
(1989) 12 P&H CK 0028

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 1594 of 1989

Mohinder Kumar Aggarwal

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 22-12-1989

Acts Referred:

Constitution of India, 1950 — Article 226, 352
Punjab Municipal Act, 1911 — Section 13, 13(2)

Citation : AIR 1990 P&H 250 : (1990) 97 PLR 553

Hon'ble Judges : N.C. Jain, J; M.R. Agnihotri, J

Bench : Division Bench

Advocate : G.C. Dhuriwala and Nidhi Gupta, for the Appellant; Hemant Kumar and Rajiv Atma Ram, for the Respondent

Judgement

M. R. Agnihotri, J.—In this Letters Patent Appeal against the judgment of the learned single Judge dated 7th August, 1989. the short point for our determination is as to whether after the expiry of the term of office of elected members of a Municipal Committee under S. 13 of the Punjab Municipal Act, 1911, the outgoing members are bound, by law, to vacate the office or are entitled to continue in office for an indefinite period, that is, till such time the date of the meeting is fixed when the newly elected members, as and when they are so elected, take oath of allegiance.

2. The facts are not in dispute, as admittedly the elected members of the Municipal Committee, Kapurthala, took oath of office on 3rd June, 1983. Though on the expiry of the statutory term of five years the elected members ceased to continue beyond 2nd June, 1988, yet by virtue of the order dated 20th June, 1988 (Ann. P"2) the State Government "decided that the Committee may continue for the time being to function beyond 3-6-1988 till further orders. "This order of extension of term of the elected members was challenged by a voter of the Municipal Committee, Kapurthala, on the ground that after the expiry of the statutory term of office of five years, the State Government had no jurisdiction to

extend the term and the elected members ceased to hold office as members of the Municipal Committee forthwith. The learned single Judge allowed the writ petition and quashed the impugned order dated 20th June, 1988 (Ann. P/2).

3. Before us in the Letters Patent Appeal filed by Mohinder Kumar Aggarwal, President, Municipal Committee, Kapurthala, it has been vehemently urged by Mr. G. C. Dhuriwala, learned counsel for the appellant that the elected members are entitled to continue as members of the Municipal Committee till such time fresh elections to the Municipal Committee are held and newly elected members are called to take oath in a meeting fixed for that purpose. Section 13 of the Punjab Municipal Act, 1911, as amended from time to time, and in its final form as it stands at present, reads as under:--

"13. Term of office of member.-- (1) The term of office of ex officio advisers shall unless, the State Government otherwise directs be conterminous 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 and completed before the expiry of the aforesaid term:

Provided that --

(i) Omitted;

(ii) while a proclamation of emergency under clause (1) of Article 352 of the Constitution is in operation, the State Government may extend the aforesaid term for a period not exceeding six months from the date of ceasing of operation of such proclamation;

(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.

(2-A) The term of office of an associate member shall be conterminous with his term as member of the Legislative Assembly.

(2-B) The term of office of a co-opted member shall be conterminous with term of elected member fixed under sub-section (2).

(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 sub-section (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 sub-section (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 :

Provided that the period of supersession shall not exceed two years.

(3-A) Omitted.

(4) An out going member may, if otherwise qualified, be re-elected or co-opted again.

(5) When as the result of any enquiry held under Chapter XIV an order declaring the election of any member void has been notified, such member shall forthwith cease to be a member of the Committee."

4. From a plain reading of the "aforesaid statutory provision it would be clear that proviso (iii) to sub-s. (2) of S. 13 will come into operation only if new elections have already been held and newly elected members are going to be called upon to take oath of allegiance in a meaning fixed for that purpose. This provision has no application to a situation where elections are not held for years and years. The contrary view would certainly run counter to the intention of the Legislature and would defeat and wholly frustrate its very object, as would be evident from the statement of objects and reasons for enactment of Punjab Act 3 of 1985, which is reproduced below:--

General elections to the Municipal Committees in the State were held on 10th June, 1979. The 5 years term of the elected members, as specified in sub-s (2) of S. 13 of the Punjab Municipal Act, 1911, was to expire on different dates around June, 1984, and the State Government was required to cause fresh elections to be held and completed before the expiry of the said term. However, elections were not held and the term of the Municipal Committees was extended by amending the Punjab Municipal Act. In June, 1985, the Act was again amended and the terms of the Municipal Committees was further extended up to 31st December, 1985. Thus, by now the municipal committees in the State have not only completed their normal term of 5 years but have enjoyed a period of one year and four months beyond that. It has come to the notice of the Government that during the extended period the functioning of the municipal committees has deteriorated considerably and infighting among the members has increased. In fact, for the same reasons, the then State Government recommended to the Central Government in March, 1985, to amend the Punjab Municipal Act, 1911, empowering the State Government to supersede the municipal committees in the state on the expiry of their term on 31st March, 1985, but the Central Government did not agree and desired that the term be extended further. Moreover, the Government feels that continuing extension beyond the normal tenure of the elected members encourages irresponsibility.

2. In the circumstances. It is felt that it will be in the public interest to supersede the municipal committees forthwith. Since there is no provision in the Punjab Municipal Act, 1911, to achieve this purpose, it is proposed to amend the Act. Hence this legislation.

3. Fresh elections would be held in due course."

5. No doubt, the term of office of the elected members of the Municipal

Committee, Kapurthala, with which we are concerned in this case had not expired yet, when Punjab Act 3 of 1985 was enacted, by which sub-s. (3) of S. 13 was substituted, but the intention of the Legislature was obviously not to extend the term of office beyond five years. That is why proviso (i) to sub-s. (2) of S. 13, which was inserted by President's Act 2 of 1984, and was to the following effect -

"(i) the State Government may, by notification, for reasons specified therein, extend the aforesaid term, from time to time, for a period not exceeding one year in aggregate."

was specifically omitted by Punjab Act 3 of 1985, while substituting sub-s. (3) to S. 13.

6. In view of the aforesaid statutory position, the State Government had no jurisdiction, in law, to issue the impugned order dated 20th June, 1988 (Ann. P/2), by which the Municipal Committee, Kapurthala, was permitted to continue to function beyond 3rd June, 1988, that is, after the expiry of the statutory term of five years. Thus, the impugned order has rightly been quashed by the learned single Judge.

7. The learned counsel for the appellant has drawn our attention to the judgments reported as : Bishamber Nath Jaitlee v. Municipal Committee, Delhi (1932) 33 PLR 83 : AIR 1932 Lah 26), Chandu Lal v. Administrator, Municipal Committee, S one-pat (1960) 62 PLR 448, Suraj Parkash Vs. State of Punjab and Others, , and V. Panchaksharappa v. Returning Officer-cum-Tahsildar AIR 1969 Mys 78, in order to contend that it has been the general trend to permit the technical institutions like elected bodies to continue in office even after the expiry of their statutory term, instead of permitting the autonomous and other local bodies to be governed by the Administrators and executive officers appointed by the State Government.

8. We are afraid, the principles enunciated in the aforesaid authorities, though very salutary, cannot take the place of statutory provisions which are mandatory in their application.

9. Consequently, the Letters Patent Appeal is dismissed being devoid of force. There shall be no order as to costs.

10. Appeal dismissed.