

In the High Court of Punjab and Haryana at Chandigarh

C.W.P. No. 18860 of 2015 (O&M)

Date of Decision: October 13, 2015

Rajinder Kumar and another

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment?
- 2) To be referred to the Reporters or not?
- 3) Whether the judgment should be reported in the Digest?

Present: Mr. Shiv Kumar, Advocate,
for the petitioners.

Mr. Rajneesh Chadwal, DAG, Haryana,
for respondents no. 1, 2 and 4.

Mr. Kuldeep Tiwari, Advocate,
for respondent no.3.

Mr. Johan Kumar, Advocate,
for respondents no. 5 to 8.

Paramjeet Singh, J. (Oral)

CM-13547-CWP-2015

exceptions. Replication to the written statement filed by respondent no.3 is taken on record.

CWP No. 18860 of 2015

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing order dated 20.07.2015 (Annexure P/10) passed by respondent no.3 – Commissioner, Municipal Corporation, Faridabad whereby new Adhoc Body Committee has been constituted.

Brief facts of the case are that the Government of Haryana decided to delimit the Wards of Municipal Corporation, Faridabad under Rule 4(1) of the Haryana Municipal Corporation Delimitation of Ward Rules, 1994 (hereinafter referred to as the '1994 Rules'). Under the aforesaid Rules, the Adhoc Body is required to be constituted for the purpose of delimitation of wards. In pursuance of Rule 4 of 1994 Rules, the Government of Haryana vide order dated 23.06.2014 (Annexure P/1) had constituted an Adhoc Body for delimitation of wards of Municipal Corporation, Faridabad, consisting of following members:-

- “(a) *Deputy Commissioner, Chairman;*
- (b) Mayor or any member as his representative, Member;*
- (c) Director, Urban Local Bodies, Haryana or his representative, Member;*

(d) Commissioner or his representative (not below the rank of Extra Assistant Commissioner), Member”

Subsequently, the term of the Municipal Corporation, Faridabad, expired and a new Adhoc Body was constituted. Vide order dated 20.07.2015 (Annexure P/10), the associate members of the Adhoc Body Committee have been replaced by the Commissioner, Municipal Corporation. Hence, this writ petition.

In pursuance of notice of motion, respondents appeared. Reply on behalf of respondent No.3 has been filed. It has been stated in the reply that petitioners have concealed the material facts. No new Adhoc Body Committee was constituted, rather only new members were associated with it after dissolution of House as per the provisions of Rule 4(3) of the 1994 Rules. This has been done in pursuance of decision of the Adhoc Body taken in its meeting held on 13.07.2015 on behalf of Administrator appointed by the Government vide order dated 26.05.2015. It has also been mentioned in the reply that Rule 2(a) of the 1994 Rules defines the words “Adhoc Body” and further Rule 4 of the 1994 Rules prescribes the procedure of constitution of Adhoc Body and Rule 6 further prescribes the procedures and powers of the Adhoc Body.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioners vehemently contended that under Rule 4 of the 1994 Rules, the power to constitute an Adhoc Body vests with the State Government. Rule 4 of the 1994 Rules reproduced as under:-

“4. Constitution of Adhoc Body – (1) For the purpose of carrying out the provisions of these rules, the Government shall constitute an Adhoc Body for each Corporation consisting of the following members namely:-

- (a) Deputy Commissioner Chairman;*
- (b) Mayor or any member as
his representative ... Member;*
- (c) Director, Local Bodies or his
representative Member;*
- (d) Commissioner or his representative
not below the rank of Extra-Assistant
Commissioner ... Member*

(2) The Adhoc Body shall associate with itself not more [than] five members belonging to various interests or groups out of the sitting members of the Corporation or out of the members of the dissolved Municipality.

(3) In case municipality mentioned in sub-rule (2) does not exist, the Adhoc Body shall associate with itself not more than five members belonging to various interests or groups from Municipal area.”

Admittedly, in the present case, vide order dated 23.06.2014

consisting of Deputy Commissioner as Chairman, Mayor or any member as his representative, Director, Urban Local Bodies, Haryana or his representative and Commissioner or his representative (not below the rank of Extra Assistant Commissioner) as its members. Thereafter, following associate members were nominated in the said Adhoc Body Committee:-

- 1) Sh. Ashok Arora, Mayor, Municipal Corporation, Faridabad;
- 2) Sh. Mukesh Sharma, Senior Deputy Mayor;
- 3) Sh. Rajinder Bhamla, Deputy Mayor;
- 4) Sh. Yogesh Kumar Dhingra, Councilor Ward-15;
- 5) Sh. Anil Kumar Sharma, Councilor Ward-26;
- 6) Rao Ram Kumar, Councilor Ward-32.

They were participating in the meeting of delimitation of wards of Municipal Corporation. It is clear from letter dated 06.02.2015 (Annexure P/2) and their names also find mentioned in the proceedings of the Adhoc Body dated 24.02.2015 (Annexure P/5). A meeting notice was issued on 31.03.2015 (Annexure P/6) regarding delimitation of wards of Municipal Corporation, Faridabad to the members as well as associate members. Thereafter, the Commissioner vide notification dated 20.07.2015 (Annexure P/10), has added the following associate

members:-

1. Sh. Sunder Singh Mahour, Ex-Councilor, MCF,
2. Sh. Om Prakash Rakshwal, Ex-Councilor, MCF,
3. Smt. Dropdi Adlakha, Ex-Councilor, MCF,
4. Sh Daya chand Yadav, Ex-Councilor, MCF.

Perusal of Rule 4 of 1994 Rules clearly indicates that an Adhoc Body for each corporation, shall be constituted by the Government which shall consist of Deputy Commissioner as Chairman, Mayor or any member as his representative, Director, Local Bodies or his representative and Commissioner or his representative not below the rank of Extra-Assistant Commissioner as Members. The Adhoc Body shall also associate with itself not more than five members belonging to various interests or groups out of the sitting members of the Corporation or out of the members of the dissolved Municipality. Admittedly, the Corporation was subsisting at the point of time, when the earlier Adhoc Body was constituted in which Mayor or any member of his representative, Director, Urban Local Bodies, Haryana or his representative and Commissioner or his representative (not below the rank of Extra Assistant Commissioner) were the members. In addition to it, the associate members were added. When the term of the Corporation expired, an Administrator was appointed. The Administrator changed the members which were to be associated under Rule 4(2) of 1994 Rules.

Subsequently added associate members are also the Ex-Councilors of the dissolved house, but the fact remains that there was no occasion for the Administrator to do away with the already existing Adhoc Body specifically associated members. Learned counsel for the respondents failed to point out that if the Adhoc Body is already existing, under what provisions of law, the Administrator or the Corporation can change the members, once they have been associated or nominated for that purpose when corporation was existing. The basic purpose of the Adhoc Body is to consider the delimitation of wards. Perusal of the record shows that proper notice was not served upon the associate members who were nominated by the Government earlier. Even no reason has been recorded for removing them from associate membership. All the members of Adhoc Body including associate members were required to be associated, if at all, some decision is to be taken.

The contention of learned counsel for the respondents that under Article 243 ZG of the Constitution of India, there is bar to interference by Courts in electoral matters, is not sustainable. The issue in the present case is not with regard to the election process. This is only a case with regard to the delimitation of the wards which specifically falls under the provisions of 1994 Rules and Adhoc Body and associated members were the elected representatives who were associated with as

per Rules.

It needs to be clarified that when the house was dissolved the number of wards were less and vide subsequent notification, the number of wards increased keeping in view change in Rule 3 of 1994 Rules as the formula for fixation of seats of Corporation has been changed. Be that as it may, the fact remains that even the delimitation of wards is to be done by the Adhoc Body, I do not find any justified reason why the Administrator has changed the already existing associate members, who were appointed in consonance with Rule 4(2) of 1994 Rules. There was no occasion for changing the associate members.

There is allegation in para 14 of the petition that under pressure of the ruling party, the members of the ruling party have been inducted in place of already existing associated members, so that they may delimit the wards according to their choice and form new wards as per choice. Although I am not required to comment on this aspect but the fact remains that once the Adhoc Body Committee is already existing, there is no question to change the same by the Administrator with the dissolution of the existing House of Corporation. Rather, Administrator should proceed with the committee which was already existing. Otherwise also, once the term of the Corporation is over, there is no

members are to be replaced, some reasons must be recorded why the existing associate members are removed and new members are brought in. The authorities are required to follow the minimum principles of natural justice. They cannot exercise the power arbitrarily.

In view of above, impugned order dated 20.07.2015 (Annexure P/10) cannot be sustained. Resultantly, the instant writ petition is allowed, impugned order dated 20.07.2015 (Annexure P/10) is set aside. No order as to costs.

October 13, 2015
vkd

[Paramjeet Singh]
Judge