
(1985) 02 P&H CK 0016

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4235 of 1981

Chandu Ram and Others

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 15-02-1985

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Punjab Municipal Act, 1911 — Section 20, 20(1), 232, 235, 236

Punjab Municipal Election Rules, 1952 — Rule 47, 51, 52, 59, 63

Citation : (1985) 2 ILR (P&H) 332

Hon'ble Judges : Sukhdev Singh Kang, J

Bench : Single Bench

Advocate : Satya Pal Jain and Parveen Goel, for the Appellant; H.S. Riar, D.A.G. for Respondent Nos. 1 to 3 and Jagdev Singh, for Sarjit Singh, for the Respondent

Final Decision : Allowed

Judgement

Suhhdev Singh Kang, J.—At issue, in this writ petition, under Articles 226/227 of the Constitution of India, is the legality and validity of the orders dated August 26, 1981, of the State of Punjab, Respondent No. 1, adjourning the meeting of Municipal Committee, Bassi Pathana, scheduled to be held on August 26, 1981, for the election of the President and orders dated August 27, 1981, of the Sub-Divisional Magistrate (Civil), Respondent No. 3, suspending the resolution of the Municipal Committee dated August 26, 1981, electing Shri Chandu Ram, Petitioner No. 1, as its President.

2. The factual matrix is of consequence in this case and may be projected in some detail.

3. Municipal Committee, Bassi Pathana, consists of 16 members. Shri Ram Kishan, the President of the Municipal Committee, submitted his resignation on July 28, 1981. Shri Surjit Kumar Singla, who was the Vice-President, assumed charge as Acting President, u/s 30 of the Punjab Municipal Act (for short "the Act"). On the resignation of the President, the members of the Municipal

Committee had to elect one of the members as President within one month of the resignation. If the members of the Municipal Committee failed to elect the President within one month of such vacancy in the office of the President, the State Government is empowered to appoint any member of the Committee to be the President.

4. A meeting of the Municipal Committee was called by the Executive Officer for electing its President on August 26, 1981, at 10. 10. a. m. The agenda of the meeting was sent by him to the members. 14 out of the 16 members came to the venue of the meeting. 13 of them are the Petitioners in this writ petition. 14th member, namely Shri Jaswant Singh though attended the meeting for sometime did not participate in the proceedings and left the place. Two members did not attend the meeting. In the meeting, the name of Shri Chandu Ram was proposed for the office of the President. It was duly seconded. No other proposal was received. The Acting President distributed ballot-papers, supplied by the Deputy Commissioner, to the members present and they cast their votes. Shri Chandu Ram polled 13 votes and he was declared elected President, by the Acting President. A resolution to that effect was passed. It was forwarded to the concerned authorities.

5. The Sub-Divisional Officer, Fatehgarh Sahib (Bassi), Respondent No. 3, within whose jurisdiction this Municipal Committee falls, suspended the resolution,--vide orders dated August 27, 1981 (a copy of the same is Annexure P-5, appended to the petition), in exercise of the powers u/s 232 of the Act. "He observed that the Punjab Government had adjourned the meeting of the Municipal Committee fixed for the election of the President on August 26, 1981. The Executive Officer had informed the Acting President and the members present about the orders of the Government postponing the meeting, but the " Vice-President and the members elected the President ignoring the orders of the State Government. Since the Committee had contravened the orders of the State Government, the resolution of the Committee electing Shri Chandu Ram as President was suspended. The Petitioners have challenged these orders.

6. The Respondents have contested the writ petition. Three separate written statements have been filed. It has been averred therein that the State Government had postponed the meeting of the Municipal Committee, because it had not complied with the formalities prescribed under Rule 47 of the Punjab Municipal Election Rules ("the Rules" for short) in summoning the meeting. The Acting President and the members of the Committee pre sent in the meeting were informed about the order of the Government postponing the meeting by the Executive Officer. However, they continued with the meeting and elected Shri Chandu Ram as the President. Since the meeting had been postponed by the government, the entire proceedings conducted by the Petitioners were illegal and void. The election of Petitioner No. 1 did not take place in accordance with law. The three members. of the Committee, namely Sarvshri Jaswant Singh, Ram Kishan and Bant Singh, who did not attend or participate in the meeting, were

made Respondents 5, 6 and 7 respectively, but they have not chosen to file any written statement.

Section 20 of the Act confers a power upon the members of the Municipal Committee to elect a President within one month of the occurrence of a vacancy for the office of the President. A meeting of the Committee was called by the Executive Officer to elect a President on August 26, 1981. An agenda for this purpose had been issued to the members by him. 14 out of the 16 members attended the meeting. This indicates that a proper notice of the meeting had been given to the members. The Respondents have not averred in the written statement that Ram Kishan or Bant Singh were not served with the notice and agenda or the notice of the meeting was less than 48 hours. Even in the letter of the Sub-Divisional Officer (Civil) addressed "to the Executive Officer, Respondent No. 4, reasons for adjournment of the meeting have not been given. It is not stated that Rule 47 of the Rules was not complied with while summoning the meeting. In his return, the Executive Officer, Respondent No. 4, has not averred that while fixing the meeting, Rule 47 of the Rules had not been complied with or the notice given to the members was short. He has only stated that the meeting was fixed by the Acting President and he had issued the agenda in compliance with his orders. Rule 47 of the Rules reads as under:

47. Election of President or Vice-President--(1) No election of a President or Vice-President of a committee shall be held at a meeting unless not less than forty eight hours" notice of the holding of such meeting has been given to all members of the committee by delivery at their ordinary place of residence of a notice, which shall specify that such election is to take place at the meeting in question.

2. The person or persons elected shall, subject in the case of the election of a President, to the provisions of Sub-section (1) of Section 20 of the Act, assume office from the date of election.

Since in the written statements of the Respondents, the clear and specific averments were not made as to in what manner Rule 47 of the Rules had not been complied with, I had asked for the relevant records. The same were produced before me. A perusal of these papers revealed that the notice and agenda of the meeting to elect the President had been issued by the Executive Officer on August 20, 1981. Rule 47 of the Rules only requires 48 hours" notice. In the present case, there is a notice of full five days. So, there was in fact no non-compliance with Rule 47 of the Rules. Respondents have not even produced the orders passed by the Government. They have not disclosed on what basis this conclusion was arrived at.

The orders of the government postponing the meeting were based on no material or evidence and are liable to be quashed on this score alone. The Act and the Rules provide a complete Code for determination of disputes regarding elections of the members of the Municipal Committee or its President and Vice President. Rule 52 of the Rules provides in clear terms that no election shall be called in

question except by an election petition presented in accordance with these Rules. Rule 63 of the Rules furnishes the grounds for declaring the election void. A commission appointed by the Court for this purpose under Rule 59 of the Rules could have gone into the allegations and if it holds that there has been any material irregularity then the commission may report that the election of such candidate should not be deemed to be valid. Under Rule 51 of the Rules, material irregularity has been defined to include the noncompliance with the provisions of the Act or the Rules made thereunder. So, even if for the sake of arguments, it may be accepted that there had been any non-compliance with the Rules, the proper remedy was by way of an election petition. The State Government u/s 20 of the Act has the power to approve or disapprove the election of the persons. Similarly, it has powers under Rule 68 of the Rules to order an inquiry to be held in the conduct of any election if there is reason to suspect that any irregularity had been committed in the conduct of the election. There is, however, no power with the State Government to adjourn a meeting called for the election of a President. In any case, the learned Counsel for the Respondents have not been able to bring to my notice any express provision in the Act or the Rules empowering the State Government to postpone an election meeting. Once the process of election has been set in motion, it should be allowed to complete its course. It is all the more important in the context of Section 20 of the Act. It provides that if the members of the Municipal Committee fails to elect a President within one month of the occurrence of the vacancy in the office, the State Government may appoint any one of the members to be the President. By postponing an election meeting, the State Government can deprive the members of the committee to elect a President.

8. Mr. H. S. Riar, the learned Deputy Advocate-General, Punjab, argued that the power to postpone an election meeting held in contravention of any rule can be spelled out from Section 236 of the Act. Section 236 of the Act reads as under:

Section 236. Power of State Government and its officers over committee.--(1) The State Government and Deputy Commissioner, acting under the orders of the State Government, shall be bound to require that the proceedings of the committees shall be in conformity with law and with the rules in force under any enactment for the time being applicable to Punjab generally or the areas over which the committee have authority."

(2) The State Government may exercise all powers necessary for the performance of this duty and may among other things, by order in writing, annul or modify any proceeding which it may consider not to be in conformity with law or with such rules as aforesaid, or for the reasons, which would in its opinion justify an order by the Deputy Commissioner u/s 232.

(3) The Deputy Commissioner may, within his jurisdiction for the same purpose, exercise such powers as may be conferred upon him by rule made in this behalf by the State Government.

The language of above section does not bear the construction canvassed by Shri Riar. It is not expressly stated in this provision that the State Government can postpone an election meeting. This can also not be implied from the language and tenor of this section.

9. In fairness to Mr. Riar, it must also be mentioned that he had argued that the order of the Sub-Divisional Magistrate passed u/s 232 of the Act is only a conditional or tentative order which has to be approved by the State Government u/s 235 of the Act. The Petitioners should have represented to the State Government if they had any grievance against the impugned order. This contention has not commended itself to me. The meeting of the Municipal Committee had been postponed by the State Government. The order of the Sub-Divisional Officer was only a sequel to this order. He had suspended the resolution because the meeting had been held in contravention of the orders of the government adjourning the election meeting. In these circumstances, it would have been unfair to relegate the Petitioners to seek redress from the same Authority with whose decision they have been aggrieved.

10. Mr. Riar had also raised a technical objection that the Petitioners had not specifically assailed the order of the government postponing the meeting but this is not factually correct. In ground (b) of. paragraph 13 of the writ petition., it had been specifically stated that Respondent No. 3 had justified his action on the ground that the members of the municipal committee had contravened the order of the State Government adjourning the meeting but there was no justification for this argument, because there was no provision in the Act which authorises the State Government to postpone or adjourn the election.

11. In the result, I allow this writ petition, quash the orders dated August 23, 1981, of the State Government and orders dated August 27, 1981, of the Sub-Divisional Officer (Civil). The Respondents shall pay the costs of the petition. Counsel fee Rs. 200.