
(1972) 08 P&H CK 0037
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2382 of 1972

Suraj Parkash

APPELLANT

Vs

The State of Punjab and others

RESPONDENT

Date of Decision : 09-08-1972

Acts Referred:

Punjab Municipal Act, 1911 — Section 24(1)

Citation : (1972) 08 P&H CK 0037

Hon'ble Judges : M.R. Sharma, J

Bench : Single Bench

Advocate : D.N. Awasthy with Mr. S.C. Goyal, for the Appellant; R.K. Chhibbar, for Respondents 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

M.R. Sharma, J.—The facts giving rise to this petition may briefly be stated as follows. The elections to the Municipal Committee Batala, were held and the petitioner was declared elected unopposed from Ward No. 5-A on May 25, 1972. In accordance with section 24(1) of the Punjab Municipal Act (hereinafter called the Act), the name of the petitioner and other Municipal Commissioners were published in the official gazette dated July 10, 1972. It is stated that though the name of the petitioner was correctly mentioned in the notification, yet the name of his father and the locality in which he had been residing were incorrectly given. The petitioner sent a telegram to the Secretary, Local Government, Punjab, Chandigarh, on July 16, 1972, requesting him to rectify this mistake. Because of this telegram, the Director, Local Bodies, directed the Deputy Commissioner, Gurdaspur, respondent No. 2, to supply the correct particulars of the petitioner. It is alleged that respondent No. 2 deliberately withheld this information with a mala fide purpose. Initially, the General Assistant to the Deputy Commissioner was appointed as the convener to hold the first meeting of the newly elected Committee for the purpose of administering oath to the newly elected members as also for co-opting members u/s 12-A, 12-B and 12-C of the

Punjab Municipal (Amendment) Ordinance, 1972 (hereinafter called "the Ordinance"). The General Assistant, Shri Bhupinder Singh was removed and Shri S.K. Khosla was deputed to act as the convener for the aforementioned purpose. The first meeting of the Committee was held on July 24, 1972, at 4 P.M. in the Municipal Town Hall, Batala, with respondent No. 3 Shri S.K. Khosla in the chair as the convener. The Municipal Committee, Batala, consists of 21 elected members. According to the petitioner, who alleges himself to be a member of the Jan Sangh group, 11 members of the Committee were elected on the tickets of this party and only 10 members were elected on the tickets of the Congress party (Ruling).

2. The Punjab Municipal (Amendment) Ordinance, 1972, was brought on the statute book by the Governor of Punjab for the solitary purpose of giving representation to backward classes and women folk on the municipal committees. Under the provisions of this Ordinance, the elected members sit together and co-opt lady members, members belonging to the scheduled castes or backward classes, as the case may be. Obviously, the party having majority of elected members can further swell its majority by making co-options.

3. The petitioner alleges that the party position, which emerged after the elections to the Municipal Committee, Batala, was not quite palatable to the Congress party (Ruling) in the Municipal Committee. For this reason, they raised objections in the meeting that the petitioner could not be administered the oath of office because of the wrong description in the notification of his particulars regarding parentage and the place of residence. The Petitioner filed an affidavit before respondent No. 3 to the effect that he was the same person who had been elected as the member of the Committee. Indeed, respondent 3 had admitted that to his personal knowledge the petitioner was the same person who had been duly elected as the member of the Committee. In spite of this fact, respondent No. 3 declined to administer oath to the petitioner.

4. After administering the oath of office to the other members, the convener took up the next item on the agenda, i. e. the co-option of the members. u/s 12-A of the ordinance, if no person belonging to the scheduled castes of Balmikis, Churas or Bhangis is elected to a committee, the elected members of the committee have to co-opt out member belonging to this class. Incidentally, the petitioner belongs to the Balmiki class. The question arose whether a member of the scheduled castes should be co-opted in this meeting or not. The convener decided that since the petitioner a Balmiki had been duly elected as a member, it was not necessary for the Committee to co-opt a member of the scheduled castes u/s 12-A of the Ordinance. The next item on the agenda was the co-option of the lady members of the Committee u/s 12-B of the Ordinance. The names of the women candidates were duly proposed and seconded and a secret ballot was held. The result of the ballot was that three women candidates secured 10 votes each and the 4th woman candidate secured only 9 votes because in her case one vote was rejected. In view of the tie of the votes

secured by the first three candidates, respondent No. 3 announced that the Committee had failed to co-opt women members u/s 12-B of the Ordinance, with the result that the Government would exercise its powers u/s 12-B of the Ordinance and nominate two lady members of its own choice. The next item on the agenda was the co-option of a member of the backward classes u/s 12-C of the Ordinance but at this stage the meeting was adjourned without making this co-option.

5. According to the petitioner the meeting held on July 24, 1972, ended at 7-30 P. M., respondent No. 3 submitted his report to the Government on July 25, 1972, and on the same day the State Government notified the names of respondents Nos. 4 to 6 as co-opted members of the Municipal Committee and notified their names in the official gazette on the same day.

6. This petition came up for hearing before Mahajan and Narula, JJ., on July 27, 1972, when their Lordships were pleased to issue notice, stay election of the president and order that the petition be heard by a Single Bench on August 1, 1972. This order was telegraphically communicated at the petitioner's expense. The returns in this case have been filed by Shri S. K. Khosla respondent No. 3, the Deputy Commissioner, Gurdaspur, respondent No. 2, and the Assistant Secretary to Government, Punjab, Local Government Department. Respondent No. 3 has stated that--

The contention of the petitioner that the errors occurring in the notification do not affect his rights as a member of the Municipal Committee is not legally tenable because the publication of defective notification in the gazette debarred him from taking oath and unless oath is administered to an elected person, he cannot be allowed to participate in the proceedings of the first meeting held on 24th July 1972 of the Municipal Committee.

7. He has admitted that to his personal knowledge, the petitioner had been elected as a Municipal Commissioner of the Municipal Committee, Batala, but has stated that his personal knowledge was meaningless in the face of the gazette notification Respondent No. 2 the Deputy Commissioner, in his affidavit has stated that he had directed the Sub Divisional Officer, Batala, to submit the required information direct to the Government. He has also stated that Shri Bhupinder Singh, General Assistant, was required to be present at the head quarters because of the impending visit of the Governor and only for this reason respondent No. 3 was appointed as the convener. The Assistant Secretary to the Government, Punjab, Local Government Department, in his affidavit has stated that the particulars given by a candidate in his nomination papers became final and the State Government was not bound to correct the particulars at the petitioner's instance. There was no lapse on the part of the Government. It was also stated that in the case of a tie, the procedure for drawing lots did not apply in the matter of co-option.

8. It has now to be seen whether the errors in the description of the petitioner's

parentage and his place of residence in the official notification were material errors or not. Further, whether the petitioner was entitled to press the Government to give correct particulars relating to the gazette notification of his name etc The learned counsel for the State submitted that though the petitioner gave his correct name and the parentage in all the nomination papers filed by him yet in one of such papers he gave his place of residence as Mohalla Daula Nangal instead of Mohalla Balmiki, Nehru Gate, Batala. The State Government in this situation was not bound to accede to his request and to re-notify his name in the official gazette. It is, however, conceded by him that in the absence of the re notification of the name of the petitioner, he could not act as a member of the Committee. In my opinion, there is an obvious fallacy in the view canvassed by the learned counsel. A person who secures the largest number of votes in an election has normally the right to be declared as the successful candidate. The notification of his name in the official gazette is meant to convey the information to the general public of the fact that he stood elected The State Government by refusing to re-notify the name of a successful candidate cannot debar him from exercising his statutory rights as a Municipal Commissioner.

9. Rule 8-B of the Municipal Election Rules (hereinafter called "the Rules") lays down the disqualifications for a person, to be registered in a roll. A person who is not the citizen of India and is of unsound mind or who has been disqualified for voting under any law relating to corrupt and illegal practices in connection with municipal elections cannot be registered as a voter. It is right to say that if a municipal commissioner incurs such disqualifications after his election that would constitute a valid ground for removing him from membership Again, rule 53 of the Rules contemplates the filing of an election petition by a person who was a candidate at the election or by not less than five electors in a ward or a constituency. This election petition has to be tried by a Deputy Commissioner and the election can be declared void under rule 63 on one of the grounds mentioned therein. Under rule 68 of the Rules, the State Government is also entitled to hold an enquiry into the conduct of any election if there is reason, to suspect that a corrupt practice or material irregularity has been committed in the course of the said election. In short, whether it is an election petition or it is an enquiry by the Government under rule 68, the rights of an elected member cannot be set at naught without affording him a proper hearing. Again the action has to be taken against the member on the basis of statutory grounds only. What the Government cannot do directly, it cannot be allowed to do indirectly by merely refraining from notifying the name of an elected person The language of section 24 of the Act also shows that the Government is bound to notify the name of an elected person in the official gazette.

10. If some mistake or error creeps into the notification, the Government will be equally duty-bound to rectify that error or mistake. The learned counsel for the State has brought to my notice the nomination forms submitted by the petitioner. In some of the nomination forms he has mentioned his place of residence as Mohalla Daula Nangal while in the other forms he has mentioned it as Mohalla

Balmiki, Nehru Gate, Batala, but in all these forms the parentage of the petitioner has been correctly mentioned. The petitioner has been described as Shri Suraj Parkash son of Shri Beni Ram. In the gazette notification instead of Shri Beni Ram, Dhani Ram has been mentioned. Even if the petitioner was deemed to be at fault by making a wrong mention of his place of residence, it cannot be said that the entire blame for the errors appearing in the notification lay on his shoulders. It is somewhat unfortunate that in spite of the telegrams sent by him his parentage was not correctly notified in the official gazette. It is conceded by the learned counsel for the State that any person who is registered as a voter in any of the wards in the Municipal Committee could seek election from another ward. In this situation, wrong mention of the place of residence by the petitioner in his nomination papers loses all significance. It is the settled law that if the identity of a voter can be properly established by holding a summary enquiry on the spot, he should not be denied his right to cast vote even though there are some discrepancies regarding his name in the voters' list. In my opinion, this principle equally applies to the particulars of a member mentioned in the gazette notification. It is admitted by respondent No. 3 that to his personal knowledge the petitioner was the same person who had been elected to the Committee. In that situation, he was bound to ignore the errors occurring in the gazette notification and proceed to administer oath of office to the petitioner.

11. The next question is whether the nomination of respondents Nos. 4 to 6 made by respondent No. 1 is in order or not. It has already been noticed that respondent No. 3 was not justified in refusing to administer oath of office to the petitioner. Because of this lapse on his part, the petitioner could not participate in the process of co-option. It was not disputed that the Jan Sangh group had 10 members excluding the petitioner. Under these circumstances, the exclusion of the petitioner from the meeting held on July 24, 1972, alone would render the proceedings of that day illegal. However, the women candidates could not be elected because, as alleged in the petition, three of them got ten votes each. This was regarded as failure on the part of the Committee to elect women members. When this matter was reported to the Government, it exercised powers u/s 12-E of the Ordinance and nominated respondents 4 and 5 who, according to the petitioner, had been set up by the ruling Congress group as candidates at the time of co-option. In my opinion it was not open to the Government to do so. The co-option of members as envisaged by the Ordinance is nothing other than the election of members by the electoral college consisting of elected members. Under rule 40(c) of the Rules, in the event of a tie the matter is to be decided between the candidates having secured equal number of votes by drawing a lot. The drawing of lots is as much a process of the elections as the casting of vote by a voter is, whether that voter participates in the direct election or exercises his right as a member of the electoral college. In my considered opinion, respondent No. 3 was not justified in reporting to the Government that the Committee had failed to co-opt lady members. When he found a tie, he should have drawn lots between the candidates who had obtained

equal number of votes. The nomination of respondents 4 and 5 is, therefore, set aside.

12. Regarding respondent No. 6, it may be mentioned that the members present in the meeting held on July 24, 1972, themselves did not proceed with the co-option because some of the members indulged in acts which bordered on rowdyism. For this reason, the meeting had to be adjourned. These were the circumstances under which it could probably be said that the Committee failed to make a co-option of the member of the backward classes and it was open to the Government to exercise its powers u/s 12-E of the Ordinance, but since the petitioner had been wrongfully disallowed to participate in the meeting and the party to which the petitioner belonged did hold a majority, I see no justification in upholding the nomination of respondent No. 6 made by the State Government.

13. For the reasons mentioned above, I allow this petition and direct respondent No. 2 to take immediate steps to convene the first meeting of the Committee afresh for holding the co-option of members in accordance with law. The petitioner will have his costs from respondent No. 1 which are assessed at Rs. 350/-.