

(1973) 03 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 204 of 1973

Prithi Pal Singh

APPELLANT

Vs

The State of Punjab and others

RESPONDENT

Date of Decision : 15-03-1973

Acts Referred:

Punjab Municipal Act, 1911 — Section 232

Citation : (1973) 03 P&H CK 0012

Hon'ble Judges : Prem Chand Jain, J; Harbans Singh, J; Bal Raj Tuli, J

Bench : Full Bench

Advocate : Kuldip Singh with Mr. R.S. Mongia, Mr. Sarup Singh and Mr. I.S. Sandhu, for the Appellant; H.S. Brar, Deputy Advocate-General Punjab, for Respondents 1 and 2 and Mr. S.C. Goyal with Mr. O.P. Goyal for Respondents 3 to 12, for the Respondent

Judgement

Prem Chand Jain, J.—Prithipal Singh has filed this letters patent appeal under clause JO of the Letters Patent against the judgment and order of a learned Single Judge of this Court, dated 2nd March, 1973, by which the petition filed by Birbal Kumar and others was allowed. The facts of this case may briefly be stated thus :

2. The Municipal Committee, Bassi Pathana, consists of 13 elected and 4 co-opted members. Prithipal Singh, appellant, was elected President on 19th July, 1972. His election as President was approved and notified in the Government Gazette published on 2nd January, 1973. It appears that the appellant did not enjoy the confidence of his colleagues, as is evident from the fact that 12 Municipal Commissioners submitted a requisition for a no-confidence meeting, which was held on 13th October, 1972. On that date, the no-confidence motion was passed by the majority of two-third members of the Committee. However, the resolution was not accepted and the Deputy Commissioner, Patiala, in exercise of his powers u/s 232 of the Punjab Municipal Act, 1911, set aside the resolution of no-confidence on the ground that the name of the President had not

been notified and, as such, he could not be removed from the office under the no-confidence motion. This order of the Deputy Commissioner, Patiala, was challenged by Birbal Kumar and others by filing a civil writ which, as earlier observed, was allowed by a learned Single Judge of this Court. It is in these circumstances that the President elect has filed the present appeal.

3. The only contention raised before us by Mr. Kuldip Singh, learned counsel for the appellant, was that no-confidence motion could not be passed against the appellant till his name was approved and notified in the Gazette by the Government. Reliance, in support of his contention, was placed on various provisions of the Municipal Act and the Municipal Election Rules.

4. He also contended that the decision of R.S. Sarkaria, J., in Jagjit Singh Marwaha v. The State of Haryana 1968 Cur LJ 643, did not lay down the correct law. Our attention was also drawn to an unreported decision in Civil Writ No. 4899 of 1971 (Amar Nath Bhandari v. Pritam Singh Kamedar and others CW 4899 of 1971) decided on 28th January, 1972.

5. After hearing the learned counsel for the parties, we find that in the two decisions referred to above, different view has been taken. In Jagjit Singh Marwaha's case, it has been held that approval and notification in the Official Gazette is not a condition precedent for the President elect to function as President under the Municipal Act, while in Amar Nath Bhandari's case a contrary view has been taken. No letters patent appeal was filed against the decision in Jagjit Singh Marwaha's case, while the letters patent appeal filed against the decision in Amar Nath Bhandari's case was dismissed in limine. Except the two judgments referred to above in which different view has been taken, there is no other decision of this Court. The point involved is of considerable importance and is likely to arise quite often. In these circumstances, especially when there are two decisions taking contrary views, we find it proper that the following question may be decided by a larger Bench :--

Whether approval and notification of the State Government are necessary before the President elect can start functioning as such and whether a no-confidence resolution can be passed against him before such approval and notification ?

JUDGMENT OF THE FULL BENCH

P.C. Jain, J.

6. The referring order shall form part of this judgment of ours.

7. The question that has been referred for our decision is in the following terms :--

Whether approval and notification of the State Government are necessary before the President-elect can start functioning as such and whether a no-confidence resolution can be passed against him before such approval and notification ?

The answer to the above mentioned question would depend upon the

interpretation of certain provisions of the Punjab Municipal Act, 1911 (hereinafter referred to as the Act) and the Punjab Municipal Election Rules (hereinafter referred to as the Rules), which are reproduced below :--

Section 20. Election or appointment of President and Vice-President :

(1) Every committee shall from time to time elect one of its members to be President, and the member so elected shall, if approved by the State Government become President of the Committee :

Provided that the committee, instead of electing a president and submitting his name for approval to the State Government, may apply to the State Government, to appoint a president from among its members, and that the State Government may, by notification, exclude any committee from the operation of this sub-section and that in either of these cases, or if no election has been made within one month from the occurrence of a vacancy in the office of the president, or if the person elected be not approved the State Government may, if, it shall think fit, appoint one of the members of the committee to be president.

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XXX XXX XXX

Section 22. Resignation of president or vice-president :

Whenever a president or vice-president vacates his seat or tenders in writing to the committee his resignation of his office, he shall vacate his office, and any president or vice-president may be removed from office by the State Government on the ground of abuse of his powers or of habitual failure to perform his duties or in pursuance of a resolution requesting his removal passed by two-thirds of the members of the committee ;

Provided that before the State Government notifies his removal, the reason for his proposed removal shall be communicated to him by means of a registered letter in which he shall be invited to tender within twenty-one days an explanation in writing and if no such explanation is received in the office of the appropriate Secretary to Government within twenty-one days of the despatch of the said registered letter, the State Government may proceed to notify his removal.

Section 24. Notifications of elections, appointments and vacancies.

1. Every election and appointment of a member or president of a committee shall be notified, in the case of a municipality of the first class, by the State Government, and in the case of a municipality of the second or third class, by the Deputy Commissioner, and no member shall enter upon his duties until his election or appointment has been so notified and until, notwithstanding anything contained in the Indian Oaths Act, 1873, he has taken or made, at a meeting of the committee, an oath or affirmation of his allegiance to Indian, in the following form namely :--

I, A, B, having been elected (or appointed) a member of the municipal committee of.....do solemnly swear (or affirm) that I will be faithful and bear true allegiance to India and the Constitution of India as by law established and I will faithfully discharge the duties upon which I am about to enter.

Rule 47. Election of President and Vice-President.

(1) No election of a President or Vice President of a Committee shall be held at a meeting unless not less than forty eight hours notice of the holding of such meeting has been given to all members of the Committee by delivery at their ordinary place of residence of a notice, which shall specify that such election is to take place at the meeting in question.

(2). The person or persons elected shall, subject in the case of the election of president, to, the provisions of sub-section (1) of section 20 of the Act, assume office from the date of election.

From the bare reading of sub-section (1) of section 20, it is clear that the Committee is empowered to elect one of its members as President, but he becomes President only when approval is accorded by the State Government. This section cannot be read to mean that mere election of a member by the Committee as President is sufficient and that he can start functioning as such without the approval of the State Government. In case the member can start functioning as President on his mere election, then the words "and the member so elected shall, if approved by the State Government, become President of the committee" would become wholly redundant. These words are neither superfluous nor a surplusage. There is absolutely no ambiguity in the language of sub-section (1). The Legislature's intention is clear from the language of sub-section (1) that the member so elected shall, if approved by the State Government, become President of the Committee. In case the intention of the Legislature would have been that the member elected by the Committee would become President on his election, then the language employed in sub-section (1) would have been "every Committee shall from time to time elect one of its members to be President, and the member so elected shall become President of the Committee."

8. Mr. S.C. Goyal, learned counsel for respondents 3 to 13 sought to argue that the language employed in sub-section (1) was directory and as such the approval of the State Government was not essential before the President-elect could assume office and that the approval could be accorded even after the assumption of office. In support of his contention, the learned counsel placed reliance on the decisions of the Allahabad High Court in Mohd. Rasul, Member Municipal Board Moghalsarai Varansi v. Mata Din Singhania 1966 All LJ 925 Mohammad Ali Vs. The State of Uttar Pradesh and Others, , Shiv Dayal Tiwari v. State of Uttar Pradesh 1953 All LJ 505 and Shakir Husain v. Chandoo Lal AIR 1931 All 565 and a Single Bench decision of this Court in Jagjit Singh Marwaha v. The State of Haryana 1968 Cur LJ 643. In our view the contention of the learned counsel, on

the face of it, is untenable. The act of granting approval which, in our view, is a positive act and has to be performed by the State Government consciously, is a condition precedent to the assumption of office by the President-elect. The Legislature has purposely used the words "become President" after the words "if approved by the State Government" in order to show its clear intention that the member elected as President would become President only after approval. As earlier observed, there is no ambiguity in the language of sub-section (1) and on its plain reading, the one and the only conclusion that can possibly be arrived at is that the President-elect assumes office only after approval is accorded by the State Government. This conclusion of ours also finds full support from the provisions of sub-rule (2) of rule 47 wherein it is provided that the person or persons elected shall, subject in the case of the election of a president, to the provisions of sub-section (1) of section 20 of the Act, assume office from the date of election. This sub-rule again shows that the President assumes office only subject to the provisions of subsection (1) of section 20 and not on mere election. A clear distinction has been drawn between the President-elect and a member-elect, viz., in the former case the President-elect is to assume office subject to the provisions of sub-section (1) of section 20, while in the latter case the member-elect assumes office from the date of election. Adverting to the case as referred to before us, we find that the decisions of the Allahabad High Court have no relevancy at all to the point involved in the case in hand and it would be unnecessary to burden this judgment by discussing them in detail. So far as Jagjit Singh Marwaha's case is concerned, there can be no gainsaying that it does not lend support to the contention of Mr. Goyal ; but for the reasons recorded in the earlier part of our judgment, with utmost respect, we are unable to agree with the view taken therein by the learned Judge.

9. At this stage it would be appropriate to make reference to an unreported decision which is helpful to the appellants, in *Amar Nath Bhandari v. Pritam Singh Kamedar* 1968 Cur LJ 643 (Civil Writ No. 4899 of 1971) decided on 28th January, 1972, wherein I took the view that election of a President by the Committee does not vest him with power to act as such and that he only becomes President and acts as such after the approval is accorded by the State Government and a notification is issued u/s 24; but on reconsideration, that view of mine needs amendment only to this extent that the issuance of notification as required u/s 24 of the Act is not a condition precedent to the assumption of office by the President-elect. The issuance of a notification is only a ministerial act and any delay occurring in its issuance would not be a bar to the assumption of office by the President-elect if approval has been accorded.

10. The second question that requires consideration is whether a no confidence resolution can be passed against a President-elect before the approval and notification ? In the view we have taken that a President-elect can assume office only after the approval is accorded by the State Government, the answer to this question has to be in the negative. u/s 22, for the removal of the President, a resolution can be passed by two-thirds of the members of the Committee. The

language used in section 20 is for the removal of the President. If a person has not become the President, then how can a resolution be passed for his removal. Provisions of section 22 come into play only after a member becomes a President.

11. For the reasons recorded above, we answer the question referred to us for decision as follows :--

Approval of the State Government is necessary before the President-elect can start functioning as such and a no-confidence resolution cannot be passed against him before such approval is accorded and that it is only after the approval of the State Government that the President-elect can assume office and start functioning as such.

The appeal shall now go back to the Letters Patent Bench for decision on merits.