
(1966) 08 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 805 of 1966

Jatindra Sarup and Others	Vs	APPELLANT
The State of Punjab and Another		RESPONDENT

Date of Decision : 05-08-1966

Acts Referred:

Punjab Town Improvement Act, 1922 — Section 1(3)

Citation : (1966) 08 P&H CK 0008

Hon'ble Judges : R.S. Narula, J

Bench : Single Bench

Advocate : H.L. Sarin, Balraj Bahl and Miss Asha Kohli, for the Appellant; C.D. Dewan, Deputy Advocate-General and Mr. R.S. Mittal, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Narula, J.—The short question that calls for decision in this case is whether the Municipal Committee, Rohtak (respondent No. 2) passed the requisite resolution u/s 1 (3) of the Punjab Town Improvement Act No. 4 of 1922 (hereinafter called the Act) within time to the effect that the Act should not be applied to the municipal area of Rohtak as notified by the Punjab Government.

2. Though the long history of facts given in the writ petition is more or less in the nature of embellishment and is not directly relevant for the decision of the case, it may be summarised thus: In May, 1958, the Punjab Government proposed by notification u/s 1 (3) of the Act to apply the provisions of the Act to the municipal area of Rohtak. At that time the Municipal Committee had been suspended and the municipal functions were being discharged by an Administrator appointed u/s 233 of the Punjab Municipal Act, 1911 (hereinafter referred to as the Municipal Act). The Improvement Trust was, however, dissolved by notification dated August 30, 1961 (Annexure A), u/s 103 (1) of the Act. Fresh elections to the Municipal Committee were held in July 1931 and the Municipal Committee, Rohtak, was re-constituted on January 10, 1932. On October 23, 1962, a communication was addressed by the Punjab Government to the Municipal

Committee proposing to reconstitute the Improvement Trust. In a special meeting of the committee the proposal of the Government was opposed. The said resolution of the committee was communicated to the Punjab Government in November 1932. In spite of the said opposition, the Government issued notification dated January 10, 1963, u/s 4 (2) of the Act appointing a Chairman of the Improvement Trust. Notification of January 10, 1963, was impugned in this Court by certain tax payers of the municipal area, Rohtak, including the petitioner, in Civil Writ No. 547 of 1963. The petition was dismissed by a learned Single Judge but the L.P.A. 110 of 1965 against the judgment of the Single Judge was allowed by the Letters Patent Bench (Falshaw C.J. and Mehar Singh J.) on August 17, 1965. The case is reported in Mohan Lal Gupta and others v. State of Punjab (1965) 67 P.L.R. 1050. It was held by the Division Bench that an Improvement Trust could not be constituted in a place where the Municipal Committee had been superseded as it was only a committee, which was functioning, which could be in a position to hold a special meeting to decide whether or not it considered the creation of a Trust desirable. Their Lordships further held that where a Trust once created has been dissolved and has ceased to exist, fresh proceedings were necessary to recreate the Trust in order to enable the Municipal Committee to consider the desirability or otherwise of its creation.

3. On December 31, 1965, the Punjab Government issued notification u/s 1 (3) of the Act notifying that the provisions of the Act were proposed to be applied to the whole of the municipal area of Rohtak on the date of the notification. The second respondent could have rendered the notification of the Government dated 31st December, 1965, ineffective by resolving by two-third majority within three months of the notification against the proposed creation of the Improvement Trust. A meeting of the Municipal Committee was called for the 30th March, 1966, but the meeting had to be adjourned by the President of the Committee on account of pandemonium created by some members (copy of the proceedings of the meeting of that date is Annexure D to the petition). At the adjourned meeting of the Municipal Committee held on April 10, 1966, an objection was raised to the consideration of the Government's proposal to apply the Act to the municipal area of Rohtak on the ground that three months from the date of the notification (Annexure B) had already passed. By a majority of 13 out of 19 members present at the meeting, the objection was overruled and the resolution opposing the creation of the Trust was passed. The Deputy Commissioner, Rohtak, by letter dated April 6, 1966 (Annexure G) enquired from the Municipal Committee if any meeting had been held relating to the proposal in question within three months of December 31, 1965. In reply to the said letter the Executive Officer of the Municipal Committee sent communication dated April 11, 1966 (Annexure F), to the Deputy Commissioner informing of the convening, holding and adjournment of the meeting dated March 30, 1966, and also of the passing of the resolution in the adjourned meeting dated April 10, 1966. Copies of the proceedings of the two meetings were forwarded to the Deputy

Commissioner as enclosures to the letter dated April 11, 1966. The Government, however, did not admit the position as represented by the Municipal Committee and replied back in its letter dated April 12, 1966 (Annexure H) that the provisions of the Act stood extended to the municipal area of Rohtak as the meeting of which the resolution was passed on April 10, 1966, had not been convened within three months from the date of the notification of the Government u/s 1 (3) of the Act. This writ petition was filed to impugn the decision of the Government contained in the above-said letter of April 12, 1966 (Annexure H). In the written statement of respondent No. 1 dated July 25, 1966, it has been averred that the provisions of sub-section (3) of section 1 of the Act are mandatory and the failure of the Municipal Committee to raise any objection within the statutory period of three months automatically extended the Act to the Rohtak municipal area. To the validity and futility of the Municipal Committee's resolution dated April 10, 1936, three objections have been taken in the written statement, namely, (1) that the meeting dated March 30, 1966, had not been "convened for the purpose" of considering the advisability of the creation of the proposed Trust; (2) that the meeting at which the resolution was passed was not convened within three months from December 31, 1965, and (3) the resolution was not passed by two-third of the majority of the total number of members of the Municipal Committee, which was 21.

4. It is not disputed by the learned State counsel, that if the Municipal Committee had passed a resolution by two-third majority within three months of the notification dated December 31, 1965, opposing the proposal of the Government at a meeting convened for the purpose of considering the application of the Act, the provisions of the Act could not have been applied to the municipal area of Rohtak. On the other hand, Mr. Sarin, learned counsel for the petitioner, does not contest that if any of the three attacks levelled by the respondent against the position taken up by the Municipality succeeds, the writ petition must fail.

5. The argument of Mr. H.L. Sarin on the first point is that the consideration of the matter in dispute was specifically and clearly mentioned in item No. 45 in the agenda of the meeting convened for March 30, 1966, and nothing more was required by the statute in this connection. It is however, not disputed that in the original agenda for the meeting convened for March 30, 1966, there was no mention at all about the matter in dispute though there were no less than 45 items of business on the agenda of the said meeting. By correction slip dated March 28, 1966 (referred to in paragraph 8 of the writ petition) the original item No. 45 was sought to be substituted by the specific item relating to the consideration of the proposal for extending the provisions of the Act to Rohtak. The question that has to be answered by me in this connection is whether the meeting of the Municipal Committee of Rohtak convened for the 30th March, 1936, can in these circumstances be termed as "a meeting convened for the purpose of" considering the application of the Act. I think the words "convened for the purpose" used in section 1 (3) of the Act are intended to convey that the

purpose for which the meeting is convened must be the consideration of the application of the Act. Whether it means that no other business should be fixed in the agenda for the meeting in question or not, need not be decided in the instant case. Even if it is permitted that other business may be transacted at such a meeting, it is at least necessary that the meeting should be convened for the purpose of considering the specific question. On the facts of the instant case, the meeting was admittedly not convened for the purpose of considering the application of the Act when notice of the meeting was originally issued. The issue of correction slip, by which it is intended to substitute one item in place of another in the agenda of a meeting which had already been convened, does not, in my opinion, amount to "convening a meeting" for the purpose of considering the item in the substituted agenda. On the facts of this case, there is still another defect which is fatal to the convening of the meeting for the 30th March, 1966, in so far as it related to the item in question. Bye-law 2 (d) of the Business Bye-laws of Municipal Committee, Rohtak, passed on January 30, 1929, which are stated to be still in force, require that the notice and the agenda of an ordinary or special meeting of the Municipal Committee shall be despatched so as to allow 3 clear days to intervene between the date of despatch of the notice or the agenda and the date of the meeting. When the correction slip is dated March 28, 1966 it could not possibly have been despatched before that date. Three clear days do not therefore intervene between the 28th March and 30th March. That being so, there was no proper meeting scheduled for March 30, 1966, at which the item in question could be legally considered even if the meeting was otherwise validly convened within section 1 (3) of the Act.

6. Nor have I been able to find any force in the arguments of the learned counsel for the petitioner on the second point. The argument of Mr. Sarin is that the resolution passed on April 10, 1966, should be deemed to have been passed on March 30, 1966; which later date was admittedly within three months from December 31, 1965. The Act has conferred a special right on the Municipal Committee to undo the will of the Government to apply the provisions of the Act to any municipal area by passing a resolution opposing the notification in a special meeting within the prescribed period. The right is a restricted right and is subject to the limitation of time imposed by the section itself. Whatever may be the reason for which a meeting of the committee could not be held within time allowed by law, there is nothing which allows the Municipal Committee to claim that effect should be given to the resolution passed by it after the expiry of the period in question. Reliance is placed by the learned counsel for the petitioner on bye law 14 of the Business Bye laws of Municipal Committee, Rohtak, which allowed the President of the Municipal Committee to adjourn the meeting on the 30th March, 1966, in the circumstances detailed in the proceedings of that date. Be that as it may, the Act does not allow the undoing of the proposal of the Government u/s 1 (3) of the Act by the Municipal Committee after the expiry of the prescribed period of three months, howsoever much justified may be the reason for which the meeting could not be convened during that time.

7. In view of my decision on the first two points, the third question does not really call for decision in order to dispose of this case. Since, however, arguments have been addressed before me on this question; I propose to deal with it also. The admitted facts which are relevant for the decision on this point are that the total number of members of the Municipal Committee of Rohtak at the relevant time was 21, that one out of them had died before the meeting dated April 10, 1966-was held and that 19 out of the remaining 20 members of the committee attended the meeting out of which 13 voted in favour of the petitioners' point of view and 6 in support of the Government's proposal. The argument of the State counsel is that two-third majority required by section 1(3) of the Act is two-third of the total membership of the committee. On that basis it is argued that whether the membership is taken as 21 or 20, two-third thereof would be more than 13 and, therefore, the resolution in question was not passed by the requisite majority. On the other hand Mr. Sarin contends that there is no question of the total number of the members of the municipality being taken into account, that the total number of members at the relevant time was 20 and that two-third majority required by the above-mentioned provision of law is the two-third of the members who attended the meeting in question. In this view of the matter it is argued that 13 out of 19 constituted not less than two-third majority. Mr. Sarin relies in this connection on sections 27 and 29 of the Punjab Municipal Act, 1911, which are quoted below:

27(1) The quorum necessary for the transaction of business at a special meeting of a committee shall be one-half of the number of the committee actually serving at the time, but shall not be less than three.

(2) The quorum necessary for the transaction of business at an ordinary meeting of a committee shall be such number or proportion of the members of the committee as may, from time to time be fixed by the bye-laws, but shall not be less than three:

Provided that, if at any ordinary or special meeting of a committee a quorum is not present, the chairman shall adjourn the meeting to such other day as he may think fit, and the business which would have been brought before the original meeting if there had been a quorum present shall be brought before, the transacted at the adjourned meeting, whether there be a quorum present thereat or not.

29. 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. A perusal of the language of section 27(1) of the Municipal Act shows that whenever reference is intended to the total membership of the Municipal Committee, it is referred to as "number of the committee", and when the intention is to refer to a certain percentage of the members present at a

meeting, they have been referred to, as in section 29, as "the members present". In section 1(3) of the Act neither any reference has been made to the total membership of the committee nor has it been specifically stated that the two-third majority required by the statute is of Ike members present. Taking the scheme of the Act and of the language of the particular section in view, it appears to me that the intention of the legislature is clear about the two-third majority being required of the members present at the meeting subject of course to the prerequisite of a complete quorum. The section refers to the passing of a resolution by a particular majority. In the absence of a clear indication to the contrary it is obvious that a resolution can be passed only by the persons present in the meeting and, therefore, the section cannot envisage the taking into account of members who are not present in the meeting. Moreover, the relevant part of sub-section (3) of section 1 of the Act appears to have been introduced as an exception to the rule contained in section i 9 of the Municipal Act, wherein resolution of the municipality can be passed by mere majority. In place of "a majority of the votes of the members present" is deemed to have been substituted for the purposes of passing a resolution u/s 1(3) of the Act the words "by a majority of two-third of the votes of the members present", instances are not lacking where in order to refer to the total membership of a committee or an institution, specific language has been used in statute. This is so even in the case of *Ranjit Singh v. The State of Punjab* to which reference was made by Mr. Dewan. The expression which had to be interpreted in that case was "total number of members" in relation to the members of the Panchayat Samitis. It was held by the Division Bench in *Ranjit Singh's* case (supra) that the "total number of members" as used in section 18(1) of the Punjab Panchayat Samitis and Zila Parishads Act refers to all the members of the Samiti. No such expression has been used in section 1 (3) of the Act. In these circumstances, I am inclined to agree with the contention of Mr. Sarin to the effect that the resolution in question had been passed by the requisite two-third majority of the members present in the meeting of the Municipal Committee of Rohtak held on April 10, 1966.

9. In view, however, of the fact that I have held that the meeting had been convened after the expiry of the statutory period of three months and the fact that the original meeting of March 30, 1966, had not been "convened for the purpose" of considering the resolution in question, I dismiss this writ petition without making any order as to costs.