
(1996) 07 P&H CK 0065

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 17142 of 1995

Rattan Lal and Others

APPELLANT

Vs

Deputy Commissioner and Others

RESPONDENT

Date of Decision : 01-07-1996

Acts Referred:

Haryana Municipal Act, 1973 — Section 246, 249, 29

Citation : (1996) 114 PLR 133 : (1996) 3 RCR(Civil) 223

Hon'ble Judges : N.K. Sodhi, J;N.C. Khichi, J

Bench : Division Bench

Advocate : S.K. Mittal, for the Appellant; D.R. Trikha, DAG for the Respondent Nos. 1 and 2, J.K. Sibal and Reeta Kohli, for the Respondent No. 3, for the Respondent

Final Decision : Allowed

Judgement

N.K. Sodhi, J.—Elections to the Municipal Committee, Bawal, District Rewari (for short the Committee) were held on December 28, 1994 and the names of the eleven members who were elected were notified by the Haryana State Election Commission on January 10, 1995. Seven of the petitioners are elected members of the Committee whereas petitioner 8 is a nominated member who was subsequently nominated by the State Government on February 20, 1995. It may be mentioned that the State Government had nominated five members including petitioner 8 thereby raising the total number of members of the Committees to sixteen. Election of the President and Vice-President of the Committee took place on February 17, 1995 and Raghbar Dayal son of Shri Matadin was elected President. All questions which come before any meeting of a Committee are required to be decided, except as otherwise provided by the Haryana Municipal Act, 1973 or the rules framed thereunder (hereinafter called the Act and the Rules respectively) by a majority of the votes of the members present and in the case of equality of votes, the Chairman of the meeting has a second or casting vote. On August 12, 1995 a meeting of the Committee was held which was

attended by twelve members including the petitioners. In this meeting there were various items on the agenda and each item was disposed of by the members by passing a resolution approving or disapproving the recommendation suggestion contained in the agenda. Agenda items at Sr. Nos. 1, 3, 9 and 11 in regard to which there is now a dispute between the parties pertained to the following matters:-

"Item No.1:-

Regarding the grant of administrative approval for the estimates of the expenditure to be incurred on various development works enumerated in the agenda item from (i) to (xvi).

Item No.3 :-

Pertained to the approval regarding the income earned and expenditure incurred for the period March, 1995 to July, 1995.

Item No. 9 :-

Pertained to the giving of powers for operating Bank accounts of the Committee.

Item No. 11:-

Pertained to the dewatering of collected rainy water from the town."

After discussing item no.1 the majority of the members decided not to grant approval sought for as according to them the Sub-Committees which were required to undertake the development work had not been constituted by the President. As regards item no.3, the income of the Committee from March, 1995 to July, 1995 was confirmed but the Secretary was instructed to make efforts to increase the income. The expenditure was not approved as according to the majority of the members present the prior approval of the Committee had not been obtained before incurring those expenses. It was brought to our notice at the time of arguments that the expenditure running into lacs of rupees had been incurred by the President while exercising his emergency powers u/s 35 of the Act. In regard to item no.9, the Secretary of the Committee had suggested that power to operate the Bank accounts be given only to an elected member and not to any nominated member. The members decided to give powers to the President or Vice-President and to Shri Raj Kishore Chaturvedi nominated member to sign all cheques and operate Bank accounts of the Committee. In regard to item no. 11, it was unanimously decided that the areas where rainy water had accumulated in different parts of the town be dewatered in a planned manner. It was further decided that the execution of the works that was already going on taking the rainy water to Gugaheri John (Pond) in Ward No.4 be stopped forthwith and the same be got sanctioned from the Committee after obtaining technical advice.

2. The decisions of the Committee taken on item Nos. 1, 3, 9 and 11 were not to the liking of the President and it appears that the members of the Committee are

equally divided half of whom are siding with the President whereas the other eight are in the opposite camp. After the meeting of the Committee on August 12, 1995, the President made a complaint in writing to the Deputy Commissioner, Rewari on August 31, 1995 stating therein that some of the members who were not well disposed towards him because of his being a member of a Backward class are creating all sorts of obstacles in his functioning as President and that have formed a group, they were not allowing him to carry out any development work. He further complained that they were not approving any expenditure incurred by him as President. Specific reference was made to the resolutions passed by the Committee in its meeting held on August 12, 1995 in regard to items at Sr. Nos. 1, 3, 9 and 11 of the agenda. The prayer made in the complaint was that the Deputy Commissioner should in exercise of his powers u/s 246 of the Act suspend the resolutions pertaining to those items. The Deputy Commissioner then suspended the aforesaid four resolutions and communicated his decision to the Committee as per his letter dated October 13, 1995 (Annexure P-2 with the writ petition). It is this decision of the Deputy Commissioner suspending the resolutions of the Committee on the asking of the President that has been challenged by the petitioners in the present petition filed under Article 226 of the Constitution. A prayer has also been made that since the Committee did not pass the budget in the meeting held on March 28, 1995, the President who has been arrayed as respondent 3 in the writ petition be directed not to spend any amount from the funds of the Committee. It is also averred in the petition that the provisions of Section 249 of the Act have not been complied with inasmuch as after the Deputy Commissioner suspended the resolutions passed by the Committee on August 12, 1995, he failed to forward forthwith his order to the Commissioner nor did he send any statement of reasons for suspending the resolutions. According to the petitioners, the Committee was not afforded any opportunity to furnish its explanation in the matter and thus the Commissioner had no opportunity to confirm modify or rescind the order of suspension of the resolutions.

3. In the written statements filed on behalf of the respondents, it is admitted that resolutions 1,3, 9 and 11 passed by the Committee in its meeting held on August 12, 1995 were suspended by respondent 1. It is also admitted that President of the Committee made a representation against these resolutions and that on a proper inquiry it was found that the resolutions in question were against public interest and, therefore, they were suspended. The allegation in para 14 of the petition to the effect that the Deputy Commissioner did not forward a copy of his order to the Commissioner, as is required by Section 249 of the Act along with his statement of reasons and that the Commissioner has neither confirmed, modified or rescinded that order, has not been denied in either of the written statements and all that has been stated by respondent 1 in reply to para 14 is that he made a proper inquiry before suspending the resolutions. It is pleaded by the respondents that the budget was passed by respondent 1 on June 19, 1995 and that the Committee is spending the amount

in a lawful manner.

4. We have heard learned counsel for the parties and perused the original record produced by the respondents at the time of hearing. It has been noticed that after the Committee held its meeting on August 12, 1995, President (respondent 3) made a complaint to the Deputy Commissioner to the effect that some of the members of the Committee had ganged up to remove him from office as he was, a members of a Backward class. He further stated that the members were not allowing him to carry out any development work and that they were raising all sorts of obstacles in his functioning as President and for these reasons he requested the Deputy Commissioner to suspend resolution 1,3,9 and 11 passed by the Committee in the aforesaid meeting. Obviously, these resolutions were not to the liking of the President and the majority of the members present in the meeting had disapproved the various estimates of expenditure. According to the petitioners President had been incurring expenditure in the exercise of his emergency powers u/s 35 of the Act and was not getting a prior approval for the same from the Committee. As regards the dewatering of the rain water that had collected in parts of the Town, it appears that the members did not approve the execution of work that was going on as according to them rainy water was being drained out in a pond that is being used by the animals of the area and, therefore it was not advisable to have that dirty water thrown. According to the petitioners, it was necessary to give powers to some person/persons to operate the Bank account of the Committee and for that purpose they authorised president or Vice-President along with another member. There is no gainsaying the fact that all these decisions taken by the majority of members in the meeting were not liked by the President and whether they were right and whether those decisions should have been taken is not the concern of this court. The fact remains that proposals of the President, could not go through in the meeting. He then complained to the Deputy Commissioner who on receipt of the complaint marked the same to the Sub Divisional Magistrate, Rewari making the following observations:

"All the charges be gone through and File was marked to the Sub Divisional Magistrate on September 28, 1995 and on October 6, 1995 the Sub Divisional Magistrate put the following note on the file and sent back the same to the Deputy Commissioner :

"As requested by President, Municipal Committee, Bawal all the four resolutions i.e. at Serial numbers 1,3, 9 and 11 may be suspended.

For approval."

On receipt of this recommendation, the Deputy Commissioner approved the proposal made by the Sub Divisional Magistrate and the resolutions were suspended. This is all that is stated to have been inquired into by the Deputy Commissioner or by the Sub Divisional Magistrate though it will be a misnomer to call it an enquiry. After going through the original file, we are satisfied that the

Deputy Commissioner did not apply his mind to the facts of the case nor to the requirements of Section 246 of the Act under which he was exercising his powers. He has not recorded his satisfaction that the resolutions of the Committee were either in excess of the powers of the Committee or contrary to the interest of the public or were likely to cause waste or damage of municipal funds or that the execution of any of the resolutions was likely to lead to breach of peace or encourage lawlessness. The recording of such a satisfaction is a condition precedent for the Deputy Commissioner to exercise his powers u/s 246 of the Act and not having done so, the order suspending the resolutions stands vitiated. Not only this, it was also necessary for him to be satisfied that the facts which could form the basis of an order u/s 246 did actually exist. We do not find any such inquiry having been conducted either by the Deputy Commissioner or by the Sub Divisional Magistrate nor does the record show that circumstances existed which necessitated the suspension of the resolutions in exercise of the powers u/s 246 of the Act. The Deputy Commissioner wanted the charges levelled by the President of the Committee to be enquired into and also wanted the Sub Divisional Magistrate to make recommendations, if any, after an enquiry. The sub Divisional Magistrate without making any enquiry recommended the suspension of the resolutions merely because the President had made such a request. This is not the kind of enquiry contemplated by Section 246 nor is the request by the President sufficient for the Deputy Commissioner to form an opinion that it was necessary for him to suspend the resolutions. We have, therefore no hesitation in quashing the order of the Deputy Commissioner suspending the resolutions passed by the majority of members of the Committee in their meeting held on August 12, 1995. It is also now admitted before us that the Deputy Commissioner after suspending the resolutions did not forthwith forward a copy of his order to the Commissioner to enable the latter to confirm, modify or rescind the order of suspension. Obviously, the statement of reasons for making such an order was not prepared and the Committee too was not given an opportunity to offer its explanation and, therefore, the provisions of Section 249 of the Act stood violated. The order of the Deputy Commissioner cannot be sustained for this reason as well.

5. Now coming to the next question regarding the non-passing of the budget. It is submitted on behalf of the petitioners that the budget was taken up for consideration by the Committee in its meeting held on March 28, 1995 and the proceedings of that meeting are contained in Annexure P.4 to the writ petition. A perusal of the proceedings shows that 14 members of the Committee were present including the President and they were equally divided. Seven of them including respondent 3 approved the budget whereas the other seven voted against it. In such a situation the President will be presumed to have cast his second vote in terms of Section 29 of the Act though this fact has not been recorded in the proceedings. Having voted for the budget once alongwith others it is but natural to assume that his casting vote would also be for the budget. The budget would thus be deemed to have been passed. The matter was referred to

the Deputy Commissioner who as per his letter dated June 19, 1995 approved the same. In such a situation, it cannot be said that the budget had not been passed. Consequently, the President cannot be restrained from spending any amount from the municipal funds though it goes without saying that he shall spend the same in accordance with law.

6. In the result, the writ petition is allowed and the impugned order of the Deputy Commissioner (Annexure P-2 with the writ petition) suspending the resolutions of the Committee passed in the meeting held on August 12, 1995 quashed. We, however, make it clear that it shall be open to the Deputy Commissioner to exercise his powers u/s 246 of the Act in accordance with law and suspend any of the resolutions passed by the committee in its aforesaid meeting. In that event, he will comply with the provisions of Section 249 of the Act as well. The parties are left to bear their own costs.