
(1973) 04 P&H CK 0011
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 3999 of 1972

Tek Chand

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 17-04-1973

Acts Referred:

Punjab Municipal Act, 1911 — Section 12
Punjab Municipal Election Rules, 1994 — Rule 51, 63

Citation : AIR 1974 P&H 111

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

Bench : Single Bench

Judgement

1. The elections to the Municipal Committee, Dhuri were held on June 18, 1972. The petitioner, respondents Nos. 3 and 4, and ten other persons were elected as members. The first meeting of the Committee was held on July 7, 1972. It was presided over by the Sub-Divisional Officer, Malerkotla. The oath of office was administered to the newly elected members and the work of co-opting members u/s 12-A, 12-B and 12-C of the Punjab Municipal Act (hereinafter called the Act), was taken in hand. One Shri Niranjan Singh representing the Balmiki community was co-opted u/s 12-A of the Act. Smt. Punna Devi and Smt. Lachhmi Devi were co-opted u/s 12-B of the Act and Shri Sardara Singh was co-opted u/s 12-C of the Act. Thereafter, a meeting for holding election to the office of the President and the Vice-President of the Municipal Committee was held on July 20, 1972. This meeting was presided over by respondent No. 2, and oath of office was administered to the four co-opted members and proposals were invited for the election of President and the Vice-President. The names of Shri Lajpat Rai and Shri Bhim Sen were duly proposed and seconded for the office of the President. Shri Bhim Sen respondent No. 3 was declared elected as the President of the Municipal Committee. For the office of Vice-President, the names of Shri Lal Singh and Shri Prem Chand were duly proposed and seconded. As a result of the election which followed, Shri Lal Singh respondent No. 4 was declared as Vice-President.

2. Sometime later C. W. No. 2696 of 1972 was filed in this Court on August 1, 1972, in which the co-option of members made in the meeting held on July 7, 1972, was challenged. This petition came up before R.N. Mittal, J., who was pleased to quash the co-option of two lady members and maintained the co-option of the other two members.

3. In this petition, the election of respondents Nos. 3 and 4 is challenged on the ground that the co-option of Smt. Punna Devi and Smt. Lachhmi Devi having been quashed, they would be deemed not to have been co-opted in the eye of law and their participation in the meeting held on July 20, 1972, rendered the election of respondents Nos. 3 and 4 as invalid. It is also submitted that during this election the principle of secrecy of ballot was violated inasmuch as the Convener directed the voters to mark 'yes' against the name of the candidate in whose favour they wanted to poll their vote for the election of the President of the Municipal Committee. It is also submitted that in case of some illiterate voters, the Convener himself/herself marked the ballot papers, which violated the principle of secrecy of ballot.

4. The first question raised by the learned counsel is of considerable importance. It is not disputed by the other side that the co-option of Smt. Punna Devi and Smt. Lachhmi Devi was quashed in a writ petition after they had participated as voters in the election for the office of the President and the Vice-President of the Municipal Committee. The result of their participation would mean that two rank strangers who were not entitled to cast any vote had cast votes in favour of one or the other candidate at the elections. The question which arises is whether on account of such an irregularity the election of the President and the Vice-President can be set aside or not. Rule 63 of the Punjab Municipal Election Rules, inter alia, provides that the election of a returned candidate may be set aside if its result had been materially affected on account of any material irregularity. "Material irregularity" is defined in Rule 51(e) of the said Rules, which reads as under:--

" "Material irregularity" in the procedure of an election includes any such improper acceptance or refusal of any nomination or improper reception or refusal of a vote or reception of any vote which is void for non-compliance with the provisions of the Act or of the rules made thereunder, or mistake in the use of any form annexed thereto as materially affects the result of an election."

It shows that before a refusal or acceptance of a vote can be said to have caused material irregularity, the refusal or the acceptance of the vote must have materially affected the result of the election. Again, it is the settled principle of law that an election should not be set aside on lighter grounds and those who want to set at naught the result of an election must prove all the necessary facts on the basis of which relief can be given to them. In the instant case, I find that apart from making a bald allegation that the co-option of Smt. Punna Devi and Smt. Lachhmi Devi has been set aside, the petitioner has not alleged how the receipt of their votes has materially affected the result of the election, for ought

we know that these two ladies may actually have voted for the losing candidate. Before the election of respondents Nos. 3 and 4 can be set aside, it has to be established as a fact that these two ladies voted for them and because of the consideration of their votes the respondents No. 3 and 4 were declared to be elected as President and Vice President respectively of the Municipal Committee. In *Ram Dit Singh v. Harbhajan Singh*, L.P.A. No. 69 of 1963(Punj) a similar question came up for consideration before Dulat and P.C. Pandit, JJ, who observed as under:--

"All that was stated in the writ petition regarding this allegation was: "It is pertinent to mention that before the co-option, the proportion and ratio of votes between the two rival groups was 10:9 and the illegal inclusion of respondent No. 4(Ram Dit Singh) was directly responsible for tilting the balance in favour of the opposite group. In his absence it is obvious that the strength of the groups would have been by a toss and thus different. This has materially affected the result of the election at all stages and vitiated the proceedings." All these are vague allegations. The names of the persons who constituted these two groups have not been given. The reasons why they were opposing each other have not been mentioned. It has further not been made clear as to why Ram Dit Singh was favouring a particular group. The voting admittedly, was by secret ballot. As such, it cannot be said affirmatively as to in whose favour he had given his vote. It is also not known as to how the other members had given their votes. The allegations are not based on facts and, as such, it cannot be said that the vote of Ram Dit Singh assumed decisive importance in the election and that his inclusion, in any way, had materially affected the proceedings which took place after his election. Under these circumstances, the learned Single Judge should not have set aside the election of the co-opted members, the Chairman and Vice-Chairman of the Samiti and the two members of the Zila Parishad."

In *Vashit Narain Sharma Vs. Dev Chandra and Others*, , the Court was concerned with a case arising out of the Representation of the People Act, in which it was held as under:-

"But we are not prepared to hold that the mere fact that the wasted votes are greater than the margin of votes between the returned candidate and the candidate securing the next highest number of votes must lead to the necessary inference that the result of the election has been materially affected. That is a matter which has to be proved and the onus of proving it lies upon the petitioner. It will not do merely to say that all or a majority of the wasted votes might have gone to the next highest candidate.

The casting of votes at an election depends upon a variety of factors and it is not possible for any one to predicate how many or which proportion of the votes will go to one or the other of the candidates."

The similar view was reiterated in a recent case decided by the Supreme Court in *Paokai Haokip Vs. Rishang and Others*, .

5. In view of these authoritative pronouncements of law, no relief can be given to the petitioner.

6. The learned counsel for the petitioner has, however, drawn my attention to a Division Bench judgment of this Court in Onkar Singh v. State of Haryana 1972 PLR 378. In this case it was held that since a non-member participated in a meeting which elected Chairman and Vice-Chairman of the Market Committee, the entire election proceedings were vitiated. I may, however, observe that the instant case is governed by statutory rules which lay down that an election should be set aside on the ground of improper acceptance of a vote only if the result of the election has been materially affected as a consequence of this wrongful acceptance of vote. This aspect of the case was not brought to the notice of the learned Judge who decided Onkar Singh's case 1972 PLR 378(supra). Mr. Goyal then relied on a Single Bench decision in Ramesh v. The State of Punjab C.W. 2687 of 1972, decided on 10-10-1972(Punj). Though this case relates to municipal elections, yet the statutory rules discussed above do not appear to have been brought to the notice of the learned Judge. Besides, the view taken by the learned Judge cannot stand in view of the earlier Division Bench judgment of this Court in Ram Dit Singh's case, L. P. A. No. 69 of 1963(Punj)(supra) and the cases of the Supreme Court cited above.

7. For the reasons mentioned above, this petition fails and is dismissed.

8. Petition dismissed.