

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No. 18751 of 2012 (O&M)

208

Date of decision : 08.04.2015

Daljeet Singh Grewal and others

.....Petitioners

Versus

State of Punjab and others

....Respondents

**CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. S.K. Garg Narwana, Senior Advocate with
Mr. Teevar Sharma, Advocate for the petitioners.

Mr. Kamal Sehgal, Addl. AG, Punjab.

Mr. N.D.S Mann, Advocate for respondent No. 5.

Mr. R.S. Bains, Advocate for the applicant (in C.M. No. 11614
of 2014)

HEMANT GUPTA, J.

C.M. No. 11614 of 2014

Application is allowed, subject to just exceptions.

Civil Writ Petition No. 18751 of 2012

Challenge in the present writ petition is to the manner of election for the posts of Mayor, Senior Deputy Mayor and Deputy Mayor of the Municipal Corporations in the State of Punjab constituted under the Punjab Municipal Corporation Act, 1976 (for short 'the Act').

The argument of learned counsel for the petitioner is that the provision of election by 'show of hands' violates the right of secrecy of the voter; therefore, such procedure of voting by 'show of hands' is unconstitutional. It is also argued that State Government has no power to frame rules for the conduct of elections for the post of Mayor, Senior

Deputy Mayor and Deputy Mayor as there is no provision in the Act authorizing the State Government to frame rules.

We do not find any merit in the arguments raised. The question as to whether the procedure of voting by 'show of hands' is unconstitutional has been examined by Division Bench of this Court in CWP No. 4151 of 2015 in Kuljeet Singh Bedi versus State of Punjab and others decided on 24.3.2015. This Court has relied upon the Constitution Bench of Hon'ble Supreme Court in Kuldip Nayar and others v. Union of India and others, (2006) 7 SCC 1, it has been held that the right of voting is a statutory right and when it is prescribed that the vote shall cast by 'show of hands', it does not violates any constitutional provisions. The court held:-

“Keeping in view the aforesaid judgment of Hon'ble Supreme Court in Kuldip Nayar's case (supra) upholding the process of 'open vote' as justified, we do not find that election by 'show of hands' for an indirect elections to the post of Mayor, Senior Deputy Mayor and Deputy Mayor violates any constitutional or statutory provision. There is no right of secrecy contemplated in the Constitution that election to the office bearers of local self-governments should be held by secret ballot. The right to vote in the Constitution of Municipal Council is a statutory right. In the absence of any statutory provision contemplating the right to vote only by secret ballot, the rule-making authority has the option to prescribe voting by secret ballot and by show of hands. The statutory provisions cannot be impugned only for the reason that another view is possible as laid down in Kuldip Nayar's case (supra).”

The other argument raised by learned counsel for the petitioner that there is jurisdiction with the State Government to frame rules is not tenable. Section 38 of the Act itself contemplates that the Corporation shall

in the prescribed manner elect one of its members as Mayor and other two

members to be Senior Deputy Mayor and Deputy Mayor. "Prescribed" is defined in Section 2(37) of the Act means prescribed by rules made under this Act. Therefore, Section 38 authorizes the State Government to frame rules for the purposes of election of Mayor, Senior Deputy Mayor and Deputy Mayor of the Municipal Corporation.

In view of the above, we find no merit in the present petition.

The writ petition is, thus, dismissed.

(Hemant Gupta)
Judge

(Lisa Gill)
Judge

April 08, 2015
rts