

(1976) 08 P&H CK 0012
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 6486 of 1975

Gurtej Singh

APPELLANT

Vs

The Punjab State and Others

RESPONDENT

Date of Decision : 13-08-1976

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Municipal Act, 1911 — Section 12A, 12B, 12C, 12D, 12E
Punjab Municipal Election Rules, 1952 — Rule 5, 5(1)

Citation : AIR 1976 P&H 389

Hon'ble Judges : Prem Chand Jain, J;Ajit Singh Bains, J

Bench : Division Bench

Advocate : R.L. Aggarwal and Amar Dutt, for the Appellant; I.S. Tiwana, Dy. A.G. (P) and O.P. Goyal, for the Respondent

Final Decision : Allowed

Judgement

Prem Chand Jain, J.—Gurtej Singh has filed this petition under Articles 226 and 227 of the Constitution of India for the issuance of an appropriate writ, order or direction quashing the proceedings of the Municipal Committee, Giddarbaha dated 5th of August, 1974, and 28th of October, 1975, (copies Annexures P-2 and P-4 to the petition respectively).

2. The facts of the case as given in the petition may briefly be stated thus:

Elections to the Municipal Committee, Giddarbaha were held in May, 1974, and the petitioner along with twelve other persons was elected as a Member of the Municipal Committee. The Gazette notification declaring the elected persons as members of the Committee was published in the Gazette dated 14th June, 1974. A meeting of the elected members was called by the Sub-Divisional Officer (Civil), Muktsar under the orders of the Deputy Commissioner, Faridkot for administering the oath of allegiance, for 5th of August, 1974 and, in this respect, a notice was issued to the members elected. On receipt of the notice, the petitioner Sub mitted an application on 1st of August, 1974 (Copy Annexure P-1

to the petition) pointing out that the meeting called was illegal and irregular as in the meeting in which oath of allegiance has to be administered to the members, co-option of members is simultaneously to take place; but, no action was taken on this application and the meeting was held on 5th of August, 1974, in which the oath of allegiance was administered to the members elected. Copy of resolution dated 5th of August, 1974, evidencing the administering of the oath of allegiance to the members is attached with the petition as Annexure P-2.

3. It is further stated that another notice was received by the petitioner from the Sub-Divisional Officer (Civil), Muktsar saying that another meeting had been called for 28th of October, 1975, for co-option of the members. In the meeting an objection, which was supported by the petitioner, was raised by Jodh Singh, one of the members of the Committee, to the effect that the meeting held on 5th of August, 1974, was illegal and the meeting could not legally be held on 28th of October, 1975, for co-option as administering the oath of allegiance and the co-option had to take place simultaneously in the first meeting called for the purpose of administering the oath. The objection v/as not decided by the Sub-Divisional Officer (Civil) and the co-option was made in the meeting of 28th of October, 1975. It is in these circumstances that the present petition has been filed calling in question the legality of the proceedings of the Committee dated 5th August, 1974 and 28th October, 1975.

4. Separate written statements have been filed on behalf of respondents Nos. 1, 2, 3 and respondents Nos. 4 and 5, in which the material allegations made in the petition have been controverted and the proceedings of the meeting have been sought to be supported as being legal and in order.

5. The petitioner has filed replication in which the stand taken in the petition has been reiterated.

6. Before dealing with the contentions, it would be worthwhile to notice certain relevant statutory provisions.

7. Sections 12-D and 12-E of the Punjab Municipal Act, 1911 (hereinafter referred to as the Act) provide:

"12-D. Manner of co-option -- Co-option under Sections 12A, 12-B and 12-C in the case of a newly constituted committee shall be made in a meeting of the elected members held for the purpose of administering oath of allegiance to them and in case of any other committee within a period of thirty days from the date of commencement of the Punjab Municipal (Amendment) Act, 1972:

Provided that whenever a vacancy occurs by death, resignation, removal or otherwise of a co-opted member, the co-option shall be made within a period of thirty days from the occurrence of the vacancy.

12-E. Nomination in the event of failure to co-opt. In the event of failure to co-opt a member u/s 12-A, 12-B or 12-C, as the case may be, in accordance with the provisions of Section 12-D, the elected members of the committee shall

cease to have the right of co-option of such members and thereupon the State Government may nominate a person who is eligible to be co-opted u/s 12-A, 12-B or 12-C, as the case may be, to be a member of such committee."

8. Out of the Punjab Municipal Election Rules, 1952 (hereinafter referred to as the Rules), Rule 5, Sub-rules (1), (2), (9) and (10)), are relevant and read as under:--

"5. Co-option of members and election of President and Vice-President.

(1) The Deputy Commissioner or any Gazetted Officer appointed by him in this behalf (hereinafter in this rule referred to as the "convener") shall, within a period of fourteen days of the publication of the notification of appointment and election of members of a newly constituted committee, fix at forty-eight hours notice of a date for the first meeting of the elected and appointed members of such committee stating in the notice that at such meeting the oath of allegiance will be administered to the members present and that the co-option of members, under Sections 12-A, 12-B and 12-C, if any, shall take place after the oath is administered.

(2) Immediately after the oath of allegiance is administered under Sub-rule (1), the convener shall, after such enquiry as he may deem necessary ascertain whether co-option as required by Section 12-A, 12-B or 12-C is called for or not. In case co-option is called for then the convener shall call upon the elected members to propose the names of the candidates for co-option u/s 12-A, 12-B or 12-C, if any. Such proposal shall be made separately for each category of candidates and in case of the candidates to be co-opted u/s 12-A or 12-C the proposal shall be accompanied by a certificate verified by any of the authorities referred to in Sub-rule (1) of Rule 11 to the effect that the candidate whose name has been proposed belongs to the scheduled caste of Balmik, Chura or Bhangi or is a member of any of the backward classes mentioned in Schedule II appended to the Act, as the case may be. Each proposal shall be seconded by another elected member.

(9) In the case of a newly constituted committee in which co-option is not required to be made under Sections 12-A, 12-B and 12-C the convener shall within a period of seven days from the date of meeting held under Sub-rule (1) fix at forty-eight hours notice a date for meeting of the committee stating in the notice that at such meeting oath of allegiance will be administered to such elected members who were not present at the previous meeting and that the President and Vice-President or Vice-Presidents will be elected.

(10) In the case of a newly constituted committee where co-option as required by Sections 12-A, 12-B and 12-C is made in the meeting held under Sub-rule (1) the convener shall within seven days of the publication of the notification of the co-option of members, fix at forty-eight hours notice a date for meeting of the elected and co-opted members stating in the notice that at such meeting the oath of allegiance will be administered to the co-opted members present and

elected members, who were not present at the previous meeting, and that the President and the Vice-President will be elected."

9. On the basis of the aforesaid statutory provisions the main contention of Shri Ram Lal Aggarwal, learned counsel for the petitioner, was that co-option had to take place in the meeting held on 5th of August, 1974, in which oath of allegiance was administered to the elected members, failing which no co-option could legally be held later on and that the meeting held subsequently on 28th of October, 1975, in which co-option took place, was legally bad. On the other hand, it was submitted by Shri I.S. Tiwana, learned Deputy Advocate-General, that administering the oath of allegiance and co-option of members were two distinct acts and that the same could be performed independent of each other in separate meetings. This contention of the learned Deputy Advocate-General was adopted by Shri O.P. Goyal, learned counsel appearing for the private respondents.

10. After giving my thoughtful consideration to the entire matter, I am of the view that there is considerable force in the contention of Shri Ram Lal Aggarwal. The plain reading of the statutory provisions, reproduced above, leads to an irresistible conclusion that co-option has to take place in a meeting of the elected members held for the purpose of administering oath of allegiance to them. The Committee in the instant case is a newly constituted committee and was required to co-opt members in the meeting held for the purpose of administering the oath of allegiance. I do not agree with Mr. Tiwana that separate meetings could be held for administering the oath of allegiance as well as for co-option. If such had been the intention of the Legislature, then it would have been so reflected in the provisions of the statute. Even Rule 5, which gives the procedure for co-option, makes the intention of the Legislature abundantly clear that the co-option has to take place in the first meeting of the elected and appointed members in which oath of allegiance has to be administered. Sub-rule (1) of Rule 5 casts a duty on the authority to fix a meeting within the prescribed period and the notice thereof be given to the elected and appointed members stating therein that oath of allegiance would be administered to the members present and that the co-option of members under Sections 12-A, 12-B and 12-C, if any, shall take place after the oath is administered. In Sub-rule (2) of Rule 5, procedure is prescribed, which is required to be followed for co-option by the authority after the oath of allegiance is administered to the elected members present. Sub-rule (9) prescribes the procedure for the election of the President and Vice-president in the case of a newly constituted committee in which co-option is not required to be made; while Sub-rule (10) lays down the procedure for the election of the President and the Vice-President in the case of a newly constituted committee where co-option has been made. The Legislature has laid down complete procedure for meeting each and every type of contingency and nothing has been left to guess-work. As earlier observed, if the co-option could be made in another meeting then it would have been so provided in the Act or in the Rules themselves. The language of the statutory provisions is not susceptible of any

other interpretation than the one which I have put. In this view of the matter, I hold that co-option had to be made in the meeting held for the purpose of administering oath of allegiance and that a separate meeting only for the purpose of making co-option could not be held.

11. Mr. O.P. Goyal, learned counsel for the private respondents, contended that it was the Sub-Divisional Officer (Civil) who called the meeting for the purpose of administering oath of allegiance; that it was his fault that he did not make co-option in that meeting and that the co-opted members could not be made to suffer for the mistake of the authority. I am afraid I am unable to agree with this contention of the learned counsel. If the authority has acted without jurisdiction and made co-option in a meeting which could not legally be held, then such an action of the authority cannot legally be sustained. Merely the fact that the co-opted members are not at fault and the whole blame lies on the authority which conducted the proceedings for co-option would be no ground to take a view favourable to the co-opted members, especially when the action of the authority is illegal and in contravention of the statutory provisions.

12. It was also contended by Shri I.S. Tiwana, learned Dy. Advocate-General, that the petitioner should be directed to file an election petition against the election of the co-opted members and that no relief should be granted to him in the exercise of extra-ordinary jurisdiction under Articles 226 and 227 of the Constitution. In the circumstances of the case, I find myself unable to agree with this contention of the learned Deputy Advocate-General. In the earlier part of the judgment I have given a firm finding that the meeting held for co-option was illegal and in contravention of the statutory provisions. In the presence of that finding, at this stage, it would be wholly unjust to deprive the petitioner of the relief to which he has successfully laid claim, on the short ground that he could avail of the alternative remedy by way of filing an election petition. Moreover, the question agitated before us is purely a legal one and the same has been answered in favour of the petitioner. As earlier observed, in these circumstances, no case for dismissal of the petition has been made out on the ground that the alternative remedy of filing the election petition should have been availed of and that this petition is not maintainable.

13. It was also contended by Mr. Tiwana that the petitioner is not entitled to the discretionary relief as he had himself attended the meeting on 5th of August, 1974, in which oath of allegiance was administered to him and that having failed to raise any objection in that meeting, the petitioner should not be granted any relief. This contention of the learned Deputy Advocate-General is again untenable. In the first meeting held on 5th of August, 1974, in which oath of allegiance was administered, there was no occasion for the petitioner to have raised any objection as it was the duty of the authority under the Act to have proceeded in accordance with the statutory provisions. Before holding the meeting the authority had to issue notice stating therein that co-option would also take place in the meeting. It was the authority which failed to perform its

duty even in spite of the fact that the petitioner had already submitted an application on 1-8-1974 (copy Annexure P-1) pointing out that the meeting called was illegal and irregular, as in the meeting in which the oath of allegiance has to be administered to the members, co-option of members is to simultaneously take place. However, in the next meeting, which was held on 28th of October, 1975, the petitioner and one other member raised objection that co-option could not be made and, in my view, that was the only right and proper time when such an objection could be raised. Thus the petitioner cannot be non-suited on this plea that he did not raise any objection in respect of the matter of co-option in the meeting held on 5th of August, 1974.

14. It was also contended by Mr. Goyal that co-option could not take place on 5th of August, 1974, as stay had been granted by this Court in Civil Writ No. 2578 of 1974, which was filed by Pirthi Singh, one of the elected members, whose name had not been gazetted; that there was no fault of the officer in not making co-option in the first meeting as he could not do so in the wake of the stay order; and that the co-option which took place in the meeting held on 28th of October, 1975, was legally valid. Again, I am unable to agree with this contention of the learned counsel. Admittedly, the notice which was issued by the Sub-Divisional Officer (Civil) to the elected members regarding the holding of the first meeting on 5th of August, 1974, did not mention that co-option was to take place on 5th of August, 1974. The facts of this case clearly show that the Sub-Divisional Officer (Civil) called the first meeting only for administering the oath of allegiance and that he had no intention of making co-option in that meeting. Reference may be made at this stage to the reply of the Sub-Divisional Officer (Civil), wherein in para. 5 it has been averred as follows:--

"Since the name of Shri Pirthi Singh has not been notified in the Punjab Gazette Notification, question of co-option has not risen and hence no mention of co-option was made in the agenda, circulated for the meeting in question. Hence this contention is untenable."

The aforesaid averment clearly shows that the Sub-Divisional Officer (Civil) did not call the first meeting for the purpose of co-option as the name of one elected member had not been gazetted. When the authority itself gives a positive reason for not making co-option, there seems to be no justification in the contention of the learned counsel that the co-option was not held because of the stay order issued by this Court. It may be observed at this stage that merely this fact that the name of one of the members had not been notified in the Gazette was no ground for not making co-option in the first meeting in which oath of allegiance was administered to the elected members. However, whether there was sufficient ground or not to hold the co-option in the meeting in which the oath of allegiance was administered to the elected members, the fact remains that there has been a failure to co-opt members in accordance with the provisions of Section 12-D and in the event of such failure, as positively laid down in Section 12-E, the elected members cease to have a right of co-option and thereupon it was only

the State Government which was entitled to nominate the eligible persons to be co-opted. Thus, it is abundantly clear that in the meeting held on 28th of October, 1975, co-option could not be made by the elected members and the proceedings of that meeting, therefore, are illegal and without jurisdiction and there is no alternative but to quash the same and hold the co-option made therein to be invalid and ineffective.

15. No other point was urged on either side.

16. For the reasons recorded above, I allow this petition with costs and quash the proceeding of the Municipal Committee held in the meeting of 28th of October, 1975 (copy Annexure P-4 to the Petition).

A.S. Bains, J.

I agree.