressed by the Supreme Court in Kishansing Tomar's case (supra), by the Uttarakhand High Court in Rajiv Lochan Sah's case (supra), by this Court in Kartar Singh's case (supra) and by the Allahabad High Court in Anugrah Narain Singh's case (supra).

13. The answer to the question is writ large in the explanation of Section 13(1) of the Act itself in which it is provided that the first meeting would be the meeting of the newly constituted municipality held for the election of the President and Vice President. It is nowhere provided that the said meeting should be successful as well. Had it been so provided, then the municipality would have been at the mercy of its elected members who may or may not allow the meeting to be successful for any reason which may be best suited to them and may get an extension of their period in the office, as has been experienced in the present case where the elected members of the Municipal Council, Ferozepur, had disrupted the first meeting dated 22.07.2008 though the said meeting was admittedly convened by the Deputy Commissioner for the purpose of administering oath of office to the newly elected members and also for election of the President, Senior Vice President and the Junior Vice President respectively. If in a democratic set up, the elected members, who have got a secured tenure of 5 years in terms of the provisions of the Act as well as the Constitution of India, are allowed to play with the sentiments of the people to whom they represent in the municipalities in the manner in which the first meeting dated 22.07.2008 was held, it would defeat the very purpose of bringing Chapter IX A in the Constitution of India for providing a secured tenure of 5 years to the elected members.

Thus, in my considered opinion, the word "held" used in the explanation to Section 13(1) of the Act does not mean the meeting in which the transaction of administering oath to the members and election of President and Vice President

actually takes place, rather it means a meeting which is convened under the provisions of the Act for the purpose of administering oath and for election of the President and Vice President. It would not make any difference if the said meeting is successful on that day rather from that date only the tenure of the municipality shall be counted for the purpose of 5 years and not from the date when the election of the President, Senior Vice President and Junior Vice President actually takes place. It may also be noticed that it is nowhere provided in the explanation that in the meeting, which is to be held for the election of the President or the Vice President, they should also be elected. All that has been said in the explanation is that the first meeting would be the meeting of the newly constituted municipality which is held for the purpose of election of the President or the Vice President, which cannot be expanded to hold that the first meeting would be considered only that meeting in which the actual business of election of President or the Vice President is transacted.

In view of the aforesaid discussion, the present writ petition is found to be meritorious and the same is hereby allowed and as such, the letter dated 20.07.2012 (Annexure P-1) is hereby quashed. It is held that the meeting held on 22.07.2008 was the first meeting in terms of explanation to Section 13(1) of the Act and the tenure of the members of the Municipal Council, Ferozepur, would be considered for a period of 5 years from the said date. It is further directed that since the tenure of 5 years of the Municipal Council, Ferozepur, from the said date i.e. 22.07.2008 would over on 22.07.2013, therefore, election of the Municipal Council, Ferozepur, be now held in accordance with law.