
(1994) 08 P&H CK 0032
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 16151 of 1992

Khayal Chand and another	Vs	APPELLANT
State of Haryana and others		RESPONDENT

Date of Decision : 05-08-1994

Acts Referred:

Constitution of India, 1950 — Article 14
Punjab Municipal Act, 1911 — Section 12
Punjab Municipal Election Rules, 1952 — Rule 51, 58, 68

Citation : AIR 1995 P&H 26 : (1994) 108 PLR 398

Hon'ble Judges : N.K. Kapoor, J; Amrit Lal Bahri, J

Bench : Division Bench

Advocate : O.P. Goyal, Adv and Parmod Goyal, for the Appellant; G.K. Chatrath, Gen., S.S. Gang, DAG(P) and I.P.S. Doabia, for the Respondent

Judgement

N.K. Kapoor, J.—This judgment shall dispose of Civil Writ Petition Nos. 16151 and 13585 of 1992 as identical questions of law and fact are involved in these petitions.

2. Petitioners have sought issuance of a writ of certiorari quashing of Annexure P-22 dated 4-12-1992 with a" further prayer for issuance of a writ of mandamus directing the respondents to act in accordance with Jaw and also declaring Section 24(4) of the Punjab Municipal Act (for short "the Act") and Rule 68 of the Punjab Municipal Election Rules (for short" the Rules"), as ultra vires of the Constitution.

3. According to the petitioners, Municipal Committee, Phagwara, has 21 elected members. It is on 22-9-1992 that these elected members were administered oath and on the same day two members were co-opted i.e. one woman member u/s 12-B of the Act and another member belonging to the Backward Classes u/s 12-C of the Act. The proceedings of the meeting held on 22-9-1992 were duly recorded Annexure P-I. It is the grievance of the petitioners that despite the fact that they had been co-opted, yet their names were not being notified as Sh.

Joginder Singh Mann, Minister of State for PWD (B & R) Punjab was interested that his own men should be elected as members and so was putting up obstacles. According to the petitioners, order dated 4-12-1992 passed by the Secretary to the Government of Punjab to notify the names of the petitioners is not only illegal, unjust and against the principles of natural Justice but otherwise too is contrary to the mandate of the people. Even otherwise, recourse to Rule 58 of the Rules could not be made when the same matter was being agitated in two separate election petitions where in co-option of petitioners. Nos. 1 and 2 has been separately challenged. Construed so, the action of the State Government can be termed to be mala fide.

4. Pursuance to the notice of motion issued by the Court, written statement on behalf of respondents Nos. 1 to 4 has been filed by one Sh. Mandeep Singh, Joint Secretary to Govt. Punjab, Department of Local Government. By way of preliminary objection, it has been stated that the action has been initiated under S. 24(4) of the Act. This power cannot be termed to be arbitrary. In the present case, a complete inquiry has been held and after giving full opportunity to the petitioners to place their view points. Order Annexure P-22 has been passed. Similarly, Rule 68 of the Rules authorises the State Government to direct an inquiry into the conduct of election if there is reason to suspect that a corrupt practice of material irregularity has been committed. This being an enabling provision does not infringe any legal right of the petitioners. Relying on merits, it has been stated that Sh. Malkiat Singh Raghbotra was necessary party to the petition as his status is in issue. However, as per enquiries made it has been found that Malkiat Singh Raghbotra belong to a backward class and so in the circumstances the order Annexure P-22 cannot be said to be erroneous. Similarly, the election of petitioner No. 2 has not rightly to be found to be valid as secrecy of the votes was not maintained. It was thus prayed that the petition is devoid of any merit and so deserves to be dismissed.

5. Learned counsel for the petitioners besides reiterating what has been averred in the petition urged that the authorities erred in ignoring Sh. Malkiat Singh Raghbotra's own assertion that he does not belong to backward Class. As a matter of fact, he did not contest the election as a backward class candidate which fact is otherwise too amply proved as per documents placed on record in the nature of admission form and extracts from the Register. Criticising the so called inquiry conducted by the respondent before passing order Annexure P-22, it was stressed that no proper opportunity was afforded to the petitioners to adduce evidence in support of their contentions nor afforded any opportunity to cross-examine Chaman Lal --applicant -- or Malkit Singh Raghbotra who chose to take a contrary stand from his earlier stand that he does not belong to a backward class. It was next contended that since precise controversy is subject-matter of adjudication in two separate election petitions filed against petitioners Nos. 1 and 2 which are pending, recourse to Section 24(4) of the Act and Rule 68 of the Rules in the facts and circumstances of the case has been adopted by the ruling group in the State of Punjab in a mala fide manner. Even otherwise. Rule

68 of the Rules gives unbridled powers to the respondent and deprives the elected persons of their right to appeal etc.

6. Rule 68 of the Rules gives powers to the Government to hold an inquiry into the conduct of the election if it suspects that a corrupt practice or material irregularity has been committed. It is in pursuance to this provision that Sh. Chaman Lal, Municipal Commissioner, filed an application stating that there being already an elected Municipal Commissioner from a backward class, no other person could be co-opted under Clause 12-C of the Act. He further stated that material irregularity has been committed while co-opting these two members as no secrecy of votes was maintained. According to him, even ballot papers were not issued by the proper authority and so prayed that an inquiry be held in this regard and till such time the members so co-opted be not notified. Pursuance to this application, inquiry was entrusted to the Regional Deputy Director, Local Government, Lalandhar, who submitted his report. It is thereafter that both the petitioners were issued notices to come present and raise objections if they so desire with regard to the inquiry report. Admittedly, petitioners were not associated by the Inquiry Officer. Thus, they had no opportunity to cross-examine Chaman Lal or Malkiat Singh Raghbotra or to adduce any evidence which might have disproved the assertion made in the application. Such a recourse by an authority performing quasi-judicial function cannot be sustained. Any report submitted by an authority without associating the aggrieved person cannot be sustained. Thus, on this ground alone, the impugned order is liable to be set aside.

7. We, however, do not find much merit in the contention of the counsel for the petitioners that this inquiry be entrusted to a person hearing the election petition or that the same be deferred till the decision of these two election petitions. We also find no substance in the contention of the learned counsel for the petitioners that the power of the government to initiate suo motu action under Rule 68 of the Rules in any manner is arbitrary or unjust. This Rule gives power to set aside an election if corrupt practice or material irregularity has been committed during the conduct of an election. "Material irregularity" has been defined in Rule 68(ix) (c) of the Rules which reads as under :--

"(C) "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 provision 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."

8. In the context of the dispute raised, if it is found on inquiry that Malkiat Singh Raghbotra belong to a backward class, cooption of petitioner No. 1 u/s 12-C could not be made. It is with a view to find out the same that Rule 68 of the Rules envisaged an inquiry. Petitioner being an aggrieved person is thus entitled to be heard before any such report is submitted by the inquiry officer. Since the petitioners have not been afforded proper opportunity by the Inquiry Officer, we

set aside order Annexure P-22 with a further direction that the Inquiry Officer will afford full opportunity to the petitioners to cross-examine the witnesses which may be produced by the applicant as well as allow them any oral or documentary evidence which they may wish to adduce and it is thereafter that the government will pass appropriate order as envisaged u/s 24(4) of the Act and Rule 68 of the Rules. Petitioners have expressed their apprehension that the earlier Inquiry Officer would not grant them fair opportunity. Learned Advocate General has no objection if another Inquiry Officer holds the inquiry. In these circumstances while setting aside the order Annexure P-22, we direct the respondents to appoint another inquiry Officer who will intimate the date and time the inquiry proceedings shall commence and give sufficient opportunity to the petitioners to adduce any evidence in support of their contentions. Since the matter is pending for a pretty long time, it is hoped that the Inquiry Officer shall expeditiously examine the matter and submit his report preferably within six months from the date he is appointed.

9. In view of the aforesaid decision, writ, petition No. 13585 of 1992 is disposed of as above.

10. Order accordingly.