
(1982) 10 P&H CK 0020

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 5218 of 1981

Jagraj Singh and Another

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 06-10-1982

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Municipal Act, 1911 — Section 25, 25(2), 26, 27, 27(1)
Punjab Municipal Election Rules, 1952 — Rule 47

Citation : AIR 1985 P&H 64 : (1985) 1 ILR (P&H) 158

Hon'ble Judges : S.S. Sandhawalia, C.J.; S.C. Mital, J.; Kulwant Singh Tiwana, J

Bench : Full Bench

Judgement

S.S. Sandhawalia, C.J.—The self-imposed bar against the exercise of the writ jurisdiction where an efficacious statutory remedy exists, particularly in the election field, is the spinal question in this reference. More pointedly at issue is the discordance of views in *Gurtej Singh Vs. The Punjab State and Others*, and *Harkewal Singh Ramana v. Municipal Committee, Faridkot*, C. W. P. No. 3894 of 1981, decided on 14th September, 1981.

2. The factual matrix is not in dispute and lies in a narrow compass. The two writ petitioners along with fifteen others were elected to the Municipal Committee, Mansa, for a period of five years in municipal elections held in the year 1979. Two women members were co-opted as members of the Committee thereby completing the strength of the Committee which was nineteen. Shri Atma Singh was elected as President of the Society for a period of five years. However, the term of senior Vice-President and junior Vice-President under the election rules is one year only. This was to expire on February 10, 1981. No meeting of the Committee was, however, called by the President for electing persons to the aforesaid two offices. Accordingly respondents No.s 5, 6 & seven other members of the Committee who are alleged to belong to one group requisitioned a meeting, in writing, u/s 25(2) of the Punjab Municipal Act (hereinafter called "the Act"), for October 2, 1981. A meeting so convened is termed as "special

meeting" and the quorum for such meeting is provided by sub-section (1) of Section 27 of the Act. If the quorum is not present then the Chairman of the meeting has to adjourn the meeting to some other day. The writ petitioners themselves rely on the provisions of Sections 25 and 27 of the Act and rule 47 of the Punjab Municipal Election Rules, 1952 (hereinafter called "the Rules").

3. It is the case of the writ petitioners that despite the requisition aforesaid, no meeting was called by the President and, therefore six out of nine requisitionists, on November 9, 1981 issued a notice under rule 47 of the Rules for holding the meeting for the purpose of electing the senior Vice-President and Junior Vice-President, for November 12, 1981 at 10 A. M. within the precincts of the Municipal Committee. Accordingly the requisitionists met for holding a meeting on the date and time above said, but in the said meeting only nine out of nineteen members were present and since the President S. Atma Singh was absent, the requisitionists elected Nichhattar Singh to be the Chairman of the meeting. Since the requisite quorum of one-half of the members of the Committee was not present, the resolution, annexure P/1, was passed adjourning the meeting to be held on the same day at 12 noon. On the said date the requisitionists again held the meeting and passed the resolution, annexure P/2, whereby respondent No. 5, Amar Nath was elected as the senior Vice-President and respondent No. 6 Kashmiri Lal was elected as the Junior Vice-President of the Municipal Committee.

4. The writ petitioners seek to challenge the resolution, annexure P/1 and the election of respondents Nos. 5 and 6, primarily on the alleged infraction of the provisions of Ss. 25 and 27 of the Act and rule 47 of the Rules. In the written statement filed on behalf of the respondents Nos. 5 & 6 apart from controverting the averments in the writ petition, a specific preliminary objection has been taken that an efficacious statutory remedy by way of an election petition is in terms provided by the Punjab Municipal Act and the Rules. It is the stand that the election petition is an exclusive remedy and in any case there is no room for the High Court to exercise its powers under Art. 226 of the Constitution of India unless resort is first made to the said remedy. Particular reliance in this context was placed on Harkewal Singh Ramana's case (supra), a copy of the judgment whereof was annexed as R-5/1.

5. At the motion stage itself, the preliminary objection on behalf of the respondents to the maintainability of the writ petition on the ground that an efficacious alternative statutory remedy by way of an election petition was available under the Punjab Municipal Election Rules, 1952, was strongly urged. The Motion Bench noticing some conflict of precedent within this Court, admitted the writ petition for a hearing by the Full Bench.

6. As noticed at the outset, one must inevitably advert to the preliminary objection strenuously pressed on behalf of the respondents. This is rested squarely on the mandatory provisions of the Act and the Punjab Municipal Election Rules. Pointed notice herein is called to R. 52 of the Rules which is in the

following terms:-

"..... (1) An election petition against the return of a candidate at a Municipal Election or against the return of a President or Vice-President or against an unsuccessful candidate with a view to his disqualification under R. 66 on the ground of a corrupt practice or material irregularity in the procedure shall be in writing, signed by a person who was a candidate at the election or by not less than five electors and the petitions shall be presented to the Deputy Commissioner or an Assistant Commissioner or Extra Assistant Commissioner appointed by the Deputy Commissioner in this behalf within 14 days after the day on which the result of the election was declared; provided that the limit of fourteen days prescribed by this rule may be extended by the Deputy Commissioner if there are in his opinion sufficient grounds for such extension".

A plain reading of the above would indicate that the Rules in terms, governs the election of the Vice President of the Municipality which in terms is to be assailed only by way of an election petition and further prescribes the persons who can challenge the same as also the modus for doing so and the limitation within which the same is to be done. The succeeding rules 54 and 55 in detail provide for the contents of the petition and the deposit to be made which the same is presented. R. 57 is pre-emptory in laying down that if the mandatory provisions of R. 53 or 55 have not been complied with the election petition shall be dismissed and such orders will be final. Rule 58 empowers the appointment of a person for trying the election petition whilst rule 59 specifies both the place and the procedure of such enquiry. Particular attention is then called for to sub-rule (1) of Rule 63. Its four clauses particularize the grounds on which the election can be declared void. Not only that sub-rule (2) lays down that if the Election Commission further reports in terms of clauses (a), (b), (c) and (d) thereof, then the election of the candidate may not be deemed to be void. Reference must also be made to the definition of "material irregularity" in rule 51 (ix) (c) of the Rules which can be one of the grounds for declaring an election petition void, and which reads as under:-

".. "material irregularity" in the procedure of an election includes any such improper acceptance or refusal of any nomination or improper reception or refusal of a vote or reception of any vote which is void or non-compliance with the provisions of the Act or of the rules made thereunder, or mistake in the use of any form annexed thereto as materially affects the result of an election".

7. Now it was the admitted position before us that under the Punjab Municipal Act, the only mode of the election of a President or Vice President was through the medium of calling or convening a meeting of the Municipal Committee for the said purpose. The relevant provisions herein are first Ss. 25 and 26 of the Act which specify the times for holding the meetings and their nature, namely, whether these are to be ordinary or special meetings, S. 27 of the Act then lays down the quorum necessary for an ordinary or special meeting and it is clearly provided by S. 29 of the Act that the vote of majority in such meetings would be

decisive and the record and publications of proceedings would be drawn up in accordance with S. 30 of the Act. As has been noticed in passing earlier, the case of the writ petitioners themselves is rested on the alleged contravention of the aforesaid Sections of the Act and of rule 47 of the Rules.

8. Now on a reading of the aforementioned Sections and the Rule together, and inevitably construing them harmoniously on the sound canons of construction, there seems to be little doubt that the farmers herein have specifically provided for the remedy by way of an election petition, the grounds on which such a relief is to be accorded or refused and in essence have made it an exclusive remedy in the first instance. What is further significant is the fact that by virtue of the definition of "material irregularity" and sub-rule (2) of rule 63 of the Rules, the choice of the electorate is not to be upset on a mere technical infraction of the provisions, but also on the more substantial and solid ground that the result of the election has been materially affected thereby.

9. Once it is held as above, then within this jurisdiction it would hardly need any examination or dissertation on principle, because it appears to me as wholly covered by the binding precedent of the final Court not in one but in a trilogy of cases. The first in the series is Nanhoo Mal and Others Vs. Hira Mal and Others, . Therein also, the election of the President of the Municipal Board was sought to be challenged on the ground of the infraction of rule 6 of the Uttar Pradesh Municipalities (Conduct of Election of Presidents and Election Petitions) Order, 1964, by way of a writ petition. The Full Bench of the Allahabad High Court allowed the same and set aside the entire election proceedings. Their Lordships, in reversing the same categorically opined that the whole approach of the learned Judges of the High Court to this problem was mistaken, because S. 43-B of the Uttar Pradesh Municipalities Act, 1916 and the rules framed therein, provided an efficacious statutory remedy. It was held as follows (Paras 3 and 5):-

"..... Under the Act, the non-compliance with any rule or order made under the Act or any provision off the Act does not ipso facto result in the election being set aside. That result can be set aside only if the Election Tribunal comes to the conclusion that the result of the election has been materially affected by such non-compliance. The jurisdiction to decide the validity of the election of a President is an exclusive one conferred on the District Judge. In the circumstances there was no room for the High Court exercising its powers under Art. 226 in order to set aside the election. In setting aside the election the High Court plainly erred because it did not consider whether the result of the election had been materially affected by non-compliance with the rule in question. In any case that is a matter within the exclusive jurisdiction of the District Judge".

And again:

"It follows that the right to vote or stand for election to the office of the President of the Municipal Board is a creature of the statute, that is, the U. P. Municipalities Act and it must be subject to the limitations imposed by it. Therefore, the

election to the office of the President could be challenged only according to the procedure prescribed by that Act and that is by means of an election petition presented in accordance with the provisions of the Act and in no other way...."

10. In *K.K. Shrivastava and Others Vs. Bhupendra Kumar Jain and Others*, , the Madhya Pradesh High Court allowed a writ petition against an election to the Bar Council of the said State. In reversing the decision of the High Court, on the narrow point of the existence of an efficacious alternative remedy, their Lordships observed that in fact the High Court fell into a grievous error in entertaining the writ petition and observed as under (Para 4):-

"It is well settled law that while Art. 226 of the Constitution confers a wide power on the High Court there are equally well settled limitations which this Court has repeatedly pointed out on the exercise of such power. One of them which is relevant for the present case is that where there is an appropriate or equally efficacious remedy the Court should keep its hands off. This is more particularly so where the dispute relates to an election. Still more so where there is a statutorily prescribed remedy which almost reads in mandatory terms....."

The categorical observations were also made therein that the exercise of the power under Art. 226 of the Constitution could well be described as mis-exercise and the gravely injurious repercussions of entertaining the writ petitions, where they should not be, were illustrated by the said case.

11. In reiterating the aforesaid view, their Lordships in *Bar Council of Delhi and Others Vs. Surjeet Singh and Others*, again observed as follows (Para 18)

"We may add that the view expressed by some of the High Courts in the cases referred to above that merely because the whole election has been challenged by a writ petition, there being an alternative remedy being available, so widely put, may not be quite correct and especially after the recent amendment of Art. 226 of the Constitution. If the alternative remedy fully covers the challenge to the election then that remedy and that remedy alone must be resorted to even though it involves the challenge to the election of all the successful candidates....."

12. To conclude, it seems to emerge clearly from the aforesaid catena of authorities that particularly in the election field, the existence of an alternative statutory remedy is virtually a bar to the exercise of the writ jurisdiction without first resorting to the remedy by way of an election petition. It is only in exceptionally extraordinary circumstances that the writ Court would deviate from this hallowed rule.

13. Reference must inevitably be made to *Gurtej Singh Vs. The Punjab State and Others*, , on which strenuous reliance was sought to be placed by the learned counsel for the petitioners. Thereon a writ petition directed against the co-option of the members to the Municipal Committee, Giddarbaha, was entertained and allowed. A perusal of the judgment would indicate that the preliminary objection

about the maintainability of the writ petition on the ground of the existence of an alternative remedy was not raised at the outset, but only at the fag-end of the case. The learned Judges observed that they had already given firm findings on fact and law in favour of the petitioners and at that late stage it would be unjust to deprive the petitioners of the relief. It was also found that the questions agitated were purely legal ones which had already been answered in favour of the petitioners. It would thus appear that Gurtej Singh's case (supra) is somewhat distinguishable. However, if this is to be construed that within the elective process, a writ may issue without at all resorting to an alternative efficacious statutory remedy, then with respect, it does not lay down the law correctly. It deserves highlighting that the binding precedent in Nanhoo Mal and Others Vs. Hira Mal and Others, , was not brought to the notice of the Bench. The subsequent precedents in K.K. Shrivastava and Others Vs. Bhupendra Kumar Jain and Others, and Bar Council of Delhi and Others Vs. Surjeet Singh and Others, have further constricted the exercise of writ jurisdiction in this arena. With respect, it must be held that on this point Gurtej Singh Vs. The Punjab State and Others, is no longer good law and is hereby overruled. The view in Harkewal Singh Ramana's case (supra) is hereby affirmed.

14. In the light of the above, the preliminary objection raised on behalf of the respondents must succeed. Learned counsel for the petitioner was wholly unable to show any unexceptional or extraordinary circumstances which could even remotely warrant a deviation from the sanctified rule or this self-imposed bar. The writ petition is accordingly dismissed and the petitioners are relegated to their remedy by way of an election petition, if so advised. There will be no order as to costs.

S.C. Mital, J.

15. I agree.

K.S. Tiwana, J.

16. I agree.

17. Petition dismissed.