
(2013) 08 P&H CK 0638
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 1369 of 2013 (O and M)

Davinder Kapoor and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 05-08-2013

Acts Referred:

Citation : (2013) 08 P&H CK 0638

Hon'ble Judges : Satish Kumar Mittal, J;Mahavir S. Chauhan, J

Bench : Division Bench

Advocate : S.P. Jain and Mr. Dheeraj Jain, for the Appellant;

Judgement

Satish Kumar Mittal, J.—The instant Letters Patent Appeal has been filed by the appellants, who were the elected members of Municipal Council, Ferozepur, for setting aside the order dated 19.7.2013 passed by the learned Single Judge, whereby the writ petition (CWP No. 19261 of 2912) filed by some residents of Ferozepur City (respondents No. 9 to 14 herein) for quashing the letter dated 20.7.2012 (Annexure P-1) issued by the Punjab Government to the Executive Officer, Municipal Council, Ferozepur, declaring the term of the Municipal Council, Ferozepur for five years with effect from 4.5.2010, was allowed and it was held that tenure of the members of the Municipal Council, Ferozepur, would be for a period of 5 years from 22.7.2008, the date when the first meeting of the Municipal Council was convened, and since the tenure of 5 years of the said Municipal Council would expire on 22.7.2013, therefore, election of the Municipal Council, Ferozepur be immediately held in accordance with law. Before the legal controversy raised in this appeal is dealt with, certain relevant facts are required to be mentioned.

2. The Municipal Council, Ferozepur, consists of 25 members. Elections of members of the Municipal Council were held on 30.6.2008 along with the other Municipal Councils in the State of Punjab. The result of the said elections was duly notified by the Government of Punjab on 9.7.2008. In view of Rule 3 of the Punjab Municipal (President & Vice President) Election Rules, 1994 (hereinafter

referred to as the Rules of 1994), vide letter dated 11.7.2008, the Deputy Commissioner, Ferozepur, appointed the first meeting of the Municipal Council for 22.7.2008 for administering oath to the newly elected members and for election of the President, Senior Vice President and Junior Vice President. But when the said meeting was convened on 22.7.2008, some unidentified persons entered the meeting place and disturbed the meeting. They forcibly snatched the attendance and proceeding register and ran away with the same. It was alleged that by the time, the meeting was suddenly disturbed, some of the members had already taken the oath, but after the said incident, the members started quarreling and slapping each other. In these circumstances, the meeting was postponed.

3. Later on, three elected members of the Municipal Council filed CWP No. 12952 of 2008 seeking direction to the Presiding Officer to sign the proceeding book pertaining to the meeting held on 22.7.2008, alleging therein that in the said meeting, after administering oath to 18 members, they were elected as President, Senior Vice President and Junior Vice President. Vide order dated 15.10.2008 (Annexure R-9/1), the said writ petition was dismissed by this Court 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.

4. In pursuance of the said direction, a fresh meeting was convened on 24.7.2009. In that meeting, only 9 members of the Municipal Council came present and they were administered oath. It is alleged that in the said meeting, one member of the Municipal Council, namely, Ashwani Kumar Grover, was elected as President of the Municipal Council. When his election as President was not notified, he along with other persons approached this Court by filing CWP No. 11855 of 2009 seeking direction to the State Government to notify his election as President of the Municipal Council. Vide order dated 13.1.2010 (Annexure R-9/2), the said writ petition was dismissed as withdrawn, as the State Government had taken a stand that it had not yet taken the decision with regard to validity of the meeting convened on 24.7.2009. Thereafter, vide order dated 16.2.2010 (Annexure R-9/3), the Principal Secretary, Local Government, Punjab, declared the meeting dated 24.7.2009 as illegal and void-ab-initio, and directed the Deputy Commissioner, Ferozepur, to immediately convene the meeting of the newly elected members of the Municipal Council as per Rule 3(1) of the Rules of 1994.

5. In pursuance of the said order, the meeting was convened on 4.5.2010. In that meeting, the remaining 16 members were administered oath and thereafter, election of the President, Senior Vice President and Junior Vice President was also held.

6. It is the case of respondents No. 9 to 14 that when five years term of the Municipal Council, as prescribed u/s 13(1) of the Act, was going to expire, somehow or the other, all the members of the Municipal Council got manipulated a letter dated 20.7.2012 (Annexure P-1) from the Punjab Government, holding

that term of the Municipal Council will be for five years with effect from 4.5.2010, instead of 22.7.2008. They challenged the said letter by filing the writ petition, which was allowed by the learned Single Judge vide the impugned order.

7. The following question was posed by the learned Single Judge, which was to be answered in the writ petition:

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?

The learned Single Judge, while interpreting the provision of Section 13 of the Act as well as Article 243U of the Constitution of India, held that duration of the Municipal Council shall be for five years from the date appointed for its first meeting, and the said tenure cannot be extended beyond a period of five years from the date appointed for its first meeting. While interpreting the meaning of "first meeting", the learned Single Judge held that the first meeting in this case would be the meeting held on 22.7.2008 and not 4.5.2010 as claimed by the Government. In this regard, the learned Single Judge observed as under:--

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 IXA in the Constitution of India for providing a secured tenure of 5 years to the elected members.

8. Learned counsel for the appellants very vehemently argued that the expression "first meeting" used in Section 13(1) of the Act 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. He argued that in the first meeting held on 22.7.2008, neither the oath was administered to any elected member nor election of the President and Vice President was held. Therefore, the said meeting for all intents and purposes could not be said to be the "first meeting" of the Municipal Council. By referring to the order dated 15.10.2008 (Annexure R-9/1) passed by this Court in CWP No. 12952 of 2008, whereby a direction was issued to the authorities to convene a fresh special meeting for taking oath and electing President/Vice President of the Municipal Council, learned counsel argued that in the said order also, it was found that in the first meeting held on 22.7.2008, no transaction had taken place. Learned counsel further argued that until and unless an elected member of a Municipal Council is administered oath, he cannot be deemed to be member of the Municipal Council. He becomes member of the Municipal Council only after taking oath. He argued that if in the meeting held on a date appointed for its first meeting, no oath is administered to the members of the Municipal Council, the same cannot be said to be the first meeting of the Municipal Council. According to the learned counsel, the first meeting of the Municipal Council will be deemed to be the meeting, in which oath is administered to all the elected members of the Council and election of the President/Vice President is held. Learned counsel further argued that the second meeting held on 24.7.2009 also cannot be said to be the "first meeting" of the Municipal Council within the meaning of Section 13(1) of the Act, because in that meeting also, except administering oath to 9 elected members of the Council, no election of the President/Vice President was held. He submits that only the third meeting, which was held on 4.5.2010, is deemed to be the validly convened "first meeting" of the Municipal Council and as per Section 13(1) of the Act, term of five years of the Council shall be counted from the said date. Therefore, the Government, after taking legal advice, vide letter dated 20.7.2012, has rightly declared that term of five years of the Municipal Council will be counted from 4.5.2010. Thus, the learned Single Judge has committed grave illegality while setting aside the said letter.

9. After hearing learned counsel for the appellants and going through the impugned order, as well as the provisions of the Act and the Rules of 1994, we do not find any merit in the contention raised by the learned counsel.

10. Article 243U of the Constitution of India, which provides duration of Municipalities, reads as under:--

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.

(Emphasis added)

11. In view of the aforesaid mandate in the Constitution of India, the Act was also amended and Section 13 was substituted by Punjab Act 11 of 1994, which reads 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 Sub-section (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 Sub-section (1) had it not been so dissolved.

Further, how the first meeting of the Municipality shall be convened, and by whom, Rule 3 of the Rules of 1994 provides as under:--

3. Manner of election--(1) The Deputy Commissioner or any other officer authorised by him in this behalf (here-in-after referred to as the Convener) shall, within a period of fourteen days of the publication of the notification of the election of members of a newly constituted Municipality, fix, by giving not less than forty-eight hours notice to be served at the ordinary place of residence of all the elected members, a date for convening the first meeting of the elected members of such Municipality by stating in the notice that at such meeting, the oath of allegiance will be administered to the members present and also stating that the President and Vice-President or Vice- Presidents, as the case may be, shall be elected:

Provided that all subsequent meetings to fill casual vacancies of the offices of President and Vice-President or Vice-Presidents, as the case may be, shall be convened by the Convener.

(2) If due to any reason, the elected member is unable or refused to take oath of allegiance as required by sub-rule (1) within the stipulated meeting unless he is debarred from taking the same by the Government for any reason. In case any such member does not take the oath of allegiance as aforesaid, then a fresh election to the constituency to which that member represents, shall be held.

The aforesaid Article 243U of the Constitution of India and Section 13 of the Act clearly provide that every Municipality shall continue for five years from the date appointed for its first meeting and no longer. The mandate of these provisions is clear that in no circumstance, the term of a Municipality shall be more than five years. The date from which the term of five years of a Municipality is to be counted is the date appointed for its first meeting. In explanation to Section 13(1) of the Act, the expression "first meeting" has been defined as the meeting of the newly constituted Municipality held for the election of its President and Vice-President. Rule 3(1) of the Rules of 1994 empowers the Deputy Commissioner or any other officer authorised by him to convene the first meeting of the elected members of the Municipality within a period of fourteen days of the publication of the notification of the election of members of a newly constituted

Municipality. In the notice issued for the said purpose, it is to be clearly stated that oath of allegiance will be administered to the members and election of the President and Vice- President shall be held in the said meeting. Sub-rule (2) of Rule 3 further makes it clear that in case any elected member is unable or refused to take oath of allegiance, he will be allowed to take such oath of allegiance in the subsequent meeting. In the aforesaid provisions of the Constitution, the Act and the Rules of 1994, it has nowhere been stated that only the said meeting will be deemed to be the first meeting of the Municipality, in which the oath is administered to all the elected members of the Municipality and election of the President and Vice-President is held. The date on which the Deputy Commissioner convenes the meeting of the newly elected members of the Municipality under Rule 3 of the Rules of 1994, is deemed to be the date appointed by the Deputy Commissioner for the first meeting of the Municipality under sub-section (1) of Section 13 of the Act, from which the period of five years duration of the Municipality is to be counted. The starting point of the duration of the Municipality does not depend upon the fact whether any transaction has been conducted in the first meeting or not; or whether the elected members of the Municipality have been administered oath or not; or the election of President and Vice-President of the Municipality has been held or not. We have to give true meaning to the words "the date appointed for its first meeting" used in Article 243U of the Constitution of India and Section 13(1) of the Act. After the election of the members of a Municipal Council as per the requirement of the Rules of 1994, names of the elected members are to be notified.

After such notification, the Deputy Commissioner has been empowered to convene the first meeting of the Council under Rule 3 of the Rules of 1994, in which oath is to be administered to the newly elected members and election of the President and Vice-President is to be held. When for the first time, the Deputy Commissioner fixes the date for convening such meeting, it is to be taken as "the date appointed for its first meeting", irrespective of the fact whether in such meeting any transaction has taken place or not; or the same has been adjourned for one reason or the other. Sub-rule (2) of Rule 3 of the Rules of 1994 clearly provides that if due to any reason, the elected member is unable or refused to take oath of allegiance as required by sub-rule (1) within the stipulated period, then he will be allowed to take such oath of allegiance in the subsequent meeting. This sub-rule further indicates that the date on which the first meeting is convened and held is the date appointed for first meeting of the Municipality. Thus, for all intents and purposes, the said date which was fixed by the Deputy Commissioner shall be deemed to be the date appointed for first meeting of the Municipality and the term of five years is to be counted from that date. Holding of a meeting and appointing a date for a meeting are two different things. Once a date for convening a meeting of a newly constituted Municipality is fixed by the Deputy Commissioner under Rule 3(1) of the Rules of 1994, the requirement of Section 13(1) of the Act is complete and duration of the

Municipality is to be counted from the said date, irrespective of the fact whether in the said meeting the oath of allegiance was taken by the newly elected members or not, and election of the President/Vice-President was held or not, or postponed for one reason or the other. The duration of a Municipality, in any circumstance, cannot be more than five years, because in Article 243U of the Constitution as well as Section 13(1) of the Act, the words "no longer" have been used. This indicates that in no circumstance, the duration of a Municipality can be extended beyond five years. The first meeting of a Municipal Council convened by the Deputy Commissioner under Rule 3(1) of the Rules of 1994 is a statutory meeting and such a meeting cannot be termed as special or general meeting. Whether any transaction is transacted in that meeting or not is not material, particularly for the purpose of counting the term of five years of the Municipal Council. It is mandatory for the Deputy Commissioner to call the first meeting within the specified time from the date of publication of the notification of the election of members of a newly constituted Municipality. It has been made mandatory because the day, on which the first meeting is convened is deemed to be the appointed day of the first meeting and for the starting point of duration of the Municipality. Therefore, the Deputy Commissioner cannot delay convening of the first meeting. It is the mandatory requirement that he shall convene the first meeting within fourteen days of the publication of notification of the election of newly elected members, so that term of the Municipality is not extended for a longer period. That is why in sub-rule (2) of Rule 3 of the Rules of 1994, it has been made clear that if any elected member is unable or refused to take oath of allegiance in the first meeting, he will be allowed to take such oath of allegiance in the subsequent meeting. If the interpretation, as given by learned counsel for the appellants, is accepted that the first meeting of a Municipality will be the meeting in which all the newly elected members are administered oath and election of President and Vice-President is held, then there is no certainty of the term of a Municipal Council. It may exceed beyond five years in many cases, which is not the intend and purpose of the Constitution as well as the Act. In such circumstances, the term of the Municipal Council will not be according to the legislation, but it will be as per the desire of the members of the Council, who deliberately and intentionally may not attend the first meeting and get it postponed for one reason or the other. There may be many circumstances where the first meeting of a Municipal Council has to be postponed, or if the meeting is convened, some of the members are not administered oath, or if they are administered oath, election of the President and Vice President is not held. In that situation, the term of the Municipal Council cannot be extended beyond five years by taking the adjourned date as the date of first meeting. If we take the example of the instant case. In the first meeting held on 22.7.2008, some unidentified persons snatched the attendance and proceeding register and ran away, due to which neither the oath could be administered to the newly elected members of the Municipal Council, nor election of the President and Vice-President could be held. In the second meeting held on 24.7.2009, only nine elected members of the Municipal Council were administered oath and the

remaining members did not attend the meeting to take the oath. The so called election of President and Vice President in that meeting was held to be invalid and in the third meeting held on 4.5.2010, oath was administered to the remaining 16 elected members of the Council, and election of the President and Vice President was held.

12. Learned counsel for the appellants has put much emphasis on the explanation to Section 13(1) of the Act, and argued that "the first meeting" means the meeting of the newly constituted Municipality "held" for the election of its President and Vice-President. While emphasising on the word "held", it has been argued that the first meeting will be deemed to be a meeting, where election of the President and Vice-President had taken place. If in a meeting, oath has not been administered to the newly elected members of the Council, and election of the President and Vice-President has not been held, according to the learned counsel, such meeting cannot be said to be the validly held "first meeting" of the Municipal Council.

13. In our considered opinion, as observed by the learned Single Judge, the word "held" used in 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 or not, but in all circumstances, tenure of the Municipality shall be counted from the date, which is appointed for its first meeting. In our opinion, the learned Single Judge has rightly held that tenure of the Municipality shall not be counted from the date when all the newly elected members were administered oath or from the date of the meeting when election of the President and Vice President actually took place. Thus, we do not find any illegality in the order passed by the learned Single Judge. In view of the above, there is no merit in the instant appeal and the same is, hereby, dismissed.