
(2007) 04 P&H CK 0001

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12590 of 2005

Suman and others

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 03-04-2007

Acts Referred:

Citation : (2007) 3 RCR(Civil) 16

Hon'ble Judges : Vinod K.Sharma, J

Advocate : Mr. S.P. Jain, Sr. Advocate with Mr. Dheeraj Jain and Mr. Vijay Kumar Chaudhary, Advocates.For the Respondent Nos. 1 to 4, Ms. Mamta Singal Talwar, A.A.G., Haryana, Mr. P.K. Mutneja, Advocate, Mr. Balwinder Singh, Advocate., Advocates for appearing Parties

Judgement

Vinod K. Sharma, J.—The petitioners have invoked the powers of this Court under Articles 226/227 of the Constitution of India seeking a writ in the nature of certiorari for quashing the resolution dated 5th August, 2005 passed by 8 out of the 17 members of the Municipal Committee, Pinjore, being illegal in the eyes of law as well as to quash the impugned notification dated 8th August, 2005 vide which respondent No. 5Kuldeep Singh has been notified as President of the Municipal Committee, Pinjore and further sought a writ in the nature of mandamus directing respondent Nos. 1 to 4 to hold the election of the President and VicePresident of the Municipal Committee, Pinjore, afresh.

2. The facts of the case are not in dispute. The petitioners are elected members of Municipal Committee, Pinjore, District Panchkula. The last election to the Municipal Committee was held on 21st of March, 2004 and a meeting of the members was called on 12th April, 2004 for administering oath to the newly elected members. However, the provisions of Rule 70 of the Haryana Municipal Elections Rules, 1978 were violated as election of the President and the VicePresident was not held in the said meeting. Rule 70 of the Haryana Municipal Election Rules, 1978 (hereinafter referred to as the `rules") reads as under :

"70. Oath of allegiance and election of President etc. (1) The Deputy

Commissioner or any gazetted officer appointed by him in this behalf shall, within a period of (Thirty days) of the publication of the notification of the names of the members elected to a committee convene the first meeting of the newly constituted committee at fortyeight hours notice to be delivered at their ordinary place of residence. The notice shall clearly state that the oath of allegiance will be administered to the members present and that the election of President and VicePresident shall be held in the meeting. The convener shall administer the oaths to the members and shall preside over the meeting till the election of the President and the VicePresident. Such meeting shall be deemed to be a validly convened meeting of the Committee. Notwithstanding anything contained in any byelaws, made under the provisions of Section 31 of the Act, the administration of the oath of allegiance and the election of the President and VicePresident shall be recorded as part of the proceedings in the minutes of the meeting.

(2) The oath of allegiance shall be administered to a member who was not present at the meeting under subrule (1) or to a member elected or nominated to fill a casual vacancy subsequently by the Chairman of the meeting at which such member appears to take such oath.

(3) The terms of office of the President shall be for five years or the residue of the terms of his office as a member whichever is less. The president shall be elected from amongst the members of the committee.

(4) The office of the presidents in the municipalities shall be filled up from amongst the members belonging to the general category, Scheduled Castes, Backward Classes and women by rotation which will be determined in the manner as detailed below :

Provided that the numbers of offices of the president reserved for the Scheduled Castes and Backward Classes in the State shall bear as may be the same proportion to the total number of such offices of the municipalities as the population of the Scheduled Castes and Backward Classes in the State bears to the total population of the State :

Provided further that not less than one third of the total number of offices of the president in the municipalities shall be reserved for women including the offices reserved for Schedule Casts and Backward Class women. The reservation of offices for women shall rotate to different municipalities which will be determined by draw of lots, by a committee consisting of the State Election Commissioner, Haryana and Deputy Commissioners of the Districts concerned or their nominee. If women of the reserved category are not available, then the office of the President shall be filled up from the male members of the said reserved category. In case a woman of the reserved category is elected subsequently, then the office of the President shall be deemed to have been vacated and the elected woman shall be elected as President in accordance with the provisions of these rules :

Provided further that the number of offices of the President for Scheduled Castes

and Backward Classes shall be determined on basis of their population and shall rotate to different municipalities firstly having largest population of Backward Classes and they rotate in the subsequent terms of offices of the municipalities having their next largest population and so on. In case percentage of population of two Municipal Committees or Municipal Councils as regard Backward Class and Scheduled Castes in the same reservation will be determined by draw of lots to be conducted by a committee consisting of State Election Commissioner, Haryana and Deputy Commissioner of district concerned or his nominee :

Provided further that in case of office of the Municipal Council reserved for the Backward Classes, the President shall be elected from amongst the members belonging to the Backward Classes and in case of Municipal Committee, the member of Backward Class shall be deemed to be elected as President of the Committee reserved for the Backward Classes."

3. The meeting of the Municipal Committee was thereafter called on 24th February, 2005 for electing President and VicePresident. In the said meeting only 8 out of 17 members came present. However, the SubDivisional Officer (Civil) Kalka, on the presumption that quorum for the meeting was 50 per cent of the elected members, the same was not complete as 9 members were required to attend the said meeting and accordingly the said meeting was adjourned/postponed. Though the meeting was treated to be a special meeting, while adjourning, no date was fixed as required by proviso to Section 27 of the Haryana Municipal Act, 1973 (hereinafter referred to as the 'Act'). Section 27 of the Act reads as under :

"27. Quorum (1) The quorum necessary for the transaction of business at a special meeting of a committee shall be onehalf of the number of the members of the committee actually serving at the time, but shall not be less than three.

(2) The quorum necessary for the transaction of business at any ordinary meeting of a committee shall be such number or proportion of the members of the committee as may, from time to time, be fixed by the byelaws, but shall not be less than three :

Provided that, if at any ordinary or special meeting of a committee a quorum is not present, the chairman shall adjourn the meeting to such other day as he may think fit, and the business which would have been brought before, and transacted at, the adjourned meeting, whether there be a quorum present there or not."

Thereafter on 2nd August, 2005, a notice was issued for holding election of President and VicePresident on 5th August, 2005. It was made clear in the said notice that a special meeting was to be held under Section 70(1)B of the Rules. The meeting on 5th August, 2005 was held under the Chairmanship of SubDivisional Officer (C) Kalka, wherein eight members were present. In the said meeting, Shri Kuldeep Singh was elected as President while Smt. Krishna Lakra, was elected as VicePresident. The election was unopposed.

4. On 8th of August, 2005 in view of the powers conferred under Sections 1 and 2 of the Act, a notification was issued with regard to election of Kuldip Singh as President of the Municipal Committee, Pinjore, Distt. Panchkula.

5. It is the stand of the respondents that the petitioners chose to be absent from the meeting being in minority. Their absence, therefore, amounted to nonopposition to the election of the President and the VicePresident.

6. Shri S.P. Jain, Senior Advocate, appearing with Sarvshri Dheeraj Jain and Vijay Kumar Chaudhary, Advocates, has challenged the election of the President and VicePresident primarily on the ground that on 5th of August, 2005 when the special meeting was held, the quorum was not complete. As the said meeting was not an adjourned meeting because on 21st of February, 2005 when the meeting was postponed/adjourned, no date and time was fixed for holding election as provided in proviso to Section 27 of the Act, the meeting being a fresh special meeting, the quorum was required to be seen afresh and, therefore, the election held on the said date was void. In support of this connection, learned senior counsel for the petitioners placed reliance on the judgment of the Hon"ble Supreme Court in the case of Chanderkant Khaair v. Dr. Shantaram Kale and other, AIR 1988 SC 1665. Para 17 of the judgment on which the reliance was placed, reads as under :

"A properly covening meeting cannot be postponed. The proper course to adopt is to hold the meeting as originally intended and then and there adjourn it to a more suitable date. If this course be not adopted, members will be entitled to ignore the notice of postponement, and if, sufficient to form a quorum, hold the meeting as originally convened and validly transact the business thereat. Even if the relevant rules do not give the Chairman power to adjourn the meeting, he may do so in the event of disorder. Such an adjournment must be for no longer than the Chairman considers necessary and the Chairman must, so far as possible, communicate his decision to those present."

The learned senior counsel for the petitioners placed reliance on another judgment of the Hon"ble Supreme Court in the case of Gurdeep Singh and others v. State of Punjab and others, 2000(2) RCR(Civil) 715 : 2000(2) PLR 667 to contend that as on 5th of August, 2005, the quorum was not complete, it was incumbent on the part of the SubDivisional Officer (C), Kalka to have adjourned the meeting to some other date in terms of proviso to Section 27 of the Act. Learned senior counsel for the petitioners also placed reliance on a Division Bench judgment of this Court in the case of Ashok Kumar Gupta v. State of Punjab, 2001(4) RCR(Civil) 223 to contend that the meeting can only be held in the event, the quorum is complete. However, in the absence of quorum, it is incumbent on the Chairman of the meeting to postpone the same. Learned senior counsel further placed reliance on a Division Bench judgment of this Court in the case of Nachhattar Singh Saggu v. State of Punjab, 1996(1) RRR 64 to contend that the allegation of the respondents that the petitioners were in minority is patently wrong as the petitioners were still prepared to face the

election at this stage and, therefore, the election of the President and the VicePresident cannot be sustained for want of quorum.

7. Learned senior counsel for the petitioners thereafter placed reliance on the judgment of this Court in the case of Surjit Mehta, President, Municipal Committee, Yamuna Nagar v. State of Haryana, 1992 RRR 366 to contend that for election of the President, only simple majority of the members of the committee is required as prescribed under Section 18 of the Act whereas for 'No Confidence Motion' 2/3rd members of the committee are required to vote for. Therefore, the case of petitioners is that in case respondent Nos. 5 and 6 are in majority, they can be reelected in a next meeting to be called for the said purpose.

8. The sum and substance of arguments of the learned senior counsel for the petitioners is that in a special meeting which is called, no proceedings can be held if the quorum is not complete. In that situation, the Chairman of the meeting is bound to adjourn the said meeting for a specific date and time. As in the present case, no date and time was fixed when on earlier occasion the meeting was postponed/adjourned, the subsequent notice was also for a special meeting and it was incumbent on the Chairman of the meeting to have adjourned it for a specific date and time.

9. Learned senior counsel for the petitioners also contended that objection with regard to the maintainability of the writ petition for want of alternative remedy of election petition cannot be sustained in view of the law laid down by a Division Bench of this Court in the case of Daya Shankar v. State of Haryana, 2003(3) RCR(Civil) 1 : 2003(3) PLR 33 wherein this court has been pleased to lay down that though an election petition is provided but the existence of such a remedy is not an absolute bar to the exercise of jurisdiction under Article 226 of the Constitution, particularly when the election of respondent No. 6 was patently contrary to the notification issued by Governor of Haryana reserving the post of Mayor for a backward class candidate. It was held in that case that as respondent No. 6 was not from the backward class, the very action of allowing her to contest the election was illegal. The contention of the learned senior counsel for the petitioners is that as in the present case the election was held when the quorum was not complete, therefore, the petitioners have a right to invoke the writ jurisdiction of this Court as the facts are not in dispute. He also placed reliance on the judgment of this Court in the case of Sat Pal (Ferozepur City) v. State of Punjab, 2005(3) RCR(Civil) 178 : 2005(2) PLR 576, wherein this Court was pleased to interfere in the election matter without relegating the petitioners therein to the remedy of election petition. The learned senior counsel for the petitioners also made reference to para 13 of the judgment in Nachhattar Singh Saggu's case (supra) to contend that where there is no validly convened meeting, the question of filing of election petition does not arise as in that situation it has to be held that no valid election of the officebearers was held.

10. Lastly, the learned senior counsel for the petitioners placed reliance on a Full

Bench judgment of this Court in the case of Lal Chand v. State of Haryana and others, 1998(3) RCR(Civil) 255 : 1998(2) PLR 640 to contend that bar to exercise jurisdiction would extend only to the challenge which is based on the grounds on which the election could be challenged. However, when there is inherent wrong, then the remedy of writ petition is always available to the petitioners.

11. Mr. P.K. Mutneja, learned counsel appearing on behalf of respondent No. 5 defended the resolution as well as the notification on the plea that the stand taken by the petitioners that the meeting in which elections were held was bad for want of quorum is totally misconceived. The contention of the learned counsel for respondent No. 5 was that Section 27 of the Act talks of a quorum necessary for transaction of the business at a special meeting. The election of the President and VicePresident cannot be said to be a transaction of the business and thus provisions of Section 27 of the Act will not apply to the present case. The contention of the learned counsel for respondent No. 5 was that the election of the President and VicePresident is governed by the provisions of the Rules, wherein no quorum is prescribed. He also referred to Article 243U of the Constitution of India to contend that the tenure of the Municipal Committee is five years from the date appointed for its first meeting. He further referred to Article 243W dealing with the powers, authority and responsibilities of Municipalities etc. However, his main stress of the argument was that under Article 243ZA, the election to the Municipalities is to be conducted under the superintendence, direction and control of the State Election Commission.

12. Finally, learned counsel for respondent No. 5 contended that under Article 243ZG of the Constitution, there is bar to the interference by the Courts in the electoral matters. Article 243ZG(b) reads as under :

"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."

13. Learned counsel for respondent No. 5 further submitted that in view of constitutional mandate and in exercise of powers conferred under Section 265 of the Haryana Municipal Act, 1973, the Haryana Municipal Elections Rules have been framed to deal with all election matters. He made reference to Rule 70 of the said Rules to contend that it was incumbent upon the SubDivisional Officer (Civil) Kalka, to have conducted the election of President and Vice President on the very first meeting which he failed to do in violation of the said rules and, therefore, the said mistake was required to be corrected by calling a meeting subsequently for holding of election.

14. It was also the case of respondent No. 5 that under Rule 70 of the Rules, it is only members, who are present, can participate in the meeting and no quorum is prescribed. The contention of the learned counsel for respondent No. 5, therefore, was that Section 27 of the Act would not be applicable to a meeting

held for holding of election of President and VicePresident as in the said meeting no business was to be conducted. Learned counsel in support of this contention also referred to Section 3A of the Act to contend that the superintendence, direction and control of the preparation of electoral rolls and the conduct of all elections to the Municipalities is to vest in the State Commission constituted under the Act. He further referred to Section 3A(iv) of the Act to contend that election has to be conducted in the manner as prescribed. Thus, according to him, the election of President and Vice President was required to be held in terms of Rule 70 of the Rules and, therefore, the petition is totally misconceived.

15. Learned counsel for respondent No. 5 thereafter contended that the present writ petition regarding the dispute relating to election is not competent. In support of this contention, he placed reliance on the judgment of the Hon''ble Supreme Court in the case of K.K. Shrivastava etc. v. Bhupendra Kumar Jain and others, AIR 1977 SC 1703. He further made reference to the judgment of the Hon''ble Supreme Court in the case of Gujarat University v. N.U. Rajguru and others, AIR 1988 SC 66 to contend that when mandatory provisions to challenge the election are made, then writ petition would not be competent in view of alternative remedy being available to the party.

16. Learned counsel for respondent No. 5 placed reliance on a Full Bench judgment of this Court in the case of Jagraj Singh v. State of Punjab, 1986 RRR 162 to challenge the maintainability of the writ petition in view of the availability of alternative remedy of election petition. He then placed reliance on the judgment of the Hon''ble Supreme Court in the case of Umesh Shivappa Ambi and others v. Angadi Shekara Basappa and another, 1988(4) (1999 ?) SCC 529 to contend that once election is over, the challenge can only be made by preferring an election petition and in view of the availability of efficacious remedy, the High Court is not to interfere in exercise of its writ jurisdiction.

17. Learned counsel for respondent No. 5 also placed reliance on the judgment of the Hon''ble Supreme Court in the case of Harnek Singh v. Charanjit Singh and others, 2005(4) RCR(Civil) 482 : 2005(8) SCC 383 to contend that writ petition would not be competent to challenge the election to the Municipal Committee. He placed reliance on another judgment of the Hon''ble Supreme Court in the case of Avtar Singh Hit v. Delhi Sikh Gurdwara Management Committee and others, 2006(8) SCC 487 to contend that proper remedy for the aggrieved person against the election is to file a petition before the Tribunal and the writ petition, therefore, would not be competent. The contention of the learned counsel for respondent No. 5 was that there was no exceptional or extraordinary circumstances with the petitioners for not availing the said remedy.

18. Lastly, the learned counsel for respondent No. 5 placed reliance on a Division Bench judgment of this Court in the case of Babu Lal Aggarwal v. Commissioner and Secretary to Govt. of Haryana, Local Bodies Department, 1994(2) RRR 165 (P&H) to contend that holding of election does not relate to transaction of business of the Municipal Committee and, therefore, no quorum is prescribed.

This Court in the case of Babu Lal (supra) was pleased to observe that holding of meeting of `No Confidence Motion" does not amount to the business of the Municipal Committee and, therefore, no quorum is prescribed. The meeting held for passing `No Confidence Motion" is to be treated as an extra ordinary meeting which is governed by the Rules of passing `No Confidence Motion".

19. Learned counsel for respondent No. 5 also referred to a Division Bench judgment of this Court in the case of Tarun Bhandari v. State of Haryana and others, 2006(2) RCR(Civil) 817 : 2006(2) PLR 719 and a judgment of the Hon"ble Supreme Court in the case of A.P. Foods v. S. Samuel and others, 2006(3) SCT 483 : 2006(5) SCC 469 to contend that the writ petition cannot be entertained when alternative remedy is available.

20. The learned counsel appearing for the State as well as respondent No. 6 argued on the same lines as argued by Shri P.K. Mutneja, learned counsel for respondent No. 5. In addition to the arguments referred to above, Mr. Balwinder Singh, learned counsel appearing on behalf of respondent No. 6 raised a plea that the petitioners having not participated in the election, have no locus standi to file the present writ petition as they are deemed to have abandoned their rights.

21. Learned counsel for respondent No. 6 further contended that the meeting held on 21st February, 2005 having been adjourned/postponed, in the subsequent meeting, the quorum, as envisaged, was not required and, therefore, the election was validly held.

22. In reply to the arguments raised by the learned counsel for the respondents, Mr. S.P. Jain, learned senior counsel for the petitioners contended that the reading of notice (Annexure P6) shows that it was a special meeting and, therefore, the quorum, as required under Section 27 of the Act, was to be there before any such meeting was held. Learned counsel for the petitioners by placing reliance on the judgments in the case of Chandrakant Khaire v. Shantaram Kale and others, AIR 1988 SC 1665; Gurdeep Singh and others v. State of Punjab and others, 2000(2) PLR 667 (supra) as also in the case of Ashok Kumar Gupta v. State of Punjab, 2001(4) RCR(Civil) 223 (supra) contended that the election of President and VicePresident was to be held by way of a special meeting as envisaged under Section 27 of the Act as in the cases referred to above, the elections were set aside for want of quorum.

23. I have considered the arguments of the learned counsel for the parties and find that the question to be decided is whether the holding of election of President and VicePresident can be said to be the business of the Municipal Committee so as to attract the provisions of the Act regarding holding of special and ordinary meetings. The word `business" is normally understood in a very broad sense and is usually defined to cover any range of human activity that is carried on a regular basis by a person or association. Accordingly, the activities of professionals such as Doctors, Architects or Lawyers also come under the

broader understanding of the terms `business". Similarly, the functions that are supposed to be discharged by the Government are also to be broadly treated as business of the Government. Going by this understanding, the term `business" even though very broadly understood to cover a wide range of activities, has a common qualitative thread running through it i.e. it must necessarily be an activity that is performed by a person involved in relation to others who avail of the goods or services so produced from the activities. In this view of the matter, the business of the Municipal Committee would comprise of the functions which it discharges as per the Act, such as laying of road, drainage pipes, and construction of buildings etc. or performs other legislative functions including quasi judicial functions. In my view, election of President and VicePresident of the Municipal Committee merely facilitates the discharge of the functions of the Committee and, therefore, cannot be considered to be the business of the Committee. Thus the election merely helps in the constitution of the Committee that ultimately conducts the business of the Municipal Committee. It is for this reason that in some Acts like Co operative Societies Act, the term `business" and the `constitution" have been separately used. Thus, it has to be noticed that the election of the President and VicePresident was required to be conducted under the rules which do not prescribe any quorum and, therefore, the election of the President and the VicePresident cannot be challenged for want of quorum, as is sought to be contended by the petitioners. So far as the maintainability of the writ petition is concerned, it cannot be disputed that this Court would not normally exercise its jurisdiction when an alternative remedy of filing of an election petition is available. However in the facts and circumstances of a particular case, especially when there is no dispute on facts and allegations of patent irregularities are made, which, prima facie make out a point, then the exercise of jurisdiction is not barred and this Court, in the given circumstances, can entertain the writ petition directly. However, as the present writ petition is being dismissed on merits, the question as to whether the petitioners ought to be relegated to the alternate remedy of election petition need not be decided.

For the reasons stated above, no ground is made out to interfere with the election of the President and the VicePresident. This writ petition is, accordingly, dismissed with no order as to costs.