
(1989) 08 P&H CK 0077

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11404 of 1988

Jugal Mahajan

APPELLANT

Vs

State of Punjab and ors.

RESPONDENT

Date of Decision : 07-08-1989

Acts Referred:

Citation : (1989) PLJ 573 : (1989) 2 RRR 539

Hon'ble Judges : S.D.Bajaj, J

Advocate : Hemant Kumar, Advocate., Advocates for appearing Parties

Judgement

S.D. Bajaj, J.

1. The long and short of the allegations obtaining in C.W.P. No. 11404 of 1988 is that elections to the Municipal Committee, Kapurthala, (Punjab) were held in 1979. Municipal Committee was constituted on May 24, 1983, and the elected members took the oath of office on June 3, 1983. Five years term of the elected members came to an end on June 3, 1988. State Government of Punjab, however, extended it beyond that date till further orders vide order, Annexure P2, dated June 20, 1988. It is averred para 10 of the writ petition that the decision taken by the State Government in this regard is beyond its competency. Hence the writ for quashing the order, Annexure P.2.

2. In reply, it was asserted that in terms of clause (iii) of the proviso to subsection (2) of section 13 of the Punjab Municipal Act, 1911, the State Government decided that the committee may continue to function for the time being beyond June 3, 1988 till further orders because according to the provisions contained in clause (3) of section 13 ibid read with subsection (2) of section 13 of the Act, fresh elections are to be held and completed before the expiry of the term of the Municipal Committee and, as such, the elected members are continuing for which the State Government was competent to do so. Thus, the impugned order, Annexure P.2, of the writ petition is perfectly legal and in accordance with the statutory provisions of the Act, was issued after due application of mind and, therefore, deserves to be upheld.

3. Relevant section 13 of the Punjab Municipal Act, 1911 (Act No. 3 of 1911) is being reproduced hereinafter for facility of reference :

Term of office of members (1) The term of office of exofficio advisers shall unless, the State Government otherwise directs be coterminus with the term of office by virtue of which they are appointed.

(2) Save as otherwise provided under this Act, the term of office of the elected members shall be five years and the State Government shall cause fresh elections to be held/completed before the expiry of the aforesaid term :

Provided

(iii) an outgoing elected member shall, unless the State Government otherwise directs, continue in office until the date fixed for the meeting at which his successor is required to take oath of allegiance.

(3) All members, who on the date of commencement of the Punjab Municipal (Second Amendment) Act, 1985, have held office for a term exceeding that fixed by subsection (2), shall on such commencement cease to hold office and the committees, the members whereof cease to hold office as aforesaid shall, notwithstanding anything contained in section 238, stand superseded on that date and the provisions of subsection (4) of Section 238 shall, as far as may be, apply to such supersession which may at any time be revoked by notification by the State Government.

4. It would appear from a plain reading of the section that there is no power vested in the State Government to extend the term of the Municipal Committee, Kapurthala beyond June 3, 1988. Power set out in the (iii) proviso to subsection (2) of Section 13 of the Act is a negative enabling proviso to disturb the interRegulation m arrangement contemplated therein of outgoing elected member continuing in office until the date fixed for the meeting at which his successor is required to take oath of allegiance. Omission of proviso (i) to subsection (2) of section 13 vide Punjab Act No. 3 of 1985 also suggests that there is no power vested in the State Government to extend the term of Municipal Committee onwards from the date its omission.

5. The legal effect of subsection (3) of section 13 is that with effect from June 3, 1988, onwards Municipal Committee, Kapurthala, is to be deemed to have been superseded with consequences envisaged in subsection (4) of section 238 of the Punjab Municipal Act, ibid flowing therefrom. Thereafter the committee can be brought into being only after fresh elections envisaged in subsection (2) of section 13 aforesaid. Proviso (iii) to subsection (2) of section 13 will, of course, continue to be operative during the period of interRegulation m set out therein.

6. In the result, the writ succeeds and is allowed. The impugned order, Annexure P.2, dated June 20, 1988, is quashed. The petitioner shall also be entitled to the cost of this petition. Counsel's fee assessed at Rs. 500/ only.