
(1976) 04 P&H CK 0008

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 414 of 1973

Parkash Chand

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 20-04-1976

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1976) 04 P&H CK 0008

Hon'ble Judges : S.C. Mittal and, J;Prem Chand Jain, J;A.S. Bains, J

Bench : Full Bench

Advocate : H.S. Sawhney, for the Appellant; I.S. Tiwana, D.A.G., Punjab, Mr. Ashok Bhan and Mr. Vipin Kaushal, for the Respondent

Final Decision : Dismissed

Judgement

Prem Chand Jain, J.—Parkash Chand has filed this appeal under clause X of the Letters Patent against the judgment of a learned Single Judge of this Court.

2. On the admitted facts, the only contention raised before us by Mr. Sawhney, Learned Counsel for the appellant, was that the co-option having been held illegal, the election of the President and Vice President should also have been declared void. Reliance in support of his contention was placed by the Learned Counsel on a Division Bench decision of this Court in Onkar Singh v. State of Haryana (1972) 74 PLR 378.

3. After giving my thoughtful consideration to the entire matter I find that in the circumstances of this case, there is no merit in the contention of the Learned Counsel and that no case for interference in the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India has been made out. Milkhi Ram and Som Nath respondents were elected President and Vice President. They secured 0 votes each as against their opponents who secured only 7 votes each. Before an election could be set aside, it was incumbent on the petitioner to have proceed that by the reception of any vote which was void, the

result of the election has been materially affected. The contention of Mr. Sawhney is that two ladies who were co-opted could not attend the meeting and caste votes in favour of the respondents WHO have been elected President and Vice-President respectively. This contention of the Learned Counsel is unfounded as on this record it has not been proved that the two co-opted ladies had voted for respondents Nos. 6 and 7 who have been declared elected as President and Vice-President respectively. However, even if for the sake of argument it is accepted that the two co-opted ladies voted for the said respondents, then also after taking out these two votes, respondents Nos. 6 and 7 have secured 8 votes each which are more than those of the defeated candidates. Thus viewed from any angle, the point agitated before us has no merit.

4. In view of the aforesaid finding there would have been no difficulty for me to dismiss the appeal, but I find that Onkar Singh's case (supra) on which reliance has been placed by the Learned Counsel for the appellant, lends support to his contention as is apparent from the following observations:-

The second around of attack is common to the election of Chairman and Vice-Chairman; namely, that a non member participated in the meeting which elected the Chairman and Vice-Chairman On this matter also the legal position is well settled. If a non member is merely present in a meeting of a body but does not participate in the proceedings his presence will not vitiate the proceedings of that body. But if he participates in the proceedings then the entire proceedings will be vitiated. In this connection reference may be made to the decision of North, J. in Lane v. Norma (1989) 66 L.T. 83. The learned Judge observed as follows:-

.....because another gentleman was present who ought not to have been. He took part in the discussion, and of course it is impossible to say what effect his views may have had upon the minds of the other persons who were present

with these observations North, J. held the entire proceedings of that meeting to be vitiated. The decision of North, J. was followed by Megarry, J. in Leary v. National Union of Vehicle Builder's, 1970 All. E.L.R. 713. No decision taking contrary view has been died.

For the reasons recorded above, we uphold the second contention of the Learned Counsel.

5. With respect I find myself unable to agree with the aforesaid view. As earlier observed, the election can be set aside only if it is proved that by reception the alleged void votes, the result of the election has been materially affected. In this situation, I deem it proper that this petition deserves to be decided by a larger Bench. Accordingly, 2 direct that the papers of this case be laid before my Lord the Chief Justice for appropriate orders.

Order Of The Full Bench.

Prem Chand Jain J.

6. Parkash Chand has filed this appeal under Clause X of the Letters Patent against the judgment of a learned Single Judge of this Court. This appeal came up for hearing before my learned brother Bains, J. and myself. After hearing the Learned Counsel for the parties, we found that a Division Bench judgment of this Court in *Onkar Singh v. State of Haryana* (1972) 74 PLR 378, needed reconsideration and accordingly we referred the appeal for decision to a larger Bench. That is how we are seized of the matter.

7. Milkhi Ram and Son Nath, respondents, were elected President and Vice-President of the Municipal Committee, Kapurthala. Earlier to the election of the President and Vice-President, a meeting was held on 9th of July, 1972, to co-opt two women in accordance with the provisions of section 12-B of the Punjab Municipal Act, 1911 (hereinafter referred to as the Act) In that meeting Shrimati Pimmi Khosla and Shrimati Nirmala were declared elected. Parkash Chand, appellant, filed a petition under Articles 226 and 227 of the Constitution of India calling in question the election of the President and Vice-President as well as the co-option of the two lady members. The learned Single Judge allowed the petition with regard to the co-option of the lady members while in respect of the election of the President and Vice-President the petition was rejected.

8. It was sought to be argued by Mr. Sawhney that the election of the two co-opted ladies had been held to be illegal; that the said two co-opted ladies took part in the election of the President and Vice-President and that their election having been held illegal, their mere participation was sufficient to declare the election of the President and Vice-President void After giving my thoughtful consideration to the entire matter, I find myself unable to agree with this contention of the Learned Counsel.

9. The sole question that requires determination in this case is whether the election of the President and Vice-President can be declared void without proving that the result of the election has been materially affected by the reception of the votes of the co-opted members whose election has been held to be illegal. Rule 52 of the Punjab Municipal Election Rules (hereinafter referred to as the Rules) provides that no election shall be called in question except by an election petition presented in accordance with the Rules. Rule 53 provides the procedure for filing an election petition. Rule 63 provides grounds for declaring an election void" The material clauses of this rule, to which reference would have to be made, read asunder:-

63 Grounds for declaring election void,-

(1) Save as hereinafter provided in those rules if in the opinion of the Commission-

(a) * * *

(b) * * *

(c) there has been any material irregularity, or

(d) the election has not been a free election by reason of the large number of cases in which the corrupt practices specified in sub clause (V- or (ii) of clause (a) of the rule 51 have been committed by a candidate or an agent of a candidate or a person acting with the connivance of a candidate or such agent or any person who is not a candidate or an agent of such candidate or a person acting with the connivance of a candidate or such agent, the Commission shall report that the election of the returned candidate shall be deemed to be void.

Material irregularity" has been defined in Rule 51 as follows:-

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.

10. Under rule 63 an election can be declared void if, in the opinion of the Commission, there has been any "material irregularity" in the conduct of the election. According to the definition in rule 51, reception of any vote which is void or non-compliance with the provisions of the Act or of the Rules made thereunder, would be a material irregularity, but the fact that there has been reception of any void vote or non-compliance with the provisions of the Act or the rules made thereunder would not by itself be sufficient to declare an election void unit it is further proved that the result of the election has been materially affected as is evident from the words "as materially affects the result of an election" occurring in the definition of "material irregularity. In other words, before, any relief can be granted it has to be proved that by the reception of the void votes the result of the election has been materially affected.

11. Adverting to the facts of the case in hand, there is no dispute that the challenge against the election is on the ground that there has been a material irregularity is as much as two co-opted lady members, whose election was held to be void, had taken part in the election of the President and the Vice-President. What was sought to be argued by Mr. Sawhney was that mere participation of such person, who could not legally vote, would render the election void as that fact by itself would lead to an inference that the result of the election has been materially affected. In support of his contention, Mr. Sawhney drew our attention to a Bench decision of this Court in Onkar Singh's case, where in similar circumstances the learned Judges observed that participation of a non-member in the proceedings vitiates the entire proceedings. The learned Judges in making the aforesaid observations had relied on the decision of North, J. in Lane v. Norman (1891) 66 L.T. 83. There can be no gainsaying that the observations in the aforesaid judgment of Onkar Singh's case do lend support to the contention raised before us by Mr. Sawhney, but with utmost respect, I am unable to subscribe to the aforesaid view which goes counter to the well settled proposition of law that the election can be declared void on the ground of material irregularity in case of reception of void votes or non-compliance with the

provisions of the Act or of the rules made thereunder only if it is further proved that the result of the election has been materially affected. See in this connection the decisions of their Lordships of the Supreme Court in Vashit Narain Sharma Vs. Dev Chandra and Others, , and Paokai Haokip Vs. Rishang and Others, am, therefore, clearly of the view that mere participation of such persons who could not legally vote, would not by itself lead to an inference that the result of the election has been materially affected.

12. It may further be observed that beyond the averment of mere participation, there is no other allegation as to how factually the election in question has been materially affected and rightly so; Milkhi Ram and Som Nath, respondents Nos. 6 and 7 (successful candidates), obtained 10 votes each as against their opponents who secured only 7 votes each, and even if we assume that the two co-opted lady members had voted for respondents Nos. 6 and 7, then also, after taking out these votes, respondents Nos. 6 and 7 would have secured 8 votes each, which are more than those of the defeated candidates. Thus I find that even on merits no case has been made out that by the receipt of the two void votes the result of the election has been materially affected.

13. Before parting with the judgment, another contention of Mr. Sawhney may be noticed that the appellant's case fell within the purview of clause (d) of sub-rule (1) of Rule 63 in as much as by the presence of the two co-opted lady members, whose election had been declared illegal, the election of the President and Vice-President would have to be held not to be a free election. In my opinion, the argument on the face of it is fallacious. The bare perusal of clause (d) would show that it has no applicability to the facts of the case in hand. Under clause (d) if the Commission arrives at a finding that the election has not been a free election by reason of the large number of cases in which the corrupt practices specified in sub clauses (i) or (ii) of clause (a) of Rule 51 had been committed by a candidate or an agent of a candidate or a person acting with the connivance of a candidate or such agent or any person who is not a candidate or an agent of such candidate or a person acting with the connivance of a candidate or such agent, then it shall report that the election of the returned candidate shall be deemed to be void. I fail to understand on what basis it was sought to be argued by the Learned Counsel that the case of the appellant fell within the purview of clause (d) of sub-rule (1) of Rule 63.

14. No other point was urged.

15. For the reasons recorded above, we find no merit in this appeal and accordingly dismiss the same with costs.

R.N. Mittal, J.

16. I agree.

A.S. Bains, J.

17. I also agree.