

(1974) 09 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 716 of 1973

Durga Dass and Others

APPELLANT

Vs

Dharam Vir and Others

RESPONDENT

Date of Decision : 12-09-1974

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Municipal Act, 1911 — Section 29
Punjab Town Improvement Act, 1922 — Section 4, 5, 8

Citation : AIR 1975 P&H 168 : (1975) 1 ILR (P&H) 120

Hon'ble Judges : R.S. Narula, C.J.; Bal Raj Tuli, J.; A.D. Koshal, J

Bench : Full Bench

Advocate : K.C. Puri and R.S. Dhillon, for the Appellant; G.C. Mital and Arun Jain, for the Respondent

Judgement

B.R. Tuli, J.—This appeal under Clause 10 of the Letters Patent is directed against the judgment and order dated September 28, 1973, of a learned Single Judge of this Court allowing the writ petition of respondents 1 to 6 and setting aside the election of the appellants as the representatives of the Municipal Committee, Kot Kapura, for being appointed members of the Kot Kapura Improvement Trust u/s 5 (4) of the Punjab Town Improvement Act, 1922 (hereinafter called the "Act"), The learned Single Judge decided two petitions under Article 226 of the Constitution of India (C. W. No. 1613 of 1973 Dharam Vir v. Municipal Committee, Kot Kapura and C. W. No. 2189 of 1973 Sohan Lal Ahuja v. Dev Mittar Ahuja) by his judgment and order dated September 28, 1973, which has since been reported as Dharam Vir v. Municipal Committee, Kot Kapura 1974 Cri LJ 37. Both the writ petitions were allowed and the election of 3 members of the Municipal Committee in each case for appointment as members of the Improvement Trust was set aside. An appeal under Clause 10 of the Letters Patent filed against the judgment in C. W. No. 2139 of 1973 was accepted by a Division Bench of this Court on November 29, 1973, and is reported as Dev Mittar Ahuja v. Sohan Lal Ahuja 1974 Cri LJ 166. The present appeal under

Clause 10 of the Letters Patent has been filed by Durga Dass and others (respondents in C. W. 1613 of 1973), and it came up for hearing before my learned brother Narula, J., (as my Lord the Chief justice then was) and myself on April 2, 1974, when the learned counsel for respondents 1 to 6 submitted that the decision of the Division Bench in Dev Mittar Ahuja's case (supra) required reconsideration. We accordingly directed that this appeal may be heard by a Full Bench of at least 3 Judges and that is how this appeal has come up for hearing before us,

2. The facts of the case lie in a narrow compass and stated briefly are that a 2nd class Municipal Committee consisting of 19 members exists for the town of Kot Kapura, district Faridkot. For constituting the Improvement Trust. Kot Kapura, 3 trustees were to be elected from amongst the members of the Municipal Committee u/s 4 of the Act. The Executive Officer of the Municipal Committee issued notices to all the members on May 4, 1973, for a meeting to be held on May 11, 1973, to consider the letter of the Deputy Commissioner for sending the names of 3 members .after election. The meeting was held under the Chairmanship of Chanda Singh, President, who announced in the meeting that the election to the 3 seats of the trustees would be held one by one and not at the same time, that is, the names for one seat would be proposed and seconded and then the members present would be asked to vote for or against the proposed candidates, and after the result is declared, the same procedure would be followed for electing the trustees for the second and the third seats. The writ petitioners, who are respondents 1 to 6 to this appeal objected to the mode of election announced by the President and strongly urged that each member should have one vote for all the 3 seats and that 3 members obtaining highest number of votes should be declared elected. Their plea was that the election was one for which each member should have one vote and he should exercise that vote in favour of one candidate and not 3 votes to be exercised in respect of each of the three members to be elected by the Municipal Committee. This view was not accepted and they walked out of the meeting, thus refusing to take part in the election. Thereafter, the remaining 12 members elected the appellants as the trustees for the Improvement Trust, Kot Kapura. Their election was challenged by respondents 1 to 6 in Civil Writ No. 1613 of 1973 which was accepted and the election of the appellants was set aside.

3. In order to decide whether the procedure followed by the President of the Municipal Committee was correct or the procedure suggested by respondents 1 to 6 was correct, it is necessary to set out the relevant provisions of the Act which are as under:--

"S. 4. (1) The trust shall consist of seven trustees, namely,--

(a) a Chairman,

(b) three members of the Municipal Committee, and

(c) three other persons.

(2) x x x (3) The members of the Municipal Committee referred to in Clause (b) of Sub-section (1) shall be elected by the Municipal Committee.

(4) If the Municipal Committee does not by such date as may be fixed by the State Government elect a person to be a trustee, the State Government shall, by notification, appoint a member of the Municipal Committee to be a trustee, and any person so appointed shall be deemed to be a trustee as if he had been duly elected by the Municipal Committee.

(5) x x x S. 4-A. During the period of supersession of a Municipal Committee u/s 238 of the Punjab Municipal Act, 1911, the three seats allotted to the Municipal Committee on the trust under Clause (b) of Sub-section (1) of Section 4 shall be filled by the State Government by appointing any three persons by notification in the Official Gazette. The term of office of every trustee so appointed shall be three years or until the Trust is dissolved, whichever period is less provided that if the Municipal Committee is reconstituted, three members of the Municipal Committee shall be elected or appointed in accordance with the provisions of Section 4, and on their election or appointment the three trustees appointed by the State Government under this section shall cease to be members of the Trust.

S. 6. The term of office of every trustee elected under Clause (b) of Sub-section (1) of Section 4 shall be three years or until he ceases to be a member of the Municipal Committee, whichever period is less, and the term of office of every trustee appointed under Clause (c) of the said sub-section shall be three years, but when the trust ceases to exist, the said term of office shall be deemed to expire on the date of the dissolution of the trust.

S. 8. (1) When the place of a trustee appointed by the State Government, becomes vacant by his resignation, removal or death, the State Government shall appoint a person to fill the vacancy.

(2) When the place of an elected trustee becomes vacant by his resignation, removal or death, the vacancy shall be filled, within two months of the existence of such vacancy being notified to the Municipal Committee by the trust, in the manner provided by Sub-section (3) of Section 4, provided that if the Municipal Committee fails to elect a qualified person to fill the vacancy within the period herein prescribed, the provisions of subsection (4) of the said section shall apply.

(3) Every person appointed or elected to fill a casual vacancy under this section shall hold his place for the time for and subject to the conditions upon which it was tenable by the person in whose place he has been so appointed or elected, and no longer; but he may, if otherwise qualified, be re-appointed or re-elected :

Provided that no person elected or appointed under Sub-section (2) shall continue to be a trustee after he ceases to be a member of the Municipal Committee, but he may so continue notwithstanding that the trustee in whose place he was elected or appointed has ceased to be a member of the said committee."

From these provisions it is evident that 3 seats on the Improvement Trust have to be filled by three members of the Municipal Committee to be elected by the Municipal Committee. The term of office of a member of the Municipal Committee, as trustee of the Improvement Trust is 3 years or until he ceases to be a member of the Municipal Committee, whichever period is less. It is, therefore, necessary that the member elected by the Municipal Committee must continue to be its member as long as he serves as a trustee of the Improvement Trust.

4. The members of the Municipal Committee to serve as trustees of the Town Improvement Trust have to be elected by the Municipal Committee which consists of such number of members not less than 5 as the State Government may fix for each municipality, as is provided in Section 11 of the Punjab Municipal Act, 1911. It, therefore, follows that the said 3 members have to be elected by all the members of the Municipal Committee who constitute it at the time of election. Election is a process by which representatives of a body are chosen for holding public offices by majority of votes. There is no normal mode of election. The Legislature has to provide it in each case. If we refer to the various Acts dealing with the election to various bodies like the Representation of the People Act, Punjab Panchayat Samities and Zila Parishads Act, the Gram Panchayat Act and the rules framed thereunder, we find that a different mode of election has been prescribed in each Act. In some cases, the method of one person one vote has been adopted; in some cases indirect election by electoral colleges already elected has been provided while in some other cases proportional representation by single transferable vote is prescribed. Where no mode of election is prescribed and the provision made is that the members will be elected by a particular electorate, the method to be adopted will be such as will afford each elector a vote in respect of election to each seat because every voter has a right to vote on each matter brought before the electorate for consideration. In the case of a Municipal Committee, the electorate consists of the members thereof and they have to elect 3 members for 3 seats on the Town Improvement Trust, if the electorate, that is, the members of the Municipal Committee are divided into three groups and each group is asked to elect one member, the election will not be by the Municipal Committee, but by a group thereof, that is proportional representation. If that had been the intention of the Legislature, it would have been specifically provided for. Section 4-A of the Act makes it clear that there are 3 separate seats for the members of the Municipal Committee and, therefore, the Municipal Committee, and not a part of it, has to elect one member for each seat. Similarly, in Section 8 vacancy is mentioned and in Section 4(4) a provision has been made that if the Municipal Committee fails to elect a member to be a trustee by such date, as may be fixed by the State Government, the latter would appoint a member of the Municipal Committee to be a trustee by notification to fill that seat. This provision envisages that in case the Municipal Committee has elected less than 3 members, the remaining seat or seats will be filled in by the State Government by nomination. I am referring to

these provisions to emphasise that there are 3 seats for the members of the Municipal Committee on the Town Improvement Trust and each one of those seats has to be filled by a member elected by the Municipal Committee. It, therefore, follows that for election to every seat, all the members of the Municipal Committee are entitled to exercise their vote and the members cannot be divided into as many groups as are the seats for which members have to be elected. In the latter case, it would not be election by the Municipal Committee but by three groups of the Committee separately electing one member each.

5. The learned Single Judge came to the conclusion that each member of the Municipal Committee was to exercise only one vote for one seat and not three votes for 3 seats, mainly for the reason that the Town Improvement Trust is constituted for the entire town and all shades of opinion in the Municipal Committee should be represented thereat and in order to do that the members of the Municipal Committee are to be divided into 3 groups and each group is to be asked to elect one member. With great respect to the learned Judge, the reasoning does not appear to be sound or decisive. In case, the members of the Municipal Committee have been elected by organised political parties, then all the 3 seats will, no doubt, be won by the party in majority and the members in the minority will have no representation. But if there are no organised parties, the members, who are popular, will get elected. This result, however, does not lead to the conclusion that election by groups should be favoured and was intended by the Legislature. As I have said above, if the intention was to give representation to every shade of opinion in the Municipal Committee, the Legislature would have provided a method of proportional representation. The provision for appointing 3 other members under Clause (c) of Section 4 (1) of the Act can be availed of by the State Government for nominating such members who represent the parties which have not received representation in the election of the Municipal members. There is no ambiguity in the provision enacted by the Legislature and, therefore, the words of the statute have to be given their ordinary meaning. The provision is for election by the Municipal Committee, which means election by all the members of the Municipal Committee constituting it and that requirement will only be satisfied if each seat on the Improvement Trust is filled in by election in which all the members of the Municipal Committee are allowed to take part and vote. In case, the Municipal Committee is divided into 3 groups and each group is asked to elect one member, the members of the other two groups will be deprived of their franchise with respect to the other two seats, which is contrary to the intention of the Legislature. I am, therefore, of the opinion that every member of the Municipal Committee has the right to vote for electing a member of the Municipal Committee for each seat and not for all the 3 seats together. In this view of the matter, the judgment of the Division Bench does not require any reconsideration. With great respect, I say that that appeal was correctly decided.

6. The learned counsel for the appellants then submitted that the writ petition of respondents 1 to 6 was not competent as it related to electoral process of the

Municipal Committee and reliance is placed on Sri P.M. Ratna Sabhapathi Rao and Others Vs. The State of Madras and Others, . In that case, objection had been taken to the wards into which the municipality had been divided. The same reasoning does not apply to the present case in which the objection was raised to the mode of election adopted by the President at the meeting of the Municipal Committee which had nothing to do with any electoral process of the Municipal Committee. That judgment is clearly distinguishable.

7. The learned counsel for the appellants has also relied on Section 29 of the Punjab Municipal Act for his argument that the mode of election for electing 3 members of the Municipal Committee to be trustees of the Improvement Trust could be decided by the votes of the majority of the members present at the meeting and respondents 1 to 6 cannot have any objection thereto. Section 29 of the Punjab Municipal Act reads as under:--

"Except as otherwise provided by this Act or the rules, all questions which come before any meeting of a committee shall be decided by a majority of the votes of the members present, the Chairman of the meeting, in case of an equality of votes, having a second or casting vote."

8. It is true that every matter brought before the meeting of the Municipal Committee is to be decided by majority of the votes of the members present, but where a point of law arises on which there is difference of opinion, the majority votes of the members of the Committee will not be decisive and such matter can be brought for judicial scrutiny before a Court. This section did not bar respondents 1 to 6 from filing the writ petition for it cannot be said that the mode of election adopted by the majority, whether correct or not, was decisive and the "Court cannot decide whether it was correct or not. Supposing the Municipal Committee had adopted the mode of election suggested by respondents 1 to 6 and the appellants feeling aggrieved had filed a writ petition in this Court, the decision of the Municipal Committee would have been set aside according to the view taken by me above. Thus the decision of the majority of the members with regard to the mode of election cannot be held to be immune from judicial review in a petition under Article 226 of the Constitution.

9. For the reasons given above, this appeal is accepted, the order of the learned Single Judge is set aside and the writ petition filed by respondents 1 to 6 is dismissed. In the circumstances, we make no order as to costs.

B.S. Narula, C.J.

10. I entirely agree.

A.D. Koshal, J.

11. So do I.