
(1968) 05 P&H CK 0007
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 767 of 1968

Jagjit Singh Marwaha

APPELLANT

Vs

The State of Haryana and Another

RESPONDENT

Date of Decision : 21-05-1968

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Municipal Election Rules, 1952 — Rule 47, 47(2), 5
Punjab Municipal Act, 1911 — Section 16, 16(1), 20, 20(1), 21

Citation : (1969) 2 ILR (P&H) 261

Hon'ble Judges : Ranjit Singh Sarkaria, J

Bench : Single Bench

Advocate : Rajinder Sachar, for the Appellant; G.C. Mittal, for A.G., G.P. Jain and G.C. Garg, for the Respondent

Final Decision : Allowed

Judgement

Ranjit Singh Sarkaria, J.—This is a petition under Articles 226 and 227 of the Constitution of India for the issuance of a writ of certiorari, mandamus or any other appropriate writ, order or direction, for quashing an order, dated 21st February, 1968, of the Government of Haryana, removing the Petitioner from the Presidentship/Membership of the Municipal Committee, Shahabad, and further disqualifying him for future election to the Municipal Committee for a period of two years.

2. The facts are as follows:

Elections to the Municipal Committee, Shahabad, took place in May, 1964. The Petitioner was one of the elected members the total number of which was 13. Election to the office of the Presidentship of the Municipal Committee took place in July, 1964. Shri Raghbir Chand was elected as President while Shri Kharaiti Lal was elected as Vice-President. The term of the Vice-President Shri Kharaiti Lal expired in July, 1966. Shri Raghbir Chand the then President, however, refused to convene a meeting for the purpose of electing a Vice-President. In compliance

with a direction issued by this Court in Writ Petition No. 2152 of 1966, the meeting was held on the 10th April, 1967, and Shri Narsingh Dass belonging to the party of the Petitioner was elected as Vice-President.

3. The term of the President expired in July, 1967, and a meeting was duly called on the 1st August, 1967, to elect the President. The Petitioner was declared elected in the said meeting. Thereafter, Shri Kharaiti Lal and five others instituted Writ Petition No. 1788 of 1967 in the High Court for challenging the election of the Petitioner as President of the Municipal Committee. This petition was dismissed in limine on the 1st September, 1967.

4. The result of the Petitioner's election as President on 1st August, 1967, was duly communicated by the Vice-President of the Municipal Committee to the Sub-Divisional Officer within a few days of the election.

5. The Petitioner, however, did not start performing the duties of the office of the President till after the decision of the Writ Petition No. 1788 of 1967 on the 1st September, 1967. The Petitioner was advised that though his name had to be gazetted and he had to take oath of office as required by Section 24 of the Punjab Municipal Act, 1911 (hereinafter referred to as the Act), this did not prevent him from functioning as the President. No objection was taken by the Sub-Divisional Officer or the Deputy Commissioner to the functioning of the Petitioner as President till the receipt of a memorandum, dated 19th October, 1967, from the Sub-Divisional Officer. Earlier on the 26th September, 1967, the Deputy Commissioner had duly recommended that the name of the Petitioner as President of the Committee be gazetted. This proposal had also been approved by the Director, Local Urban Bodies, on 21st October, 1967. This was communicated to the Controller of Printing and Stationery, Haryana,--vide Director's memorandum No. 3063/A2, dated 21st October, 1967.

6. In reply to memorandum, dated 19th October, 1967, the Petitioner wrote to the Sub-Divisional Officer,--vide his letter, dated 25th October, 1967 (Annexure A-1), that he was competent to function as President even before the publication and notification of his election as President in the Gazette. The Petitioner's name was duly gazetted as President of the Municipal Committee, Shahabad, in the Haryana Government Gazette, on the 31st October, 1967. One Jag Vasaya, a cousin of Shri Kharaiti Lal Respondent No. 2, instituted a suit for injunction, restraining the Petitioner from functioning as President on the ground that he could not function as such before the notification and publication of his election as President in the Government Gazette.

7. The Municipal Committee at a meeting presided over by the Petitioner on 8th September, 1967, passed a resolution demanding Rs. 2,999.98 from Shri Kharaiti Lal Respondent as Octroi charges that had not been paid by him. In pursuance of this resolution, a special demand notice was sent to Shri Kharaiti Lal Respondent.

8. Acting under the influence of Shri Kharaiti Lal, the Secretary to Government, Haryana, Local-Self Government Department (Respondent No. 1) issued a notice,

dated 18th January, 1968, under Sections 22/16 of the Act, calling upon the Petitioner to show cause as to why he should not be removed from the President ship/Membership of the Municipal Committee. It was alleged in this notice that he entered upon his duties as President of the Municipal Committee in contravention of Section 24(1) of the Act before his election had actually been notified and before he had taken the necessary oath. It was added that during this period the Petitioner had committed a number of irregularities which amounted to flagrant abuse of powers. Appended to this notice was a statement of facts in which nine irregularities constituting "flagrant abuse of powers" were enumerated. The Petitioner sent a reply, dated 13th February, 1968, to this notice through the Deputy Commissioner, Karnal. He also sent an advance copy of the same to Respondent No. 1. The Petitioner's reply to the show-cause notice was received by the Government (Respondent No. 1) on the 15th or 16th of February, 1968. The Deputy Commissioner, Karnal, however, asked the Sub-Divisional Officer (Civil) to report with regard to certain matters raised by the Petitioner in reply to the show-cause notice. Before the Sub-Divisional Officer could send his report, the impugned order, (Annexure "A-8") was passed by Respondent No. 1 removing the Petitioner from the Presidentship/Membership of the committee on the sole ground that the Petitioner had entered upon his duties as President before his election was approved, notified and published and before he had taken the oath of allegiance to his office. This order (Annexure "A-8"), is being impugned as illegal on the following grounds:

(1) The conduct of the Petitioner in acting and working as President after his election and before the approval and notification of his name by the Government did not amount to any "flagrant abuse" within the meaning of Section 22 of the Act.

(2) The Petitioner had functioned as President prior to his notification, on the advice which was given to him bona fide, and even if this was wrong, it amounted at the most, to an error of judgment. The Petitioner was elected as President by a majority of 7 out of 13 members of the Committee, and by delaying the notification and publication of his election as such, Respondent No. 1 had acted in a mala fide and arbitrary manner. Respondent No. 1 could not be permitted to take advantage of his own wrongs and lapses of duty and penalise the Petitioner for the same. The only object of delaying the publication was to favour Shri Kharaiti Lal Respondent and the outgoing President Shri Raghbir Chand by keeping them in as far as possible.

(3) The impugned order was mechanically passed as it lumped together actions under Sections 22 and 16(1)(e) of the Act which were distinct sections with different requirements.

(5) No notice was given to the Petitioner of his proposed disqualification for a future period of two years. The elections to the Municipal Committee were scheduled to take place on the 10th March, 1968. The impugned order, therefore, was passed only to help Messrs Raghbir Chand and Kharaiti Lal, who were

contesting the election, by debarring the Petitioner from contesting the election. The impugned order has thus been passed for a collateral purpose and it amounts to a fraud on the statute.

9. State of Haryana (Respondent No. 1), in the return, has admitted that the Petitioner was elected as President by the Municipal Committee at its meeting and was removed from that office by means of the impugned notification. It was, however, emphatically denied that Shri Kharaiti Lal, Respondent No. 2, had any influence with the Local Government Department. The Respondent, however, maintained that the Petitioner's conduct inasmuch as he started functioning as the President before his election could be approved by the State Government and the necessary notification published in the Government Gazette, despite the directions of the Sub-Divisional Officer (Civil), Thanesar, amounting to a flagrant abuse of his position as a member and also as President of the Committee. It was denied that the issue and publication of the notification in the Gazette was deliberately done with a mala fide intention or to help Sarvshri Kharaiti Lal and Raghbir Chand. It was denied that no notice of his proposed disqualification for future period was given to him. It is averred that such a notice was, in fact, given to the Petitioner.

10. Shri Kharaiti Lal Respondent, however, has not filed any return.

11. The material provisions of the Act contained in Sections 16, 20, 21(2), 22 and 24 may be reproduced as below:

16. Powers of the State Government as to removal of members:

(1) The State Government may, by notification, remove any member of Committee--

(a)-----

(b)-----

(c)-----

(d)-----

(e) if, in the opinion of the State Government, he has flagrantly abused his position as a member of the committee or has through negligence or misconduct been responsible for the loss, or misapplication of any money or property of the committee.

20. Election or appointment of President and Vice-President.

(1) Every Committee shall from time to time elect one of its members to be President, and the member so elected shall, if approved by the State Government, become President of the committee:

Provided that the committee, instead of electing a President and submitting his name for approval to the State Government, may apply to the State Government

to appoint a President from among its members, and that the State Government may, by notification, exclude any committee from the operation of this subsection and that in either of these cases, if no election has been made within one month from the occurrence of a vacancy in the office of the President, or if the person elected be not approved, the State Government may, if, it shall think fit appoint one of the members of the committee to be President.

(2) Every Committee may also, from time to time, elect one or two of its members to be Vice-President or Vice-Presidents, and when the two Vice-Presidents are elected on the same date, shall declare which of them shall be deemed to be the senior.

(3) Every member elected or appointed under this section to be President or Vice-President may be elected or appointed by office if he was appointed a member of the committee in the same way.

21. Term of office of President and Vice-President.

(2) The term of office of a President elected or appointed by name or elected by virtue of his office shall be three years or the residue of his term of office as member, whichever is less.

22. Resignation of President or Vice-President:

Whenever a President or Vice-President vacates his seat or tenders in writing to the committee, his resignation of his office, he shall vacate his office; and any President or Vice-President may be removed from office by the State Government on the ground of abuse of his powers or of habitual failure to perform his duties or in pursuance of a resolution requesting his removal passed by two-thirds of the members of the committee:

Provided that before the State Government notifies his removal, the reason for his proposed removal shall be communicated to him by means of a registered letter in which he shall be invited to tender within twenty-one days an explanation in writing and if no such explanation is received in the office of the (appropriate Secretary to Government) within twenty-one days of the despatch of the said registered letter, the State Government may proceed to notify his removal.

24. Notifications of elections, appointments and vacancies.

(1) Every election and appointment of a member or President of a committee shall be notified, in the case of a municipality of the first class, by the State Government, and in the case of a municipality of the second or third class, by the Deputy Commissioner, and no member shall enter upon his duties until his election or appointment has been so notified and until, notwithstanding anything contained in the Indian Oaths Act, 1873, he has taken or made, at a meeting of the committee, an oath or affirmation of his allegiance to India, in the following form, namely:

(1. A.B., having been elected (or appointed) a member of the municipal committee of--do solemnly swear (or affirm) that I will be faithful and bear true allegiance to India and the constitution of India as by law established and I will faithfully discharge the duties upon which I am about to enter.)

(2) If any such person omits or refuses to take or make the oath or affirmation as required by Sub-section (1) within three months of the date of the notification of his election or appointment as the case may be, shall be deemed to be invalid unless the State Government for any reason which it may consider sufficient extends the period within which such oath or affirmation may be taken or made.

12. The first contention of Mr. Sachar, learned Counsel for the Petitioner is that there is nothing in the above-quoted sections or any other provision of the Act which prohibits a member of a Municipal Committee elected as President at its meeting, from functioning as President before his election as such is notified in the official gazettee. It is argued that the inhibition contained in Section 24(1) of the Act against entering upon his duties before the notification, is confined only to a member of a Committee, and it does not extend to the President-elect of the Committee. Emphasis has been laid on the fact that whereas in the opening part of Sub-section (1) of Section 24 a duty has been imposed on the State Government to notify every election and appointment of a member or a President of a Committee, in the prohibitory clause of Sub-section (1) only the word "member" without repeating the words "or a President" has been used. The omission of the words "or a President" from this clause, says Mr. Sachar, is deliberate and the lone word "member" is not intended by the Legislation to include the President-elect.

13. On the other hand, the learned Counsel, for the Respondent state contends that the word "member" in the second part of Sub-section (1) of Section 24, also includes a member who has been elected or appointed as President of Committee and that it was not necessary to repeat the words "or a President" for the simple reason that only a member of the Committee could be elected as President. It is maintained that Section 24 is not to be interpreted in isolation; it must be read together with Section 20(1) which shows that a member does not become the President immediately on his election as such, but only when his election is approved by the State Government. It is contended that so long as such approval is not given, the person concerned is positively forbidden from entering upon the duties of the President and that if he deliberately does so, his conduct will amount to "abuse of his powers" within the meaning of Section 22 and also "flagrant abuse of his position as a member within the contemplation of Section 16(1)(e).

14. It is common ground that election of the Petitioner as a member of the Municipal Committee had been duly gazetted and notified and he had subscribed to the necessary oath before entering upon his duties as a member of the Municipal Committee. However, he had not taken any oath of allegiance after being elected as the President.

15. I agree with Mr. Sachar that the prohibitory part out of Sub-section (1) of Section 24 which makes the taking of oath a condition precedent to the assumption of office, does not apply to a President-elect of the Committee; its operation is limited only to the "member". The reason behind this distinction appear to be that a member who is the President-elect has already subscribed to the oath of allegiance before entering upon his duties as a member of the Committee. In his case it will be a mere superfluity to call upon him to take the same oath again before entering upon his duties as President. To my mind, that is why the words "or President" have not been repeated immediately after the word "member" in the second part of Sub-section (1) of Section 24, or in the form of oath prescribed in it. This distinction between the case of a member and a President is also reflected in Rules 5 and 47 of the Municipal Election Rules, 1952. Rule 5 requires the Deputy Commissioner or any gazetted officer appointed by him in this behalf, to convene the first meeting of the newly constituted Committee for administering the oath of allegiance to the members and for election of the President and Vice-President. Rule 47(2) enjoins upon the Presidentelect to assume office from the date of election. It reads as follows--

47(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.

16. Section 20 and Rule 47(2) can be reconciled only if they are held to imply that during the interregnum between the election of a President and his approval by the State Government, he can function as President subject to the proviso that he will cease to function if his election as such is not approved by the State Government.

17. Mr. Sachar further contends that even if it is assumed for the sake of argument that publication or the notification of his election as President, was a condition precedent to his assumption of the office, then also such contravention of Section 24(1) for a period of two months, will not amount to "flagrant abuse of position as a member" of "abuse of his powers as President" within the meaning of Section 16(1)(2) and Section 20, respectively, of the Act. In that case also, says Mr. Sachar, this would be an act of mere indiscretion, the provision being merely directory and not madatory. In support of his contention he has referred to *Kartik Chandra v. Jadumani Behera and Ors.* AIR 1952 Ori 251, *Vishwanath and Another Vs. The State and Others*, , *Norata Ram v. The State of Punjab* 1964 P.L.R. 226, *Satya Dev v. State of Punjab* and Anr. 1964 P.L.R. 381, *Panna Lal v. The Secretary to Government, Haryana, Local Government Department, Chandigarh* and Ors. 1967 CLJ 828 and *Sardari Lal v. The State of Haryana* and Anr. 1968 Curr. Law Journal.

18. I find a good deal of force in this contention. If the Municipal Election Rules and the various provisions of the Punjab Municipal Act are to be interpreted in harmony with each other, it is quite clear, as observed already, that unlike the case of a member who enter upon his duties only after the publication of the

notification and after taking the oath of allegiance, the President-elect can start functioning under Rule 47(2) as such from the date of his election subject to the condition that he would cease to function as such if his election is disapproved by the State Government.

19. Be that as it may, Sub-section (1) of Section 24 only prescribes the performance of a public duty by the Government, namely, to publish and notify the election and appointment of a member or President. Maxwell, in his "interpretation of Statutes", Eleventh Edition, has observed at page 360, as follows:

Where the prescriptions of a statute relate to the performance of a public duty, and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over, those entrusted with the duty, yet not promote the essential aims of the legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or, in other words, as directory only.

20. This principle was approved by their Lordships of the Supreme Court in *Dattatreya Moreshwar Pangarkar Vs. The State of Bombay and Others*, . The following observations made by S.R. Das, J., (as he then was) may be quoted with advantage:

It is well settled that generally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative.

21. In the present case also, Section 24(1) prescribe only a formality for the doing of a public act, viz., publication of the result of the election. This provision is, therefore, merely directory, particularly when the Legislature has not expressly laid down anything in the statute that the President would assume office only after such publication.

22. In *Vishwanath and Another Vs. The State and Others*, , *Wanchoo, J.*, (as he then was) and *Dave, J.*, held that Section 22(14) of the Rajasthan Towns Municipalities Act (23 of 1951) was merely directory. That provision was as follows:

The names of all chairmen or vice-chairmen elected or nominated in accordance with the provisions of this section shall be published, as soon as conveniently may be, in the Rajasthan Gazette.

The learned Judges further observed:

Considering the words of this sub-section, it is obvious that the sub-section is merely directory, and publication is envisaged in the gazette for purposes of information of the public.

If it was the intention of the legislature that no chairman or vice-chairman shall assume office until his name was published in the gazette, there was no reason

why the legislature should not have said so in Sub-section (14) when a specific provision was being made by it with respect to publication.

23. It was further held in that case that Rule 13 of the Rajasthan Town Municipal Boards Chairman Elections Rules which lays down that the Chairman-elect could enter on his duties as Chairman only after his name had been published in the Rajasthan Gazette, was ultra vires the Rajasthan Town Municipalities Act which did not make publication in the gazette a necessary preliminary to the assumption of office by a Chairman.

24. It is true that the language of Section 22(14) of the Rajasthan Act is not identical with the language of Section 24(1) of the Punjab Municipal Act and in that case no reference was made to any provision analogous to Section 21 of the Punjab Act which required the approval of the State Government as an essential preliminary to the elected member becoming the President. But that will not, to my mind, make any difference. The case before me is a converse one. In the instant case, the Punjab Election Rule 47(2) requires the President-elect to assume his office from the date of his elections. Accord of approval by the State Government and the publication of the notification in the Gazette are ministerial acts which cannot necessarily be contemporaneous with the election and have to follow in due course within a reasonable time. It was not the intention of the Legislature that during this interregnum between the election of the President and the approval and notification of that election by the State Government, the working of the Municipal Committee should remain at a standstill merely for want of such approval and notification.

25. Even if it is assumed for the sake of argument that the word "member" in the second part of Sub-section (1) of Section 24 includes a President-elect and the Petitioner in entering upon his duties as President before the notification of his election as such committed a breach of those directory provisions,--about the interpretation of which there could be honest, difference of opinion,--then also it could not be said that in doing so he was guilty of "flagrant abuse of his position as a member" within the meaning of Section 16(1)(e) or "abuse of his powers as President" within the contemplation of Section 20 of the Act.

26. As pointed out by Tek Chand, J. in Panna Lal v. The Secretary to Government Haryana Local Government Department, Chandigarh and Ors. 1967 Curr. Law Journal 828, the word "Flagrantly" in Section 16(1)(e) before "abused his position" cannot be overlooked. It indicates a stress being laid upon the nature of abuse of position which must in the circumstances be glaring, notorious, enormous, scandalous or wicked.

27. What the clause "Flagrant abuse of his position as a member" means is the doing of such act or acts by a member of a committee in disregard of his duty as would shock a reasonable mind. See Section Joginder Singh v. The State of Punjab and Anr. 1963 P.L.R. 217.

28. There is ample authority in support of the proposition that every

contravention of the Municipal Act or the rules framed thereunder by a member does not amount to abuse of his position by such member.

29. Thus in *Satya Dev v. State of Punjab* and Anr. 1964 P.L.R. 381, Dua and Harbans Singh JJ. held that continuing an encroachment which came into existence long before a person became a member of a Municipal Committee, and not demolishing the same, cannot be said to be an act, directly connected with his position as a member.

30. In *Waryam Chand v. The State of Punjab*, Civil Writ No. 535 of 1961, the charge against the member was that he had managed to construct a door and a wall in a shop without getting the building plan sanctioned from the Municipal Committee. Grover, J., who decided the case, observed:

It is not possible to see how making construction without sanction involves a flagrant abuse of position as a member of the Committee for any individual house-owner can make such an erection irrespective of the fact whether he is a member of the committee or not. Such an abuse of position as a member can only be established by some further act or acts on the part of the member by which he may have prevented the officer of the committee from interfering while the unauthorised construction is being made or by not taking any action subsequent to such construction. There is no allegation or suggestion whatsoever either in the return or in the charge preferred against the Petitioner or in final order.... that he took any undue advantage of his position as a member.

31. In the case before me also it is not said in the impugned order that the Petitioner while working as President after his election as such and before the notification of his name in the Gazette, took any undue advantage of his position as a member, or under the colour of his office as President committed any particular irregularity or reprehensible acts.

32. In *Sardari Lal v. The State of Haryana* and Anr. 1968 Curr. Law Journal 218, the Petitioner had been a lessee under the Municipal Committee since 1961, of a property belonging to the Committee. He was elected as a member of the Committee in 1964 but did not obtain the sanction of the Deputy Commissioner within two months of his becoming a member of the Committee to continue as a lessee and thus contravened the provisions of Section 48 of the Municipal Act. On account of this breach of Section 48, he was removed from the membership of the Committee by the State Government u/s 16 of the Act. P.D. Sharma, J., held that the Petitioner's failure to obtain the requisition sanction of the Deputy Commissioner was more due to ignorance than flagrant abuse of his position as a member. The following observations made by the learned Judge are pertinent:

It is well nigh settled that every contravention of any one of the provisions of the act or the bye-laws made thereunder by the member cannot be categorised as flagrant abuse of his power as a member of the Committee.

33. It is further settled that the decision of the State Government as to whether

or not a member has flagrantly abused his position is always open to scrutiny by the High Court.

34. The above being the law, the mere contravention by the Petitioner of directory provision of the Punjab Municipal Act in entering upon his duties as President before his name was approved and published in the Gazette by the Government could not be called either a "flagrant abuse of his position as a member" or "abuse of power" within the contemplation of Section 16(1)(e) and Section 20 respectively of the Punjab Municipal Act, 1911.

35. I would, therefore, allow this petition and quash the impugned order. In the circumstances of the case, there will be no order as to costs.