
(1993) 12 P&H CK 0122
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 13433 of 1992

Tejwant Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 23-12-1993

Acts Referred:

Punjab Municipal Act, 1911 — Section 12E

Citation : (1993) 105 PLR 599

Hon'ble Judges : Amarjeet Chaudhary, J

Bench : Single Bench

Advocate : J.S. Toor, for the Appellant; G.K Chatrath, A.G. and S.S. Saron, D.A.G. and Jasbir Singh, to 8, for the Respondent

Final Decision : Allowed

Judgement

Amarjeet Chaudhary, J.—This writ petition has been filed by Tejwant Singh and six other Municipal Commissioners under Articles 226/227 of the Constitution of India for issuance of a writ of mandamus directing respondents No. 2 to 3 to convene a meeting of the newly elected members of the Municipal Committee, Amloh for the purpose co-option of Balmikis, women and Backward class members as required under Punjab Municipal Act and for issuance of a writ of prohibition against respondent No. 1 from nominating any members from Balmikis, women and Backward classes. The petitioners and respondents No. 5 to 8 were elected Municipal Commissioners from the Municipal Committee, Amloh District Fatehgarh Sahib and a notification regarding their election was published in the Punjab Government Gazette on 14th September, 1992. Under Sections 12-A 12-B and 12-C of the Punjab Municipal Act, two members from Balmikis, Churas or Bhangies, two women and one member from Backward classes, if not already elected in the election, are to be co-opted by the elected members in a meeting which is to be convened by the Deputy Commissioner or any other Gazetted Officer appointed as convener for the purpose of administering oath to the newly elected members. For that purpose, respondent No. 3 was appointed

as a convener for holding meeting who convened the meeting, held on 25th September, 1992 at 3.00 P.M. in the office of the" Municipal Committee, Amloh. In the said meeting on 25th September, 1992, all the petitioners and respondents No. 5 to 8 were present and they were administered oath as required by law, after administering oath, the convener was to enquire about the fact if any of the members mentioned in Section 12-A, 12-B and 12-C of the Act form amongst Balmikis, women of the Backward classes has already been elected or not and if so how many members from each category were to be co-opted. According to the petitioners as the convenor started making an enquiry to the said facts, the meeting was disturbed with a view to compel respondent No. 3 to cancel the meeting. It is further alleged that Keshwa Nand, respondent No. 5 started raising hue and cry on the pretext that a member from Backward Classes had been elected and that the notice stating that the co-option from Balmikis, women and Backward Classes who to be made, was bad and that the meeting be cancelled; whereupon petitioner No. 1 pointed out that under the law summary enquiry was to be made regarding the fact and meeting about the fact in the notice was of no consequence even if it was so stated therein. Respondents No. 5 to 8 were determined to disturb the meeting and made an attempt to assault the petitioners. It is further alleged that respondents were in minority and were not sure that they would be able to co-opt members of their choice. It is further stated that no serious effort was made by respondent No. 3 to control the meeting. The convenor of the meeting cancelled the meeting and recorded a note in the proceedings that respondents No. 5 to 8 had threatened that they would not allow the meeting to be continued and as such the meeting was cancelled. Thereafter, petitioner No. 1 asked the convenor to get his note recorded in the minute book that the meeting was in order and members could be co-opted. All the petitioners had stated that since they were in majority they could co-opt the members. Despite that, the respondent-convenor cancelled the meeting. It is further averred that the act of the convenor was arbitrary motivated and the sole object of the convenor was to deprive the petitioners from co-opting the members of their choice. Respondent No. 3 again called a meeting to be held on 30th September, 1992 at 10.30 A.M. but the same was cancelled on 29th September, 1992 for the reasons that the requisite notice had not been served upon the members.

2. The allegations of the petitioners are that respondent No. 3 in connivance with respondent No. 4 (an M.L.A) with malafide intention and with motivated designs cancelled the meeting and thus the majority of the members had been deprived of co-opting the required number of members from amongst Balmikis, women and Backward Classes.

3. The plea of the convenor-respondent No. 3 is that the proceedings recorded in the meeting which was held on 25th September, 1992 have been correctly recorded and no motive can be attributed to him. Respondent No. 3 has stated that he had no knowledge of the political back-ground of any of the members elected from the Municipal Committee, Amloh.

4. Learned counsel for the petitioners has argued that failure of respondent No. 2 to hold the meeting will not entitle respondent No. 1 to nominate any member u/s 12-D of the Punjab Municipal Act. He further argued that there is no provisions in the Act under which the meeting convened for the purpose of nominating and co-opting the members can be cancelled. The meeting called on 30th September, 1992 was also cancelled on frivolous ground that service of notices upon all the Municipal members could not be effected.

5. I have considered the submissions made by the learned counsel for the parties and perused the paper book.

6. Under Rule 5 of the Punjab Municipal Election Rules, 1952 (hereinafter referred to as the "Rules") the meeting is to be called for administering oath to the newly elected members also with a view to give an opportunity to them to go-ahead with the process of co-option. In this meeting, the convenor is the Deputy Commissioner who is a Gazetted Officer and authorised by the State Government to conduct the meeting. In this writ petition, the question arises as to what is meant by the term "in the event of failure to co-opt due to disturbance" used in Section 12-E of the Punjab Municipal Act, 1911. Before dealing with this aspect it may be seen that the convenor of the meeting has used the word "cancelled" while postponing the meeting. The stand of the petitioners is that the meeting was "adjourned because of rowdyism in the meeting and thus the word used "cancelled" makes no difference of use of this word would have no material difference. This aspect of the matter is to be examined.

7. The term "cancel" as defined in the Chamber Twentieth Century Dictionary, is to cross out, to annul or suppress to abolish or wipe out, to counterbalance or compensate for, to remove as balancing each other e.g. like quantities from opposite sides of an equation, like factors from numerator and denominator of a fraction. It may be seen that in this case no failure can be attributed to the members. The meeting was convened by the officer of the State Government. In case, he failed to conduct the meeting ultimately in an orderly manner, his failure cannot be attributed to members. Thus, from the facts and circumstances of the case, it can be said that there was no failure on the part of the members to hold co-option and thus there was no consequential right conferred on the State Government to resort to Section 12-D of the Punjab Municipal Act, 1911 with a view to go-ahead with the process of nomination. Earlier, a question of identical nature cropped up for consideration before the Division Bench in *Roshan Lal Singla v. Deputy Commissioner, Bhatinda and Ors.* 1981 R.L.R. 134. In *Roshan Lal's* case (supra), the Division Bench came to the conclusion that under the circumstances, the committee of the elected members did not forfeit their right to resort to the method of co-option. It was pointed out that second meeting was in continuation of the original meeting and that meeting would have same character as the first meeting for the purpose of co-option. This matter is also squarely governed by the ratio of *Roshan Lal's* case (supra) and the conclusion is that the members have a right to go-ahead with the process of co-option.

8. The other question which requires consideration is whether the use of word "adjourned" as compared to "cancelled" would make any difference.

9. The submission of the learned counsel for the respondent is that the ratio of Roshan Lal's case (supra) is not applicable because in that case, the first meeting was "adjourned" whereas in the present case the first meeting was "cancelled". This does not make any material difference. As a matter of fact the convener used the word "cancelled" putting the petitioners in a better position. The term "cancelled" has been explained in the Chambers Dictionary as referred to above. The term "cancel" means to abolish or wipe out. The term also means to annul or suppress or cross out. The net result is that from the use of the word "cancelled" it would be presumed that nothing transpired on the day when the first meeting was held and whatever happened on that day would be deemed to have been obliterated and wiped out meaning thereby, it would be presumed that nothing happened on that date. It would mean that the first meeting was never held and for this reason, the members would have a right to go-ahead with the process of co-option.

10. It may also be seen that the convenor of the meeting is supposed to hold a meeting in accordance with the provisions as envisaged u/s 25 (2) and 29 of the Punjab Municipal Act in the matter of holding the meeting. There is no provision which may confer a power on the Chairman to "cancel" or "adjourn" a meeting. Thus, even if expression "cancelled" is used by the convenor, it would not make any material difference. The result of the action of the convenor is to be taken into consideration. What was done by the convenor was not to proceed in making co-option because the disturbance in the meeting was such which did not permit smooth functioning and the net effect is that meeting would be deemed to have been adjourned.

11. In Chandrakant Khaire Vs. Dr Shantaram Kale and Others, the Supreme Court considered the various shades of the term adjournment and came to the conclusion that a properly convened meeting cannot be postponed and the proper course is to hold the meeting as originally intended and then and there adjourn it to a more suitable date. If this case is not adopted then the members have a right to go-ahead with the process of transacting to a business which was originally supposed to be transacted. Paras 16,17 and 18 of the judgment given in the aforementioned case are relevant and are reproduced.

"16. Shackelton the law and Practices of Meetings, 7th Edition, apart from the passage at page 44 already quoted, gives the different shades of meaning of adjournment as understood in legal parlance in the following words:-

"Adjournment is the act in postponing a meeting of any private or public body or any business until another time, or indefinitely in which case it is an adjournment sine die. The words apply also to the period during which the meeting or business, stands adjourned. An adjournment may be:-

(1) For an interval expiring on the day of the adjournment.

- (2) For an interval expiring on some later date;
- (3) For an indefinite time (i.e sine die)
- (4) Until a fixed time and date.
- (5) To another place.

The learned author then sets out the different causes giving rise to an adjournment which may be by (1) Resolution of the meeting (2) Action of the Chairman, and (3) Failure to achieve or, maintain a quorum.

17. A properly convened 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 threat. 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.

18. The law relating to adjournment has been put succinctly in Horsely's Meetings Procedure, Law and Practice, 2nd Edition, edited by W. John Taggart at Page 84, para 1002;

"The word "adjournment" tends to be used loosely in connection with meetings. Indeed, as a result, the word is possible in process of acquiring a further derived meaning of "close, conclude or finish, whereas a meeting or a debate is adjourned when its further proceedings are postponed to some subsequent time or to enable it to reassemble at some other place; to a later hour in the same day, to some future date, or indefinitely, i.e. sine die (without a day being named). The business (of the whole meeting or the debate respectively) is indeed suspended but with an intention of deferring it until resumption at a later time."

The learned author goes on to say that the word "adjourn" has been in use for almost five centuries in connection with meetings, with an early meaning of "to put off or defer proceedings to another day" and adds; "Thus is due course give rise to the added meaning to break off for later resumption."

12. This in view of the aforementioned reasoning given by the Supreme Court it is to be presumed that the meeting was simply adjourned and no power is given or vested in the convener to cancel the meeting.

13. A reference was also made to the decision given in the case of Raj Kumar Kundan Lal and Others Vs. State of Punjab and Others, , while interpreting the word "omits and refuses; it was held that this term denotes an element of volition. An omission which is not act or failure on the part of the person himself was held to be beyond the scope of the contemplated action. Thus the failure

contemplated by Section 12-E could be something which is a positive act on the part of the members and they cannot be put to a disadvantageous position because of the failure on the part of the convenor to take appropriate steps if the meeting could not be held in an orderly manner the proper course was to adjourn the meeting and if in any case even if the word "cancelled" is used, it would not make any difference.

14. In view of the above discussions, the writ petition is allowed. A direction is issued to the Deputy Commissioner, Fatehgarh Sahib to take appropriate steps for convening a meeting of the Municipal Committee, Amloh, for the purpose of completion of the process of co-option within time frame as prescribed under the Rules. It is further directed that Deputy Commissioner shall ensure that the meeting is conducted in an orderly manner. No order as to costs.