
(2015) 04 P&H CK 0281

In the Punjab And Haryana At Chandigarh

Case No : LPA Nos. 1863 and 2116 of 2014 (O&M)

Sushila Rani

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 08-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Haryana Municipal Act, 1973 — Section 24, 24(2), 24(3), 25, 26

Citation : (2015) 04 P&H CK 0281

Hon'ble Judges : Satish Kumar Mittal, J; Harinder Singh Sidhu, J

Bench : Division Bench

Advocate : Naresh Singh Shekhawat, for the Appellant; Sandeep Moudgil, A.A.G, Advocates for the Respondent

Final Decision : Allowed

Judgement

Satish Kumar Mittal, J.

1. This judgment shall dispose of LPA Nos. 1863 and 2116 of 2014, both filed by Smt. Sushila Rani, who was elected as Member of Municipal Committee, Kalayat from Ward No. 9, challenging the common order dated 23.09.2014 passed by the learned Single Judge, whereby two separate writ petitions, one (CWP No. 20916 of 2013) filed by Baldev Krishani Mittal (respondent No. 7 in LPA No. 1863 of 2014), a defeated candidate from Ward No. 9; and the other (CWP No. 22358 of 2013) filed by Birma Devi (respondent No. 7 in LPA No. 2116 of 2014), an elected candidate from Ward No. 8, have been allowed, and the election of the appellant as a member of Municipal Committee, Kalayat from Ward No. 9 has been declared invalid on the ground that she had not validly taken oath of office within a period of three months of the date of notification of her election as a member of Municipal Committee, Kalayat.

2. Though there is delay of 58 days in filing LPA No. 2116 of 2014 and the appellant has filed an application (CM No. 4440-LPA of 2014) for condoning the delay, yet we have heard learned counsel for the parties on merits and have

gone through the order passed by the learned Single Judge.

3. The brief facts of the case are that elections to 13 wards of Municipal Committee, Kalayat, were held on 20.02.2013. The appellant contested the election from ward No. 9. In that election, she defeated Baldev Krishan Mittal (respondent No. 7 in LPA No. 1863 of 2014). Birma Devi (respondent No. 7 in LPA No. 2116 of 2014) was declared elected from Ward No. 8.

4. On 04.03.2013, names of all the elected members were notified vide notification (Annexure P-1) issued under Section 24(2) of the Haryana Municipal Act, 1973 (hereinafter referred to as "the Act"). After issuance of the said notification, Deputy Commissioner, Kaithal, appointed Sub-Divisional Officer (Civil), Kaithal, to convene the first meeting of the newly elected members of the Municipal Committee, Kalayat, for administering the oath of allegiance to the newly elected members; and to elect the President of the Municipal Committee. The said meeting was convened on 29.03.2013 at 11.00 AM in the office of Municipal Council, Kalayat, under Rule 70 of the Haryana Municipal Elections Rules, 1978 (hereinafter referred to as "the Rules"). In the meeting, out of 13 elected members, 8 members came present. They were administered oath of allegiance by the SDO (Civil), who was chairing the said meeting. No election to the post of President and Vice-President of the Municipal Committee was held. On that day, the appellant did not come present in the meeting, therefore, no oath could be administered to her. Thereafter, while issuing notices dated 26.04.2013 to the remaining 5 members, another meeting under Rule 70 of the Rules was fixed for 02.05.2013. On that day, 4 members came present in the meeting and they were administered oath of allegiance by the SDO (Civil), who was presiding over the said meeting. This time also, the appellant did not come present and she could not be administered oath. In this meeting also, election to the post of President and Vice-President of the Municipal Committee was not held.

5. Thereafter, no meeting was convened by the SDO (Civil) for administering oath to the appellant, when she could have been administered oath of allegiance within a period of three months of the date of notification of her election, i.e. upto 03.06.2013, as per sub-section (3) of Section 24 of the Act.

6. It is the case of the appellant that on 03.06.2013, she visited the office of the SDO (Civil) to take oath of allegiance. It is the further case of the appellant that when the SDO (Civil) did not take care of her request, she moved an application (Annexure R-2) on 13.06.2013 before him. On that application, the SDO (Civil) vide letter dated 14.06.2013 (Annexure R-3) sought clarification from the Deputy Commissioner, Kaithal, with regard to request of the appellant. The Deputy Commissioner, vide letter dated 26.06.2013 (Annexure R-4) asked the SDO (Civil) to proceed in accordance with Rule 70(1) of the Rules. Thereafter, the SDO (Civil) fixed meeting for 30.07.2013 for the purpose of administering oath of allegiance to the appellant. Accordingly, on that date, the meeting was held and the appellant was administered the oath of allegiance.

7. After more than one and half months of administering oath of allegiance to the appellant, Baldev Krishan Mittal (a defeated candidate from ward No. 9) filed CWP No. 20916 of 2013 for declaring the election of the appellant as member of Municipal Committee, Kalayat, from ward No. 9, as invalid by virtue of Section 24(3) of the Act, alleging that she did not take oath within the stipulated period of three months of the date of notification of her election, i.e. on or before 03.06.2013, and the oath of allegiance administered to her subsequently on 30.07.2013 does not validate her election as member of the Municipal Committee, which is deemed to be invalid. A similar writ petition (CWP No. 22358 of 2013) was also filed by Birma Devi (an elected candidate from Ward No. 8).

8. Vide impugned order dated 23.09.2014, the learned Single allowed both the writ petitions, and election of the appellant as member of Municipal Committee, Kalayat, from Ward No. 9, was declared as invalid, while holding that the appellant has "omitted" to take the oath of allegiance within the stipulated period of three months of the date of notification of her election, therefore, as per Section 24(3) of the Act, her election as member of the Municipal Committee shall be deemed to be invalid. The learned Single Judge held that the appellant was given two opportunities to take oath in two meetings held on 29.03.2013 and 02.05.2013, but in both these meetings, she did not turn up to take oath. Regarding the meeting held on 30.07.2013, where the oath was administered to the appellant, it was held that the said meeting was not a properly convened meeting as notice of the said meeting was given only to the appellant and not to other members of the Municipal Committee, as required under Rule 70 of the Rules. Therefore, the oath administered to the appellant in the said meeting cannot be said to be valid. It was also held that the request made by the appellant to administer her oath vide application dated 13.06.2013 (Annexure R-2) moved before the SDO (Civil) indicates that she made the request after the expiry of stipulated period of three months, therefore, convening of meeting by the SDO (Civil) on 30.07.2013, on the request of the appellant, in which the oath of allegiance was administered to her, was not valid. It was held that even otherwise, the oath was administered to her after lapse of mandatory period of three months.

9. The aforesaid order passed by the learned Single Judge has been challenged by the appellant by filing the instant appeals.

10. Learned counsel for the appellant argued that as per sub-section (3) of Section 24 of the Act, an elected member can take or make the oath or affirmation within three months of the date of notification of his/her election. The oath is to be taken or affirmation made in the meeting of the Municipal Committee convened by the authorised officer under Rule 70 of the Rules for the said purpose. If an elected member does not come present in such meeting convened under sub-rule (1) of Rule 70 of the Rules, he/she can be administered the oath by Chairman of the meeting, at which such member appears to take

oath, as provided under sub-rule (2). It has been argued that an elected member has a right to take the oath within the stipulated period of three months of the date of notification of his/her election. He/she may take the oath on the last date of the prescribed period. Therefore, the SDO (Civil), who was authorised to administer oath to all the elected members, was under an obligation to convene a meeting before the last date of the prescribed period for the said purpose, when no election to the post of President and Vice-President of the Municipal Committee was held, and to issue notice to the elected member, who had not been administered oath, with a warning that in case, he/she does not turn up to take oath, he/she shall be deemed to have omitted to take oath or make affirmation and his/her election shall be deemed to be invalid. It has been argued that undisputedly, after 02.05.2013, no meeting under Rule 70 of the Rules was convened by the SDO (Civil). By that time, the President and Vice-President of the Municipal Committee were not elected. Thus, no meeting of the Municipal Committee was actually held before 03.06.2013, the last date of the prescribed period for taking oath. Learned counsel further argued that after the second meeting held on 02.05.2013, in spite of the fact that one month was still left to expire from the prescribed period of three months, no meeting was convened by the SDO (Civil) for the purpose of administering oath of allegiance to the appellant. Therefore, it cannot be said that the appellant has omitted to take oath of allegiance within the prescribed time. Learned counsel further argued that on the last day of the prescribed period of three months, the appellant visited the office of SDO (Civil) and subsequently, written application was also moved by her. On that application, SDO (Civil), after seeking clarification from the Deputy Commissioner, convened the meeting on 30.07.2013 and administered oath of allegiance to the appellant. He further argued that sub-section (3) of Section 24 of the Act is not in absolute terms that in case, an elected member is not administered oath of allegiance within three months of the date of notification of his/her election, then in all circumstances, his/her election shall be deemed to be invalid. But this sub-section provides his/her election shall be deemed to be invalid "for any reason which it may consider sufficient unless the State Government, extends the period within which such oath or affirmation may be taken or made." According to the learned counsel, before declaring the election of an elected member to be invalid, it is mandatory to examine as to whether there was sufficient reason or not for not taking oath by such member within the prescribed period. In case, there is any sufficient reason, then the case is to be referred to the State Government for extension of the period and in case, the State Government does not extend the period, only then election of an elected member can be deemed to be invalid on the said ground. Learned counsel further argued that in the present case, SDO (Civil) found that the appellant was not provided opportunity to take oath within the prescribed period of three months, as after 02.05.2013, for a period of one month, i.e. till 03.06.2013, the last date of the prescribed period, neither any meeting under Rule 70 of the Rules, nor any general or ordinary meeting of the Municipal Committee, was convened or actually held, in which the appellant could have

been administered oath. Keeping in view this fact, the SDO (Civil) extended the time and convened the meeting on 30.07.2013 and in the said meeting, the appellant was actually administered oath of allegiance. In that situation, learned Single Judge should not have declared the election of the appellant as invalid, on a technical ground, while exercising the equity jurisdiction under Article 226 of the Constitution of India.

11. On the other hand, learned counsel for respondent No. 7 argued that it is a mandatory requirement under Section 24(3) of the Act that in case, a person omits to take or make the oath or affirmation within three months of the date of notification of his/her election, his/her election shall be deemed to be invalid, and there is no exception to this provision. It is contended that for whatsoever reason, if the appellant omitted to take or make the oath or affirmation within the prescribed period of three months, her election shall be deemed to be invalid and after that, she could not have been administered oath by the SDO (Civil). If any such oath was administered, that itself does not validate her election as member of the Municipal Committee. Learned counsel further argued that even the meeting, which was convened by the SDO (Civil) on 30.07.2013 was not a properly convened meeting, as notice of the same was not given to all the members of the Municipal Committee and notice was given only to the appellant. Therefore, the said meeting was not convened as per Rule 70 of the Rules. Learned counsel further argued that the appellant could have taken the oath from the Chairman in the ordinary or special meeting of the Municipal Committee, which was convened for transacting business of the Committee. It is not necessary that the appellant could take the oath only in the specifically convened meeting by the SDO (Civil), the authorised officer. In this regard, learned counsel has referred to Rule 70 (2) of the Rules, Sections 26 and 31 of the Act and the Business Bye-laws of the Municipal Committee. However, it has not been disputed during the course of arguments that there is no material on record, which remotely indicates that between the prescribed period of three months, i.e. from 04.03.2013 to 03.06.2013, any ordinary or special meeting of Municipal Committee, Kalayat, was convened or held, or notice of any such meeting was given to the appellant, or the President and Vice-President of the Municipal Committee was elected. Learned counsel further argued that the exception provided in sub-section (3) of Section 24 of the Act that on finding sufficient reason, with the approval of the State Government, the period of three months could have been extended, cannot be attracted in the instant case, as the SDO (Civil) though convened meeting, but did not seek extension of the period of three months from the State Government, therefore, his action of administering oath of allegiance to the appellant on 30.07.2013 cannot be held to be valid.

12. We have considered the submissions made by learned counsel for the parties and have also gone through the impugned order.

13. In this case, we have to consider and answer the following three questions:

(i) Whether, in the facts and circumstances of the case, the appellant has omitted or refused to take or make the oath or affirmation as required by sub-section (1) of Section 24 of the Act?

(ii) Whether the meeting held on 30.07.2013, which was convened by the SDO (Civil), Kaithal, under Rule 70(1) of the Rules, in which the oath was actually administered to the appellant, was not a validly convened meeting?

(iii) Whether the period of three months for administering oath of allegiance, as prescribed under Section 24(3) of the Act, could be extended beyond the said period, and whether the authorised officer or Chairman of the meeting is under obligation, on sufficient reasons having been shown to him, to refer the case to the State Government, for extension of the said period?

14. Undisputedly, in the present case, election of the appellant as a member of Municipal Committee, Kalayat, from ward No. 9, was notified on 04.03.2013. After issuance of the said notification, Deputy Commissioner, Kaithal, authorised Sub Divisional Officer (Civil), Kaithal, to convene meeting of the newly elected members of Municipal Committee, Kalayat, under Rule 70 of the Rules, for administering oath of allegiance to them. The said meeting was convened on 29.03.2013, wherein out of 13 elected members, 8 members came present and were administered oath of allegiance by the SDO (Civil), the authorised officer. On that day, the appellant did not come present in the meeting and was not administered oath. In that meeting, no election of President and Vice-President was held. The authorised officer again convened the meeting under Rule 70 of the Rules on 02.05.2013 for administering oath to the remaining 5 members of the Municipal Committee. On that day, 4 members came present, who were administered oath of allegiance by the SDO (Civil). This time also, the appellant did not come present and she could not be administered oath. In that meeting also, the election of President and Vice-President was not held. The period of three months for administering oath to the elected members of a Municipal Committee from the date of notification of their election, as prescribed in sub-section (3) of Section 24 of the Act, was to expire on 03.06.2013, but undisputedly after the aforesaid second meeting convened on 02.05.2013, no other meeting under Rule 70 of the Rules was convened, before the expiry of the prescribed period of three months, for administering oath of allegiance to the appellant, the only remaining member of the Municipal Committee, who was not administered oath. It is the case of the appellant that on 03.06.2013, the last day of the prescribed period of three months, she visited the office of SDO (Civil) to take oath of allegiance, but the aforesaid officer did not act on her request. Thereafter, the appellant moved a written application before the SDO (Civil) on 13.06.2013, mentioning therein that she had visited his office, but no oath was administered to her. On that application, the SDO (Civil) sought clarification of the Deputy Commissioner with regard to the request of the appellant. The Deputy Commissioner, vide letter dated 26.06.2013, asked the SDO (Civil) to proceed in accordance with Rule 70 of the Rules. Thereafter, the SDO (Civil) fixed

meeting for 30.07.2013 for the purpose of administering oath of allegiance to the appellant. On that day, the appellant appeared before the SDO (Civil), who administered oath of allegiance to the appellant. It is to be mentioned here that till the oath was given to the appellant, the election of the President and Vice-President was not held. Since the said election was not held, no meeting of the Municipal Committee, either ordinary or special, was held or could be held, where the appellant could take the oath from the Chairman of the meeting.

15. In our opinion, in the aforesaid facts and circumstances, it cannot be said that the appellant had omitted or refused to take or make the oath or affirmation, as required by sub-section (1) of Section 24 of the Act. We are of the opinion that in case, the SDO (Civil) should have convened the meeting under Rule 70 of the Rules, just before 03.06.2013, i.e. the expiry of the prescribed period of three months, and if the appellant would not have appeared in that meeting to take the oath, it could have been taken that she had omitted to take the oath of allegiance.

16. While referring to sub-rule (2) of Rule 70 of the Rules, learned counsel for the respondents argued that when the appellant did not come forward to take the oath of allegiance in the first and second meetings fixed by the SDO (Civil), then in the ordinary or special meeting of the Municipal Committee held subsequently, she could have taken the oath from the Chairman of the meeting. In our opinion, this contention cannot be accepted, because undisputedly in the present case, no material has been placed on record, which even remotely suggests that between the prescribed period of three months, i.e. from 04.03.2013 to 03.06.2013, any ordinary or special meeting of the Municipal Committee, was convened or held, or notice of any such meeting was given to the appellant. Therefore, the appellant was not having any opportunity to take the oath before the last date of the prescribed period of three months of the date of notification of her election. Thus, it cannot be said that the appellant has omitted or refused to take or make the oath or affirmation as required by sub-section (1) of Section 24 of the Act. The aforesaid conclusion is based on the interpretation to be given to Rule 70 of the Rules, the relevant portion of which 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 forty-eight 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 Vice-President 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 Vice-President. Such meeting shall be deemed to be a validly convened meeting of the Committee. Notwithstanding anything

contained in any bye-laws, made under the provisions of section 31 of the Act, the administration of the oath of allegiance and the election of the President and Vice President 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 convened under sub-rule (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) xx xx

(4) xx xx

17. According to the aforesaid sub-rule (1), after publication of the notification of the names of members elected to a committee, the Deputy Commissioner or any gazetted officer appointed by him in this behalf shall convene the first meeting of the newly constituted committee within a period of thirty days by giving forty-eight hours notice to the newly elected members. It has been provided that the notice shall clearly state that in the said meeting, the oath of allegiance will be administered to the elected members present, and election of President and Vice-President shall also be held in the said meeting. It is further provided that convener of the said meeting shall administer the oaths to the members and shall preside over the meeting till the election of the President and the Vice-President. Sub-rule (2) of Rule 70 of the Rules provides that if an elected member did not come present in the meeting convened under sub-rule (1), the oath of allegiance shall be administered to him/her subsequently by the Chairman of the meeting at which such member appears to take such oath. A conjoint reading of sub-rule (1) and (2) clearly provides that convener of the first meeting of the Municipal Committee shall preside over the meeting till election of the President and Vice-President takes place and the member who could not take oath in the meeting convened under sub-rule (1) will be administered oath by the Chairman in the meeting of the Committee held subsequently.

18. In the present case, no election of President and Vice-President was held till the oath of allegiance was administered by the SDO (Civil) in the second meeting convened on 02.05.2013. That is why on the application of the appellant, the Deputy Commissioner directed the SDO (Civil) to proceed in accordance with Rule 70 of the Rules. A perusal of the notice dated 26.04.2013 (Annexure P-4) issued for convening the second meeting clearly indicates that under the orders of the Deputy Commissioner, a special meeting was fixed to be held on 02.05.2013 at 3.00 PM for administering oath to the remaining newly elected members, and for election of President and Vice-President. The proceedings of the meeting convened on 02.05.2013 (Annexure P-5) reveals that even on 02.05.2013, when the second meeting was held and oath was administered to four members, no election of President and Vice-President was held.

19. Sub-section (2) of Section 25 of the Act clearly lays down that meeting of the

committee, ordinary or special, can be convened by the President or in his absence by the Vice-President; and sub-section (3) further provides that if the President or the Vice-President fails to convene a meeting of the committee within a period of ten days from the date of receipt of a requisition signed by not less than one-fifth of the total number of members of the committee, the members who had signed such requisition may request the Deputy Commissioner to convene the meeting. Sub-section (4) provides that the Deputy Commissioner on receipt of request under subsection (3) shall within a period of ten days from the date of such request, either himself convene the meeting or designate any other officer for this purpose. Sub-section (5) further provides that a meeting referred to in subsection (4) shall be presided over by the Deputy Commissioner or the officer designated by him.

20. In view of the aforesaid provisions and facts of the instant case, since election of President and Vice-President of the Municipal Committee was not held, oath of allegiance could not have been administered by the Chairman of the meeting before the time prescribed, as by that time, election of President and Vice-President was not held and in their absence, no meeting of the Municipal Committee could have been held, where the appellant may have an opportunity to take oath. It is also an admitted fact that from 04.03.2013 (the date of notification of election of the appellant) till 30.07.2013 (the date on which the appellant took oath), no general or special meeting of the Municipal Committee was convened, because by that time, election of President and Vice-President was not held. Thus, there was no occasion or opportunity for the appellant to take oath. Therefore, the contention of learned counsel for respondent No. 7 that the appellant could have been administered oath of allegiance by the Chairman of the meeting of the Municipal Committee is also not tenable.

21. On the second issue, the learned Single Judge has held that notice of the meeting to be held on 30.07.2013 to administer the oath of allegiance to the appellant was issued only to the appellant and not to the other elected members of the Municipal Committee, therefore, the said meeting was not properly convened. In our opinion, merely on this ground, the said meeting cannot be held to be invalid. The SDO (Civil) was only to administer the oath of allegiance to the appellant and not to all the elected members of the Municipal Committee, who had already been administered the oath. Therefore, he issued notice to the appellant, who had not taken the oath in the earlier two meetings. In our opinion, for the third meeting convened on 30.07.2013, the SDO (Civil) was not supposed to issue notice to those elected members, who had already taken the oath of allegiance. Merely on this technical ground, the said meeting cannot be held to be invalid.

22. In the facts and circumstances of the case, the equity also goes in favour of the appellant. We are of the opinion that the appellant, who is an elected woman member of the Municipal Committee, was not given proper opportunity to take the oath of allegiance within the prescribed period of three months of the date of

notification of her election. Before the last date of the said prescribed period, neither the SDO (Civil), the authorised officer, convened the meeting to administer oath of allegiance to the appellant, nor any general or special meeting of the Municipal Committee was held, in which the appellant could have taken the oath from the Chairman of those meetings. On the written request of the appellant, the SDO (Civil) convened the meeting on 30.07.2013 and administered the oath of allegiance to her. It is a fact that after more than one and half months of administering oath of allegiance to the appellant, the private respondents filed two separate writ petitions for declaring the election of the appellant as member of Municipal Committee, Kalayat, from ward No. 9, as invalid, on the ground that the oath of allegiance was administered to her after the prescribed period of three months of the date of notification of her election. The said time of three months prescribed for taking the oath is not absolute. As per sub-section (3) of Section 24 of the Act, election of an elected member who had not taken or made the oath or affirmation within the prescribed period of three months shall be deemed to be invalid for any reason which it may consider sufficient unless the State Government extends the period within which such oath or affirmation may be taken or made. In our opinion, keeping in view the facts and circumstances of the instant case, the SDO (Civil) and the Deputy Commissioner, who had directed the SDO (Civil) to proceed in accordance with Rule 70 of the Rules, should have referred the matter to the State Government, for extension of the period of three months for administering the oath of allegiance, as prescribed under Section 24(3) of the Act. The Government might have considered to extend the said period, within which the oath or affirmation could have been taken or made. It is also one of the principles of law that election of a duly elected member, who carries the mandate of majority of the voters in the constituency, should not be declared invalid or set aside merely on technical grounds. In the instant case, the appellant was duly elected as member of the Municipal Committee. Her election was duly notified. She was also administered oath of allegiance by the authorised officer, though beyond the stipulated period of three months of the date of notification of her election, but her claim for extension of the said period has not been considered at all by the appropriate authority/Government. In these circumstances, in our opinion, declaring the election of the appellant as invalid is not proper, justified and reasonable, and thus, the impugned order setting aside the election of the appellant, without appreciating the facts and circumstances of the case, is not sustainable.

23. For the aforesaid reasons, this petition is allowed and the order dated 23.09.2014 passed by the learned Single Judge is, hereby, set aside.