

(1984) 12 P&H CK 0065
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4233 of 1984

Kans Raj	Vs	APPELLANT
State of Punjab and others		RESPONDENT

Date of Decision : 18-12-1984

Acts Referred:

Punjab Municipal Act, 1911 — Section 12D

Citation : (1984) 12 P&H CK 0065

Hon'ble Judges : Sukhdev Singh Kang, J

Bench : Single Bench

Advocate : D.V. Sehgal, Mr. R.K. Mahajan and Mr. B.R. Mahajan, for the Appellant; H.S. Riar, D.A.G. (Punjab) for Nos. 1 to 3, Mr. Suresh Amba and Mr. Anil Mittal for No. 4 for the Respondents, for the Respondent

Final Decision : Dismissed

Judgement

Sukhdev Singh Kang, J.—This judgment will dispose of Civil Writ Petition Nos. 4233 of 1984 and 4864 of 1984, because common questions of law and fact are involved,

2. Kans Raj, Petitioner, in Civil Writ Petition No. 4233 of 1984 is a member of the Municipal Committee, Gurdaspur, whereas Petitioners in Civil Writ Petition No. 864 of 1984 are voters from Ward No. 13 of the Municipal Committee, Gurdaspur. The Municipal Committee consists of 17 elected members. Apart from that, members of the Municipal Committee have to coopt two lady members. One member belonging to the Scheduled Caste and one member belonging to the Backward class. If, however, the two ladies are elected then no lady is to be co-opted Similarly, if a person belonging to the Scheduled caste or Backward class, an the case may is elected then no member belonging to the Scheduled caste or Backward class, as the case may be, is to be co-opted.

3. The election to Municipal Committee was held in 1979 and 17 members of the Committee were elected from 17 wards. Shri Amar Nath Pardesi, who belonged

to the Backward class was elected from ward No. 13. For this reason no person belonging to the Backward class was co-opted. Shri Amar Nath Pardesi died on August 22, 1984. The Executive Officer of the Municipal Committee issued a notice to the elected members of the Municipal Committee that a meeting of the Committee would be held on September 13, 1984 in order to fill up the vacancy, which had occurred on the death of Shri Amar Nath Pardesi, by co-option. The meeting was held on September 13, 1984 and Shri Sardul Singh, Respondent, was co-opted as a member of the Manicipal Committee. The Petitioners challenged his co-option inter alia on the ground that Shri Amar Nath Pardesi had been elected as a member of the Municipal Committee. He had not been co-opted. u/s 12- D of the Punjab Municipal Act (for short, "the Act") when a vacancy occurs by death of a co-opted member, a co-option is to be made within a period of 30 days from the date of occurrence of the vacancy. This provision is not attracted to a vacancy caused by the death of a person, who was elected as a member of the Municipal Committee in the General Elections, although he belonged to the Backward Class. u/s 17 of the Act such a vacancy has to be filled by the election only. Since the member elected to the Committee by the voters of the Ward had died, they had a legal right to elect a new representative to the Municipal Committee. Their ward could not go unrepresented.

4. The writ petition has been contested by the Respondents. Separate written statements have been filed by each one of them. A preliminary objection has been taken that according to Rule 2 (i) of the Punjab Municipal Election Rules, 1952 (hereinafter called "the Rules") election" means election of a member, President, Vice President of a Committee and includes the co-option of a member- The co-option of Sardul Singh Respondent, had taken place in the meeting held on September 13, 1984. In view of the positive mandate of the Rules, this could be challenged only through an election petition. The Petitioners had failed to avail of the alternate remedy available to them under Rule 52 of the Rules and the writ petition was liable to be dismissed on that ground.

5. The Respondents replied on the points raised on merits, also, They pleaded that the vacancy caused by the death of Shri Amar Nath Pardesi had been filled in accordance with the provisions of the Act. Section 12-D of the Act lays down the procedure for making co-option. Following that procedure Shri Sardul Singh had been co-opted. Section 17 of the Act does not say in terms that the vacancy caused by the death of the member elected in the election has necessarily to be filled by an election and that the same cannot be filled in by way of co-option.

6. In the written statement filed by Respondent No. 2, the Deputy Commissioner, Gurdaspur, it has been stated that Shri Sardul Singh has not been co-opted to Respondent ward No. 13. The vacancy of a member of ward No. 13 was yet to be filled. The co-option had been resorted to provide representation to the Backward class.

7. The preliminary objection raised by the Respondents mutt prevail. Rule 52 of the Rules is couched in imperative language. It reads as under:

No election shall be called in question except by an election petition presented in accordance with these rules." It is manifest from a perusal of Rule 52 of the Rules that election, which includes "co-option of a member of the Municipal Committee can be challenged only by way of an election petition. According to the allegation in the petition, the co-option has been made in violation of statutory provisions of Sections 12-D and 17 of the Act. Rule 63 of the Rules enumerates the grounds for declaring "election" void. Under Sub-clause (c) of Clause (xii) of Rule 51 of the Rules "material irregularity" has been defined to include a non-compliance with the provisions of the Act or the Rules made thereunder. So, if it is proved that there has been a violation of any statutory provisions contained in the Act or the Rules, it will amount to "material Irregularity" and furnish a ground for challenging the election by way of co-option in the election petition. It is not necessary to dilate upon this matter any further, because it is squarely covered by the ratio of a recent Full Bench authority in Civil Writ Petition No. 1218 of 1981 (Jagraj Singh and Anr. v. The State of Punjab and others C.W.P. 5218 of 1981) decided on October 6, 1982. After exhaustively considering the law on the subject, their Lordships were pleased to observe:

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 restoring to the remedy by way of an election petition. It is only in exceptionally extra-ordinary circumstances that the writ court would deviate from this hallowed rule.

In that case also the aggrieved citizens had filed a writ petition challenging the election of Vice President held in a meeting of the Municipal Committee. A preliminary objection had been taken that the writ petition was not competent because the rules provided that the election could be challenged by way of an election petition. No doubt, it has been observed in that case that in exceptionally extra-ordinary circumstances the writ court may deviate from this hallowed rule. The Petitioners have not been able to show any exceptionally extraordinary circumstances, which would warrant the deviation from the above mentioned rule. Recently, the same question cropped up before a Division Bench of this Court in Civil Writ Petition No. 3132 of 1984. Gurdev Singh Mann and Ors. v. The Govt. of Punjab and Ors. C. W. P.3132 of 1984 decided on November 15, 1984, wherein co-option of a member of the Municipal Committee, Gidderbaha u/s 12-A of the Act was challenged inter alia on the ground that the meeting of the Committee had not taken place within 30 days of the occurring of the vacancy. A preliminary objection was taken that the co-option could be challenged only by way of an election petition. This objection prevailed and it was held:

Admittedly, an election petition lies against the impugned election by co-option It is contended by Mr. Arora, that in the circumstances of the case the alternative remedy could not be availed of We are afraid, we are unable to agree with the submission of the Learned Counsel Consequently, this petition is not

maintainable as an alternative remedy of election petition was available and has not been availed of. Consequently, we dismiss this petition.

8. In the light of the binding precedents cited above, I hold that these writ petitions are not competent as an alternative remedy of election petition was available to the Petitioners. Hence, I dismiss both these writ petitions. There shall, however, be no order as to costs.