
(1997) 05 P&H CK 0217

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 15393 of 1992

Sh. Krishan Kumar

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 29-05-1997

Acts Referred:

Constitution of India, 1950 — Article 227
Punjab Municipal Act, 1911 — Section 12, 12A, 12B, 12C
Punjab Municipal Election Rules, 1952 — Rule 5(1), 53

Citation : (1997) 116 PLR 751 : (1997) 4 RCR(Civil) 399

Hon'ble Judges : S.C. Malte, J

Bench : Single Bench

Advocate : O.P. Goel, Rajnish Narula and I.P.S. Doabia, for the Appellant; Rajesh Gumber, S.M.L. Arora and Sushant Maini, DAG, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Malte, J.—Both these writ petitions are being disposed of by this common judgment because the factual and legal position arising in both these petitions is the same. Both these petitions pertain to co-option of in all four members (respondents 4 to 7) who were co-opted to the Municipality of Muktsar. The petition is filed by an elected member of the Municipal Committee, Muktsar. The election of the members of the Municipal Committee had taken place on 6.9.1992. During that election, 16 members were elected. The election of one post of member had to be post-poned because one of the contesting candidate in that Ward had passed away. Consequently, one member was elected on 2.11.1992. Thus on completion of election of all the 17 members of the Municipal Committee, the names of these elected members were published in a Gazette issued on 3.11.1992. Thereafter by issuing a notice dated 16.11.1992 the date of the first meeting of the elected members was scheduled on 19.11.1992. During that meeting the oath of allegiance was to be administered to these members. In the same meeting the election of the co-opted members was also to take place. The papers before me indicate that, as per Annexure P-4, in all four members

(respondents 4 to 7) were then co-opted. The petitioners in both these petitions challenged the co-option of these members on various grounds.

2. Before I proceed to consider these writ petitions on the ground raised in the petitions, a preliminary objection to the maintainability of these writ petitions need to be disposed of. It was contended that the proper forum for any dispute regarding the election of co-opted members would be by filing of an election petition before the appropriate authority as per Rule 53 of the Punjab Municipal Election Rules, 1952, framed under the Punjab Municipal Act, 1911. Further it was submitted that Article 243 of the Constitution of India also creates a bar to the filing of such a writ petition. Visualising such objection, the counsel for the petitioner brought my attention to the case of *L. Hirday Narain Vs. Income Tax Officer, Bareilly*, . In that case the petitioner had filed a writ petition without availing of the statutory remedy. The High Court considered the case on merits; and the matter went to the Supreme Court. While considering the tenability of the petition in the light of the non-availing of the statutory remedy under the Act. Their Lordships observed that if the writ petition had not been entertained by the High Court on the ground that the petitioner should have availed statutory remedy, then the petitioner would have availed the statutory remedy because by that time the period of limitation prescribed under that Act had not expired. Since the High Court in that case entertained the writ petition, the Supreme Court was of the view that in the set of circumstances, the existence of the alternative remedy would not be a hurdle in entertaining the writ petition. Briefly stated, the ratio of the observation is that in a given set of circumstances writ petition may be entertained despite the fact that there was availability of alternative remedy. In this case, both these writ petitions were admitted by the Division Bench after hearing both the sides, presumably despite the argument that an alternative remedy was possible. The writ petitions pertained to co-option of members on 19.11.1992. The writ petitions were admitted on 17.12.1992. The period of the members of the Municipal Committee would be five years as per Section 13 of the Punjab Municipal Act. It, therefore, appears that only about seven months are left now in respect of the tenure of these members. The period for filing the election petition has also expired, and it would be another matter as to whether the delay in filing the election petition would be condoned on the ground that the petitioner was bonafidely pursuing remedy in another Court. By the time all that controversy is over, the term of five years of the membership to the Municipal Committee would come to an end. It, therefore, clearly appear that in the set of circumstances, it would be illusory now to relegate the petitioner to an alternative remedy on the ground that he should have resorted to that first. Counsel for the State brought my attention to the provisions of Article 243-ZG of the Constitution Clause (b) states that no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the legislature of a State. That Article had been introduced in the Constitution with effect from 1.6.1993. Obviously, therefore, on the date of admission of these petitions on

17.12.1992, the said Article was not in force. In the set of this petition. I find no force in the argument that the petition was not maintainable under that Article. The learned Deputy Advocate General, Haryana, brought my attention to the case of Boddula Krishnaiah and another Vs. State Election Commissioner, A.P. and others, . In that case the election to the Gram Panchayat had taken place on 27.6.1995. Before the election took place, the High Court by order dated 26.6.1995 had allowed certain persons to participate in the election. In the set of this factual position, it was held that the election of the Gram panchayat could not be challenged by way of writ petition in view of Article 243(o)(b), and the only remedy was by way of filing an election petition. That ruling is obviously not applicable. He has further brought my attention to the case of Prem Nath v. State of Punjab and Ors. 1993(14) PLR 23. Their Lordships in that case disposed of a bunch of writ petitions in which the question involved pertained to the acceptance or rejection of the nomination papers of the candidates. These writ petitions were disposed of by holding that the petitioners should have availed alternative remedy. After taking into consideration a catena of decisions, the following observations were quoted from a decision of a Full Bench of this Court :-

"To conclude, it seems to emerge clearly from the aforesaid catena of authorities that particularly in the election field, the existence of an alternative statutory remedy is virtually a bar to the exercise of the writ jurisdiction without first resorting to the remedy by way of an election petition. It is only in exceptionally extra ordinary circumstances that the court would deviate from this hallowed rule."

I find no good reason to express a different view. In this case for the reasons already assigned, I find that now relegating the petitioner to the alternative remedy would be illusory, and would amount to almost denial of a remedy.

3. This takes me to consider the contention on merits. As the outset it may be mentioned that regarding the contentious factual position, the scope of these writ petitions would be a limited one. The factual position as would be spelt out from the pleadings and the documents before me, will have to be considered as it is. The petitioners have raised a contention that on the day of holding the meeting in which members were co-opted, they were prevented from taking part in the meeting. Since adjudication of that contention involves leading of evidence and appreciation of it, the counsel for the petitioners did not argue on that point. He confined his argument on the legal position as would emerge from the pleadings and the papers before the Court.

4. The first contention raised by him was that as per Rule 5(1) of the Punjab Municipal Election Rules, 1952, the meeting in which the members were co-opted, should have been fixed and held within fourteen days of the publication of notification of appointment of convener and election of members of a newly constituted committee. For ready reference, it would be convenient to quote the relevant portion of Rule 5 of the Punjab Municipal Election Rules, 1952 as follows:-

"5. Co-option of members and election of President and Vice-President.

(1) The Deputy Commissioner or any Gazetted Officer appointed by him in this behalf (hereinafter in this rules referred to as the convener) shall, within a period of fourteen days of the publication of the notification of appointment and election of members of an newly constituted committee, fix at forty-eight hours notice a date for the first meeting of the elected and appointed members, of such committee stating in the notice that at such meeting the oath of allegiance will be administered to the members present and that the co-option of members, u/s 12-A, 12-B and 12-C, if any, shall take place after the oath is administered.

(2) Immediately after the oath of allegiance is administered under sub rule (1), the convener shall, after such enquiry as he may deem necessary, ascertain whether co-option as required by Section 12-A, 12-B or 12-C is called for or not. In case co-option is called for then the convener shall call upon the elected members to propose the names of the candidates for co-option u/s 12-A, 12-B or 12-C, if any. Such proposal shall be made separately for each category of candidates and in case of the candidates to be co-opted u/s 12-A or 12-C the proposal shall be accompanied by a certificate verified by any of the authorities referred to in Sub-rule (1) of Rule 11 to the affect that the candidate whose name has been proposed belongs to the scheduled caste of Balmiki, Chura or Bhangi or is a member of any of the backward classes mentioned in Schedule 11 appended to the Act as the case may be. Each proposal shall be seconded by another elected member.

(3) I an question arises whether the candidate is or is not qualified for being co-opted the name shall be decided by the convener, after such enquiry as he may think fit.

(4) XX XX XX XX XX XX XX XX

(14) XX XX XX XX"

5. On proper reading of these rules, it is clear that a period of 14 days mentioned therein pertains to the action to be taken by the convener of the meeting. The period of 14 days fixed therein is to be counted from the date of publication of notification of appointment of a convener and election of members of a newly constituted committee. That does not mean that period pertains to the period during which the meeting should be held. That is so clear because in a given case, for variety of reasons, the publication of notification of appointment of a convener and date of publication of the notification of elected members may turn out to be different. It, therefore, does not appear that the period of 14 days pertains to the limitation during which the meeting was to be held. That period certainly pertains to the act by the convener for fixing the meeting. Such a meeting fixed by him within the said period of fourteen days should be fixed after giving a notice of 48 hours. In this view, I am fortified by the ruling of Raghubar Dass and Anr v. The State of Punjab and Ors. 1984(1) AILLR 530. In that case their Lordships were considering the provisions of Section 25(3) of the Punjab

Municipal Act, 1911. It also provided that meeting should be convened within 14 days. While interpreting that provision, Their Lordships observed that period pertains to the act of calling a meeting. On this premise, their Lordships distinguished words "to call a meeting" and "to hold a meeting". Their Lordships were of the view that period mentioned in that section pertains to the period for taking action. In this case admittedly, the notice for holding meeting was issued on 16.11.1992, well within fourteen days from the date of notification on 3.11.1992 regarding appointment of a convener and election of members. The meeting was to take place on 19.11.1992. That was after 48 hours" notice. I therefore, find no substance in the argument that the holding of the meeting on 19.11.1992 was bad under the rules of the Punjab Municipal Election Rules, 1952.

6. This takes me to consider the question as to the category from amongst whom the members are to be co-opted. Sections 12-A, 12-B and 12-C of the Punjab Municipal Act, 1911, to the extent these are relevant for our proposes, may be quoted here for ready reference :-

"12-A. Co-option from amongst Balmikis, Churas and Bhangis - If no person belonging to the scheduled caste of Balmikis, Chura or Bhangi has been elected to a committee, the elected members of the committee shall co-opt in accordance with the provisions of Section 12-D one person belonging to the aforesaid caste, who is otherwise qualified to be elected, to be a member of such committee.

12-B. Co-option from amongst women - If no woman has been elected to a committee, the elected members of the committee shall co-opt in accordance with the provisions of Section 12-D, two women, who are otherwise qualified to be elected as members of such committee, and if one woman has been elected, the elected members shall co-opt one such woman.

12-C. Co-option from amongst backward classes other than Scheduled castes - If no person from amongst any of the backward classes comprising the castes, races or tribes or parts of, or groups within, castes or tribes specified in schedule II appended to the Act has been elected to a committee, the elected members of the committee shall co-opt in accordance with the provisions of Section 12-D one person belonging to any of the aforesaid classes, who is otherwise qualified to be elected, to be a member of such committee.

Provided that the State Government may, by notification, x x x x "

7. The proviso to these sections pertains to powers of the State Government to add or delete any of these members with which presently I am not concerned. It was argued that while selecting a woman member, as per Section 12-B, two women namely, Smt. Usha Rani and Smt. Nirmla Devi were co-opted. It was contended that Smt. Usha Rani belongs to "Jhinwar" community which is included in the category of backward class as mentioned in Schedule II of the Punjab Municipal Act. It is not disputed that she thus belongs to the backward class. On the premise of this factual position, the counsel for the petitioners

submitted that since the vacancy available for the backward class had already been filled in while co-opting two ladies members u/s 12-B, it was not open to the members to co-opt another members from the backward class u/s 12-C. I am not at all impressed by this argument. A proper reading of all these provisions clearly indicate that the members from these various communities as given in these three sections are to be co-opted if no person from amongst that category has been elected to a community. The emphasis is that it is to be found out whether there is member thus elected to the committee, who belongs to one of the categories given in the section under which these persons from that particular category is to be co-opted. The term "elected members to a committee" cannot be equated with the "co-opted members of the committee". That is so clear if one refers to Section 12 of the Punjab Municipal Act which states about the constitution of committee. It provides that the committee shall consists of - (a) such number of elected members as the State Government may prescribe in this behalf: (b) Co-opted members, if any: and (c) associate members, namely, every member of the Punjab Legislative Assembly representing the constituency in which the municipality or any part thereof is situate. It, therefore, clearly appears that in Chapter II, where all these provisions are incorporated, clearly make a distinction between a member elected to the committee and a member co-opted to the committee. Therefore while co-opting the members from any one of the categories mentioned in Section 12-A, 12-B and 12-C, it is to be found out whether a body of the elected members of the committee consists of a member responding any one of the categories mentioned in those sections. The counsel for the petitioners submitted that the co-option of a member to a committee is in the course of a complete process of an election and, therefore, if a co-opted member to one class happened to respond the requirement of members to be co-opted in another provision, the members of the committee should make a choice. In support of that contention, he brought my attention to the case of Raj Kumar Kath and Others Vs. The State of Punjab and Others, . In that case the facts are materially different from the facts in the present case. In that case there was already an elected woman member from the Scheduled Caste. Obviously, therefore, the question arose as to whether two women members can now be co-opted as per Section 12-B of the Act. Their Lordships were of the view that since elected member happens to respond categories of the members of Section 12-A as well as a Section 12-B of the said Act, it was not permissible to co-opt two ladies members now u/s 12 B, but only one lady member could be allowed. In my opinion, the position would be materially different when the elected members to the committee do not consist of | the categories mentioned in Section 12-A, 12-B and 12-C. ,

8. The next contention raised by the petitioner pertains to the compliance of Rule 5(2) of the Punjab Municipal Election Rules, 1952. It was contended that there , was no proper proposal of a candidate, duly seconded, for co-option as a member. That submission does not seem to be quite correct. In the written

statement filed by respondents 2 and 3, who are Sub Divisional Officer and Convener of the meeting, respectively, it is clearly stated that the name of co-opted member Rajinder Kumar was proposed by Inder Singh and seconded by Malkiat Singh. Similarly, the name of respondents 4, 5 and 6 was also proposed and seconded. This claim is further supported by Annexure R-1 in respect of respondent Fulbaz, Annexure R-2 in respect of respondent 5 Usha Rani, Annexure R-3 in respect of respondent 6 Nirmla Devi. Moreover, all these co-opted members have been thus co-opted unanimously as per resolution Annexure P-4. Resolution Annexure P-4 further indicates that except for the proposal in respect of the co-opted members (respondents 4 to 7) no other proposal was made. The proceedings of the meeting is signed by the Convener. In my opinion, therefore, there is no substance in the contention that there was no proper proposal in respect of candidate for co-option.

9. The next contention raised by the petitioner was that respondent Rajinder Kumar did not belong to the category of backward class, and, therefore, he was not entitled to be elected under that category. My attention was invited to Annexure P-2 which shows that Rajinder Kumar belongs to "Khatri" community. Annexure P-2 is signed by the Tehsildar on 19.11.1992. On the other hand, the respondents invited my attention at Annexure R-6 which is another certificate signed by the Tehsildar, Muktsar, and attested as a true copy on 14.7.1989, by Lecturer, Govt. College, Muktsar, which shows that the said Rajinder Kumar belongs to the backward class "Chhimba". It appears that after the election of the co-opted member was over on 19.11.1992, the caste certificate Annexure P-2 dated 19.11.1992 was issued on 20.11.1992. On the other hand, the caste certificate Annexure R-6, referred above, indicates that it was an old enough. Under these circumstances, it cannot be said that said Rajinder Kumar did not belong to the Backward Class. Certificate Annexure P-6 submitted by the said Rajinder Kumar appears to have been submitted before the convener, as indicated in para 8 of the written statement filed by him.

10. I, therefore, find no substance in both these writ petitions. Hence both the writ petitions are dismissed with costs.