
(2008) 10 P&H CK 0013
In the Punjab And Haryana At Chandigarh

Kewal Krishan Jindal and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 04-10-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2009) 153 PLR 36 : (2009) 1 RCR(Civil) 471

Hon'ble Judges : Satish Kumar Mittal, J;Jaswant Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—The petitioners, who are elected councillors of the Municipal Council, Malerkotla, have filed this petition under Articles 226/227 of the Constitution of India for quashing the proceedings of the first meeting of the members of the Municipal Council held on 23.7.2008 to the extent of conducting and holding of the election of President and Vice-President of Municipal Council, Malerkotla, being violative of Rule 3 of the Punjab Municipal (President and Vice-President) Election Rules, 1994 (hereinafter referred to as "the Rules"), with a further prayer to restrain Sub Divisional Magistrate, Sangrur, respondent No. 3 herein, from conducting draw of lots of both the candidates for the posts of President and Vice President.

2. In the present case, as per the notification issued u/s 12 of the Punjab Municipal Act, 1911 (hereinafter referred to as "the Act"), the Municipal Council, Malerkotla, consists of 32 members i.e. 31 elected members and one Member of the Legislative Assembly of the area. In the election of the Municipal Council, Malerkotla, held in the month of June, 2008, 31 councillors were elected. After the election, in view of the powers conferred upon him under Rule 3(1) of the Rules, the Deputy Commissioner, Sangrur, appointed Sub Divisional Magistrate, Sangrur, to convene the first meeting of the Municipal Council, Malerkotla, for the purpose of swearing of newly elected members and for election of the President and Vice President of the Municipal Council. Consequently, S.D.M., Sangrur,

convened the first meeting of the Municipal Council, Malerkotla on 23.7.2008 for the aforesaid purpose. Notice of the said meeting was given to 31 elected members and Smt. Rajia Sultana, M.L.A., Malerkotla. In the said meeting, 31 elected members were administered oath and thereafter, election of the President and Vice President was conducted. In the said election, Shri Ishaq and Shri Ashif quaraishi, Municipal Councilors, contested for the post of President, whereas Shri Mohd. Nazir and Smt. Malti Singla, Municipal Councilors, contested for the post of Vice President. Both the candidates for each post secured equal number of vote i.e. 16 each. Then the Presiding Officer asked both the groups for conducting the draw of lots. But Shri Ashif Quraishi and Smt. Malti Singla respondents No. 4 and 5 herein, did not agree for that, therefore, the President Officer postponed the meeting. Shri Ishaq and Mohd. Nazir challenged this action of the President Officer by filing Civil Writ Petition No. 13011 of 2008, which was allowed by this Court and the Presiding Officer was directed to convene the meeting for holding the draw of lots between the candidates of both the groups, while observing as under:

We have heard the counsel for the parties. In our view, in the instant case, the Presiding Officer was not legally justified to postpone the meeting on 23.7.2008 without declaring any result and, thus, has committed grave illegality by not conducting the draw of lots between both the candidates for the posts of President and Vice President in presence the members attending the meeting as provided in Rule 5(c) of the Rules, which reads as under:

If two or more candidates obtain an equal number of votes, the person presiding over the meeting shall at once decide between the candidates by drawing a lot in the presence of members attending the meeting.

A bare reading of the aforesaid Rule provides that the result of the election for the office of President and Vice President is to be declared in the same meeting itself and in case of equal votes, the draw of lots is to be held there and then in the same meeting in the presence of the Members attending the meeting. In such situation, the said meeting cannot be postponed on the request of any person or on the ground that one of the parties is not agreeing for the draw of lots. In our view, the action of respondent No. 3 in postponing the meeting without conducting the draw of lots as provided under the rules is not sustainable being contrary to the aforesaid Rules. The action of respondent No. 3 may provide an opportunity to either of the parties to indulge in horse trading which is alien to the democratic process.

In view of the above, the petition is allowed and the proceedings (Annexure PI) conducted by respondent No. 3, whereby the meeting was postponed without declaring the result, are hereby quashed and respondent No. 3 is directed to again convene the meeting for holding the draw of lots between the petitioners and respondents No. 4 and 5, who secured equal number of votes, by giving notice to all the Members attending the meeting held on 23.7.2008, within three weeks from the date of receipt of certified copy of the order, as provided under

the Rules.

3. Before the Presiding Officer could convene the said meeting, one of the group has filed the instant petition on the ground that the first meeting of the Municipal Council convened by the Presiding Officer under the orders of the Deputy Commissioner was in violation of rule 3 of the Rules, therefore, the order of convening the first meeting as well as the proceedings of the first meeting are liable to be quashed.

4. The contention of learned Counsel for the petitioners is that as per Rule 3 of the Rules, the Deputy Commissioner shall authorize an officer to convene the first meeting of the Municipal Council only of the newly elected members and not of the Ex-officio member. Learned Counsel submits that notice regarding first meeting must be issued only to the elected members and not to the M.L.A. of the area, who is the Ex-officio member of the Municipal Council, Learned Counsel submits that in this case, notice was also issued to the M.L.A. of the area and she along with 31 elected members had also attended the said meeting. Learned Counsel has made this submission while putting over emphasis on the word "elected members" used in Rule 3. However, during the course of arguments, he has not disputed that as per Section 12 of the Act, the Municipal Council, Malerkotla consists of 31 elected members and 1 M.L.A. of the area. Learned Counsel has also not disputed that as per Section 20 of the Act, the Ex-officio member is eligible to participate in the election of the President and Vice President and to cast his vote, but he is not eligible to contest the election of President and Vice President of the Municipal Council. The only contention of learned Counsel for the petitioners is that in the first meeting, in which oath was administered to the newly elected members and election of the President and Vice President was to take place, only elected members should have been called to attend the meeting. But in the present case, in the first meeting, not only the elected members of the Municipal Council were called, but the sitting M.L.A. of the area was also called to attend the said meeting. Therefore, by calling the sitting M.L.A., a grave illegality has been committed. In view of the Scheme of the Act, this contention of learned Counsel cannot be accepted. Section 12(1) of the Act provides that "A Municipal Council...constituted u/s 4 shall consist of a body of members, specified in Section (3), having authority over such area." Sub-section (3) provides that the Municipal Council shall consist of the following members, namely:

(1) such number of elected members as may be determined from time to time by the State Government in accordance with the prescribed principle; and

(ii) all members of the Legislative Assembly of the State representing constituencies comprising wholly or partly the Municipal area. Rule 3 of the Rules provides the manner in which election of the President and Vice President will be held. This Rule is re-produced below:

3.(1) The Deputy Commissioner or any other officer authorized by him in this

behalf (here-in-after referred to as the Convener) shall, within a period of ninety days of the publication of the notification of the election of members of a newly constituted Municipality, fix, by giving not less than forty-eight hours notice to be served at the ordinary place of residence of all the elected members, a date for convening the first meeting of the elected members of such Municipality by stating in the notice that at such meeting, the oath of allegiance will be administered to the members present and also stating that the President and Vice-President or Vice-Presidents as the case may be, shall be elected.

(2) If due to any reason, the elected member is unable or refused to take oath of allegiance as required by Sub-rule (1) within the stipulated period, then he will be allowed to take such oath of allegiance in the subsequent meeting unless he is debarred from taking the same by the Government for any reason. In case any such member does not take the oath of allegiance as aforesaid, then a fresh election to the constituency to which that member represents, shall be held.

5. A bare perusal of the aforesaid Rule shows that after the election, the Deputy Commissioner is required to empower an officer for convening the first meeting of the Municipal Council. In the said meeting, the oath is to be administered to the newly elected members and the election of President and Vice-President is also to be held. Since the MLA of the area is also a member of the Municipal Council, therefore, he is also required to attend the said meeting to participate in the election of the President and Vice-President, but he cannot contest the election for the post of President or Vice-President. In the present case also, notices of the first meeting were issued to all the 32 members of the Municipal Council, i.e. 31 elected members and one M.L.A. of the area. In the election for the post of President and Vice-President, both the groups secured equal number of votes. In that situation, in view of the provision contained in Rule 5 of the Rules, election was to be held by draw of lots. In view of this legal position, this Court while allowing C.W.P. No. 13011 of 2008 had held that adjourning of the meeting was not proper and the Presiding Officer was required to hold draw of lots, in case the candidates of two groups secure equal number of votes.

6. Therefore, in our view, in the instant case, no illegality has been committed either by the Deputy Commissioner while authorizing S.D.M., Sangrur to convene the first meeting of the members of the Municipal Council or by the Presiding Officer while inviting all the 32 members of the Municipal Council to attend the first meeting of the Municipal Council. The contention of learned Counsel for the petitioners that only elected members are required to attend the first meeting of the Council cannot be accepted because in the first meeting, election of the President and Vice-President is also to be held and the MLA, who is the Ex-officio member, is also legally entitled to participate and cast his vote in the election of the President and Vice-President of the Municipal Council. The only embargo is that he cannot contest the election for the post of President and Vice-President. In view of this legal position, the Ex-officio member is also one of the necessary participants in the first meeting. Therefore, in our view, no illegality has been

committed by the Presiding Officer in inviting the Ex-officio member to attend the first meeting of the Municipal Council. The interpretation, as proposed by learned Counsel for the petitioners goes contrary to the provisions of Sections 12 and 20 of the Act and Rule 3 of the Rules and the same cannot be accepted.

7. In view of the above, there is no merit in this petition.

Dismissed.

Sd/- Jaswant Singh, J.