

(1992) 02 P&H CK 0114
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6834 of 1991

Mrs. Bimla Arora	Vs	APPELLANT
State of Punjab and others		RESPONDENT

Date of Decision : 07-02-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Municipal Act, 1911 — Section 431
Punjab Municipal Corporation Act, 1976 — Section 12, 13, 15, 15(3), 17
Punjab Municipal Election Rules, 1952 — Rule 15, 17, 18, 3, 45

Citation : AIR 1993 P&H 11

Hon'ble Judges : N.K. Sodhi, J;M.R. Agnihotri, J

Bench : Division Bench

Advocate : Mr. M.S. Sethi, Mr. Amit Singh and Mr. Balbir Singh, for the Appellant; Mrs. S.K. Bhatia, D.A.G., Mr. Hemant Kumar and Mr. Rajesh Garg, for the Respondent

Judgement

N.K. Sodhi, J.—Whether in the absence of rules for holding elections of Councillors under the Punjab Municipal Corporation Act, 1976 (hereinafter called "the Act"), resort could be had to the Punjab Municipal Election Rules, 1952 (for short, "the 1952 Rules"), is the primary question of law involved in this writ petition which was admitted to be heard by a Division Bench. The reliefs claimed are that the order dated April 30, 1991 passed by the Deputy Commissioner, Ludhiana, whereby the request of the petitioner for recount of the ballots was declined, be quashed and that fresh elections be held.

2. The State Government decided to hold elections to Municipal Corporations in the State of April 28, 1991. The Director, Local Bodies, prepared the election programme and sent the same on 6-3-1991 to the Deputy Commissioner, Ludhiana along with instructions for guidance to the officers concerned in connection with the holding of elections and copies of the 1952 Rules. The Director, Local Bodies, Punjab, by a notification dated March 11, 1991 while exercising his powers under sub-sec. (3) of S. 15 of the Act, called upon all

wards of Municipal Corporations of Amritsar and Ludhiana (we are not concerned with the Municipal Corporation of Amritsar in this case) to elect Councillors for the Municipal Corporations of the respective cities. The Director also wrote a D.O. letter of the same date to the Deputy Commissioner, Ludhiana wherein it was stated that "Now Government has decided to hold elections to Municipal Corporations on 28-4-1991. Election programme along with 11 copies of instructions for guidance to the officers concerned in connection with holding of elections and 11 copies of Municipal Election Rules, 1952 have been sent to you on 6-3-1991 through special messenger. Accordingly, this programme is to be published by you on 11-3-1991 positively." The Deputy Commissioner, Ludhiana accordingly published on 11-3-1991 the following election programme under Rule 3 of the 1952 Rules read with S.428 of the Act:

Date of publication of 1st notice of Election Programme

11-3-1991

1.

Last date of submitting nomination papers.

22-3-1991

2.

Date of publication and preparation of list of nomination papers.

26-3-1991

3.

Date of nomination papers scrutiny.

2-4-1991

4.

Date of application for the revision of order of authority scrutinising the nomination papers.

5-4-1991

5.

Date of decision on the revision applications.

9-4-1991

6.

Last date of withdrawal of candidature.

10-4-1991

7.

Date of final list of nomination papers.

12-4-1991

8.

Date of list of Polling Stations and its publication.

15-4-1991

9.

Date of Election to be held.

28-4-1991

10.

Date of counting of votes,

29-4-1991

11.

Date of declaration of Election result.

Immediate after counting the votes.

The Deputy Commissioner while exercising his powers under Rule 45 of the 1952 Rules appointed different officers holding the powers of an Assistant Commissioner or Extra Assistant Commissioner and an Executive Magistrate to perform all functions of the Deputy Commissioner under the 1952 Rules and to perform all functions and duties for the conduct of elections of Councillors to Municipal Corporation, Ludhiana. The city of Ludhiana was divided into 50 wards and each ward was to return one Councillor. Capt. Narinder Singh, PCS, was appointed the Returning Officer for some of the wards including Ward No. 17. The petitioner and respondents 4 to 12 contested the election from this ward and they accordingly filed their nomination papers as per the election programme published by the Deputy Commissioner. The petitioner contested the election on Congress (I) ticket and was allotted the symbol of "open hand" whereas Shri Prem Kumar Kapila contested on the Bhartiya Janta Party ticket and was allotted the symbol of "Lotus". Shri Ashok Kumar was a candidate of the Janta Party whereas Shri Des Raj was a candidate on behalf of Bahujan Samaj Party. The other candidates i.e. respondents Nos. 7 to 12 were independent candidates contesting from Ward No. 17. There were, thus, ten candidates in the fray including the petitioner and respondent No. 4. The real contest as it transpired from the result of the election, was between the petitioner and respondent No. 4. There were seven polling booths in Ward No. 17. After the polling was over on April 28, 1991, the counting of votes started. The total number of votes polled by the petitioner and respondent No. 4 were as under:--

Booth No.

Place

Votes polled to the petitioner.

Votes polled to the respondentNo. 4.

1/119

N. M. Jain High School (West side)

155

219

2/120

N. M. Jain High School (East side)

251

153

3/121

N. M. Jain High School (North side)

171

167

4/122

Food Supply Office Sham Nagar (east side)

183

192

5/123

Food Supply Office Sham Nagar (west side)

139

190

6/124

Dharamsala Sita Nagar (east side)

146

125

7/125

Dharamsala Sita Nagar

125

125

Total

1170

1171

The petitioner, according to the allegations in the petition was not satisfied with the conduct of the Presiding Officers of Booth Nos. 119 and 121 as according to her, her Polling Agents were not allowed to watch the proceedings when the counting was going on nor were any reasons recorded for rejecting different ballot papers. Objections were raised from time to time about the counting and rejection of votes but no heed was paid by the Presiding Officer and request for a recount was also turned down. By way of an instance it has been pointed out that one vote cast in favour of the petitioner was rejected only on the ground that it contained a light ink mark on her symbol. Even though the intention of the voter was clear in favour of the petitioner, yet, according to her, the vote was rejected. The petitioner moved applications for a general recount and scrutiny of votes in Ward No. 17 but the Returning Officer did not take any decision thereon and referred the matter to the Deputy Commissioner for his decision. On receipt of the applications from the petitioner, she was required to appear before the Deputy Commissioner on 30-4-1991 at 3-30 p.m. Not only the petitioner but all the candidates who contested election from Ward No. 17 including respondent No, 4 were also summoned for the said date. It was after affording an opportunity of hearing to all the parties that the Deputy Commissioner by his order dated April 30, 1991 rejected the plea of the petitioner for a recount and made the following observations:--

"After listening to the counsel of the parties of the candidates and the Presiding Officers of booth Nos. 121 and 119 as has been discussed in the above paragraphs I do not find any substance in the application of re-counting submitted through the Returning Officer and it seems an after thought just on account of the fact that the candidate was losing with one vote just no other reason. Both the Presiding Officers have amply established the fact that there was nothing wrong during the counting process and the results were prepared genuinely and validly. The petitioner could not adduce any evidence what to speak of substantial evidence to sustain her claim of re-counting. After careful listening to the parties, their counsel and the record of the case I reject the plea made for re-counting."

It is this order which has been impugned in the present writ petition.

3. Shri M. S. Sethi, learned counsel for the petitioner, while challenging the impugned order of the Deputy Commissioner, has advanced to contentions -- (i) that the provisions contained in Chapter-11 of the Act pertaining to the constitution of a Corporation are a complete code by itself and elections to the Municipal Corporation could be held only under these provisions and that the

elections could not be held under the 1952 Rules framed under the Punjab Municipal Act, 1911 meant for holding elections to Municipal Committees, as, according to the counsel, provisions of the 1952 Rules run counter to and are incompatible with the provisions of the Act and (ii) that the impugned order rejecting a recount is not only without jurisdiction having been passed by the Deputy Commissioner who is not a functionary under the Act, but is also arbitrary and illegal inasmuch as a recount has been declined even when the margin of votes polled by the petitioner and the returned candidate was extremely narrow. The respondents, on the other hand, at the outset raised a preliminary objection that the writ petition was not maintainable as the election process had been completed and the Councillors having been elected, the election of the returned candidate could not be called in question except by way of an election petition presented in accordance with the 1952 Rules which are applicable in view of the transitory provisions contained in Chapter-XXIV of the Act. The impugned order was also sought to be justified on the ground that no case whatsoever had been made out for a recount before the Deputy Commissioner and that recount was sought only after the petitioner found that she had lost by a solitary vote.

4. Before dealing with the rival contentions of the parties, it is necessary to refer to some of the relevant provisions of the Act. The Act was enacted to provide for the establishment of Municipal Corporation for certain cities in the State of Punjab including the city of Ludhiana. The municipality of Ludhiana has been constituted to be the city of Ludhiana for which a Corporation has been constituted charged with the Municipal Government of the city known as the Municipal Corporation of Ludhiana. After the constitution of the Corporation under S. 4 of the Act, elected Councillors are to be chosen by direct election on the basis of adult suffrage from various wards into which the city is divided and the total number of elected Councillors for the Municipal Corporation of Ludhiana is "50". The term of office of the Councillors is five years and the city is divided into single member wards in such manner that the population of each of the wards shall, so far as practicable, be the same throughout the city. Section 10 then empowers the Director who has been defined to mean the Director of Local Government, Punjab, to conduct elections in the wards subject to the direction and control of the State Government. Every person whose name is, for the time being, entered in the electoral roll for a ward is entitled to vote at the election of a Councillor from that ward. Voting is by secret ballot and every elector has one vote. Section 12 prescribes the qualifications, for councillorship and states that a person shall not be qualified to be chosen as a Councillor unless his name is registered as an elector in the electoral roll for a ward. The disqualifications for councillorship are mentioned in S. 13. Every person whose name is entered in the electoral roll for a ward is entitled to vote at an election of a Councillor from that ward. Section 15 of the Act then declares that a general election of Councillors shall be held for the purpose of constituting the Corporation under S. 4. Sub-sec. (3) of S. 15, on which much reliance was placed by the learned

counsel for the petitioner, is reproduced hereunder:--

"For the aforesaid purposes the Director shall, by one or more notifications published in the Official Gazette, call upon all the wards to elect councillors in accordance with the provisions of this Act and the rules and orders made thereunder before such date or dates as may be specified in the notification or notifications."

After the Director has called upon the wards to elect Councillors in accordance with the provisions of the Act and the rules, the elections are to take place and the mode and the manner in which they shall take place is not provided in the Act. This has been left to the State Government to provide for by framing rules. When all the Councillors have been elected and casual vacancy, if any, that might have occurred has been filled under S. 16, the Director is required to publish in the Official Gazette as soon as may be after the election or co-option, the names of all persons elected or co-opted as Councillors. S. 18 then provides that no election of a Councillor shall be called in question except by an election petition presented to the Prescribed Authority within thirty days from the date of the publication of the result of the election under S. 17. The relief that may be claimed by the petitioner and the grounds for declaring an election to be void are mentioned in Ss. 19 and 20 respectively. The procedure provided in the Code of Civil Procedure, 1908 in regard to suits is to be followed by the Prescribed Authority as far as it can be made applicable in the trial and disposal of election petitions. The order of the prescribed Authority on an election petition has been made final and conclusive. Section 25 then provides a list of various acts which would be deemed to be corrupt practices for the purpose of the Act. There is then a provision for maintenance of "secrecy of voting" and prohibition of canvassing in or near polling stations and the officers at the elections have been prohibited from acting for candidates or to influence voting. A provision has also been made in regard to electoral offences and penalties have been provided therefor. The Government then has been given the power to make rules to regulate the elections of Councillors and they may provide for a variety of matters enumerated in sub-sec. (I) of S. 34 including the qualifications of electors and the preparation, publication, correction and revision of electoral rolls; the appointment of returning officers; the nomination of candidates, form of nomination papers, objections to nominations and scrutiny of nominations; the deposits to be made by the candidates; the withdrawal of candidature; the appointment of agents of candidates and the like. The rules framed under this Section would also provide for matters relating to election disputes.

5. Reference is now necessary to be made to sub-sec. (a) of S.428 of the Act which provides for continuation of appointments, taxes, rules, bye-laws, regulations etc. framed under the Punjab Municipal Act, 1911 which reads as under:--

"Any appointment, delegation, notification, notice, tax, order, direction, scheme, licence, permission, registration, rule, bye-law, regulation, form made, issued,

imposed or granted under the Punjab Municipal Act, 1911, or any other law in force in any local area, constituted to be a City or included in a City, immediately before the appointed day shall, in so far as it is not inconsistent with the provisions of this Act, continue in force until it is superseded by any appointment, delegation, notification, notice, tax, order, direction, scheme, licence, permission, registration, rule, bye-law or form made, issued, imposed or granted under this Act or any other law as aforesaid, as the case may be."

According to S.431, the Punjab Municipal Act, 1911 stood repealed in the area constituted to be a city with effect from the day from which it was constituted.

6. From the scheme of Chapter-11 read with S. 428 of the Act, it is abundantly clear that the legislature after making broad provisions relating to the constitution of a Corporation and the election of its Councillors has left the finer details regarding the mode and manner in which the elections are to be held to the rule making authority. The election process commences with the publication of a notification under sub-sec. (3) of S. 15 of the Act by the Director and concludes with the publication of the names of all persons elected as Councillors again by a notification published by the Director in the Official Gazette under S. 17. The framing of the election programme, the appointment of the Returning Officers and other Officers for the conduct of elections, the nomination of candidates, scrutiny, withdrawal of candidates, the form of nomination papers etc. have deliberately been left to the rule making authority to provide for in the rules. It is true that no rules have been framed by the State Government under the Act but in view of the provisions of S. 428 of the Act contained in Chapter-XXIV dealing with transitory provisions, the 1952 Rules framed by the State Government under the Punjab Municipal Act, 1911 for conducting elections of Municipal Committees will continue to operate for election of Councillors to a Corporation under the Act. The legislature while enacting the provisions of the Act, clearly intended to repeal the provisions of the Punjab Municipal Act, 1911 in so far as it related to the Municipal Corporation of Ludhiana and some other Corporations but was conscious of the fact that the State Government to whom the rule-making power had been entrusted might take some time in framing the rules regarding different matters for which provision had been made in the Act and since it did not want any vacuum during the interregnum period, a provision was made in S.428 of the Act providing that the rules already framed under the Punjab Municipal Act, 1911 in regard to an area constituted to be a city under the Act would continue to be in force till they are superseded by Rules framed under the Act. As the Government has not framed any rules in regard to the conduct of election of the Councillors under the Act, the 1952 Rules in so far as they are not inconsistent with the provisions of the Act would, thus, continue to hold the field. Learned counsel for the petitioner was unable to point out any specific provision in the 1952 Rules which can be said to be inconsistent with any provision contained in Chapter-II of the Act. The learned counsel, however, pointed out that according to the provisions of S. 10, it was the Director who was to supervise the conduct of elections in the wards and therefore, it was he alone,

who could frame and publish the election programme and not the Deputy Commissioner who is not a functionary recognised under the Act. There is no merit in this submission. As has already been noticed earlier, it was the Director who by publishing the notification calling upon the wards to elect Councillors had set the election process in motion and it was he who had framed the election programme and sent the same to the Deputy Commissioner for publication. Since the 1952 Rules could be resorted to in the matter of election of the Councillors, the Deputy Commissioner was authorised and justified under the said Rules to publish the election programme. This publication by the Deputy Commissioner in no way contravenes any provision of the Act as was sought to be contended by the learned counsel for the petitioner. We have also gone through the official file which was produced by the learned State Counsel and have satisfied ourselves that the election of Councillors was, no doubt, held under the 1952 Rules but under the constant control and supervision of the Director. The Director had been issuing instructions to the Deputy Commissioner from time to time which he, thought were necessary and maintained full control and supervision over the election, It was then urged that the period of limitation for filing an election petition is 30 days from the date of publication of the result under S. 17 of the Act whereas the period prescribed under the 1952 Rules is only 14 days. This inconsistency, if any, is of no significance and the provisions of the Act would prevail inasmuch as an election petition could be filed within 30 days instead of 14 days. In other words, S. 18 of the Act providing 30 days period would obviously override the corresponding provisions contained in the 1952 Rules. Further, S. 18 provides that an election petition is to be presented to the prescribed authority. This prescribed authority would be the one prescribed under the 1952 Rules and the Act does not provide for any other authority and, therefore, the question of any inconsistency in this regard does not arise. Again, there is provision made in the Act providing for the reliefs that may be claimed by a petitioner in an election petition and it also provides the grounds on which an election can be declared void. The authority under the 1952 Rules while deciding an election petition would be governed by the provisions of the Act in regard to the grounds for declaring an election to be void and also in regard to the relief that may be claimed by the election petitioner. In case, there is any provision in the 1952 Rules which is contrary to any provision in the Act (though none has been pointed out to us), the latter would prevail. The argument that the election of Councillors under the 1952 Rules could not be held as the said Rules are wholly incompatible with the provisions of the Act has, therefore, to be rejected. This answers the first contention raised on behalf of the writ-petitioner.

7. Since, we have held that the 1952 Rules were applicable to the election of Councillors, it necessarily follows that the preliminary objection raised on behalf of the respondents must prevail because there is a provision for an election petition in the said Rules. Rule 52 of these Rules, states in clear terms that no election shall be called in question except by an election petition presented in accordance with the Rules. Similar is the provision in Section 18 of the Act as

well. The proper course for the petitioner was to have filed an election petition. The grievance which she has made before us in this writ petition against the order of the Deputy Commissioner dated April 30, 1991 declining her request for a recount of the ballots, could well have been made in that election petition which would have been disposed of by the prescribed authority in accordance with the provisions of the Act. The improper acceptance or refusal of any vote or reception of any vote which is void, is a ground on which election of the returned candidate could be declared void by the prescribed authority.

8. Before concluding, we may mention that when elections to the Municipal Corporation, Ludhiana were called and the election programme published on March 11, 1991, a number of writ petitions including Civil Writ Petition No. 6239 of 1991 were filed in this Court challenging the elections. One of the grounds taken in these petitions was that since they had not been called by the Director, the Deputy Commissioner could not notify the election programme. The State Government in its return produced the notification dated March 11, 1991 issued by the Director and the writ petitions were dismissed.

9. In the result, we uphold the preliminary objection raised on behalf of the respondents, decline to go into the merits of the impugned order in the exercise of our extraordinary jurisdiction under Article 226 of the Constitution and dismiss the writ petition. The parties are left to bear their own costs.

10. Petition dismissed.