

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.10059 of 2015

Date of decision:19.5.2015

Sukhwant Singh

....Petitioner

VERSUS

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Nandan Jindal, Advocate for the petitioner.

HEMANT GUPTA, J.(Oral)

The challenge in the present writ petition is to a communication dated 12.05.2015 whereby the Deputy Commissioner was directed to administer oath to the elected members of the Municipal Council, Dhariwal, by adopting proper procedure as per the Rules.

The election to Municipal Council, Dhariwal, was held on 25.02.2015. The first meeting of the Municipal Council was convened for 09.03.2015 by the Deputy Commissioner by appointing Assistant Commissioner as a convener in terms of Rule 3 of Punjab Municipal (President and Vice President) Election Rules, 1994 (for short 'the Rules'). The relevant Rule reads as under:-

“3. Manner of election.- [(1) The Deputy Commissioner or any other officer authorized by him in this behalf (here-in-after referred to as the Convener) shall, within a period of fourteen days of the publication of the notification of the election of members of a

newly constituted Municipality, fix, by giving not less than forty-eight hours notice to be served at the ordinary place of resident of all the elected members, a date for convening the first meeting of the elected members of such Municipality by stating in the notice that at such meeting, the oath of allegiance will be administered to the members present and also stating that the President and Vice-President or Vice-Presidents as the case may, be shall be elected:

Provided that all subsequent meetings to fill casual vacancies of the offices of President and Vice-President or Vice-Presidents as the case may be, shall be convened by the Convener.

(2) If due to any reason, the elected member is unable or refused to take oath of allegiance as required by sub-rule (1) within the stipulated period, then he will be allowed to take such oath of allegiance in the subsequent meeting unless he is debarred from taking the same by the Government for any reason. In case any such member does not take the oath of allegiance as aforesaid, then a fresh election to the constituency to which that member represents, shall be held.”

However, on 09.03.2015, the convener left the meeting but Shri Gaurav Munna was elected as a convener who has signed the oath forms said to be given earlier by the convener. The seven Municipal Councillors present out of thirteen elected Sukhwant Singh Kang, the present petitioner, as President and Surjit Kaur as Vice President of the Municipal Council, Dhariwal. A resolution to this effect was recorded which is attached with the writ petition as Annexure P-4. The Deputy Commissioner vide communication dated 23.04.2015 recommended issuance of notification on the basis of resolution passed by seven Councillors. It is in pursuance of such recommendation; the State Government has taken a decision holding that filling the form by elected members cannot be termed as oath taken. No other person than the convener can administer oath and

without taking the oath as per the procedure laid down in the Rules, the elected members cannot elect President or Vice President of the Municipal Council. Therefore, the notification on the basis of resolution dated 09.03.2015 electing President and Vice President cannot be issued. Thus directions were issued for administering oath and elections of the officer bearers.

Learned counsel for the petitioner contends that Section 28 of the Punjab Municipal Act, 1911 (for short 'the Act') empowers the Municipal Councillors to elect any other member as chairperson for presiding over of the meeting of the Municipal Council. Since the convener had left the meeting but the majority of the members were present, they elected one of the Municipal Councillors to be officiating Chairman of the meeting and consequently conducted meeting for the election of President and Vice President. It is also contended that in terms of sub-Section (2) of Section 24 of the Act, the action of the State Government refusing to notify the election in the Municipal Council without giving an opportunity of being heard violates the principle of natural justice as contained in the said provision of the Act.

At this stage, the relevant extract from the provisions of the Act reads as under:-

“13. Duration of Municipalities. (1) Every Municipality save as otherwise provided in this Act, shall continue for five years from the date appointed for its first meeting and no longer.

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20. Election of President and Vice-President.- (1) Every Municipality shall, from time to time, elect one of its members to

be its President, and the member so elected shall, on being notified by the State Government shall become President of the Municipality.”

(2) Every Municipality may also, from time to time, elect one or two of its members to be Vice-President or Vice-Presidents and when two Vice-Presidents are elected on the same date, the Municipality shall declare which of them shall be deemed to the senior.

(3) Notwithstanding anything contained in this section an *ex-officio* member shall not be eligible for election as President or Vice-President of the Municipality.

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24. Notification of election and oath or affirmation of allegiance –

(1) No elected member of a Municipality shall enter upon his duties as such member until he has taken or made, at a meeting of the Municipality, an oath or affirmation of his allegiance to India in the following form, namely: -

“I. A.B. having been elected Member of the Nagar Panchayat or Municipal Council of do hereby solemnly swear (or affirm) that I will be faithful and bear true allegiance to India and to the Constitution of India as by the law established and I will faithfully discharge the duties upon which I am about to enter”.

(2) The State Government shall notify in the Official Gazette every election of President of a Municipality and no President shall enter upon his duties as such until his election is so notified:

Provided that the State Government may refuse to notify the election as President of any person who has incurred a disqualification under this Act or under any other law for the time being in force, subsequent to his election as member of the Municipality.

Provided further that the State Government shall not refuse to notify the election of the President without giving an opportunity of being heard to the concerned person.

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27. Quorum – (1) The quorum necessary for the transaction of business at a special meeting of a committee shall be one-half of

the number of the committee actually serving at the time, 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 the original meeting if there had been a quorum present shall be brought before, and transacted at, the adjourned meeting, whether there be a quorum present thereat or not.

28. **Chairman of meeting** – At every meeting of a committee the President, if present, or, in his absence or during the vacancy of office, or during his suspension under Section 22 the senior Vice-President present, and if there be no President or Vice-President present then such one of their number other than an associate member as the members present may elect shall preside as chairman.”

We have heard learned counsel for the petitioner and find no merit in the present writ petition. Section 27 and 28 of the Act will be applicable only after constitution of the Municipality i.e. after the oath is administered to the members of the Municipal Council and the President and Vice President are elected in terms of provisions contained in Section 24(1) of the Act.

The first meeting of the elected members is for the purpose of administering oath to the members and to elect President or Vice President as contemplated in Rule 3 of the Rules. The Deputy Commissioner is required to fix a date for convening the first meeting of the elected members of the Municipality for administration of oath of allegiance and for election of President and Vice President. The tenure of the Municipality starts with the first meeting in which the election of the President and Vice President in terms of Section 20 of

the Act is required to be conducted. The first meeting is important for determination of the period of 5 years for the duration of Municipality.

The election of President and Vice President is co-terminus with the term of the Municipality. Therefore, the oath of allegiance as Municipal Councillors and election of President and Vice President are supposed to be held simultaneously since the duration of the Municipality and the term of the office bearers starts from the said date.

Rule 3 of the Rules specify that it is the convener alone who can administer oath. The assertion of the petitioner is that the convener left the meeting without signing the forms of oath of allegiance. The form of oath of allegiance is counter-signed by Gaurav Munna, the so-called elected chairperson of the Municipality. He was not competent to administer oath nor has done so but signed the forms after the convener left meeting. In terms of Rule 3 of the Rules, the oath is to be administered by the convener appointed by the Deputy Commissioner alone.

Since there was no properly constituted meeting on 09.03.2015, it cannot be said that the petitioner is duly elected President of the Municipality. The principle of natural justice as contained in second proviso to sub-Rule (2) of Section 24 would be applicable only in the case of duly elected President or Vice President. Since the meeting itself was found to be not properly conducted, the petitioner cannot claim any violation of principles of natural justice as

there was no properly constituted meeting to administer oath to the petitioner.

Consequently, we do not find any merit in the present writ petition.

Dismissed.

(HEMANT GUPTA)
JUDGE

MAY 19, 2015
‘D. Gulati’

(LISA GILL)
JUDGE