

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

1. Civil Writ Petition No. 4151 of 2015(O&M)
Date of Decision: March 24 , 2014.

Kuljeet Singh Bedi PETITIONER(s)
Versus
State of Punjab and others RESPONDENT (s)

2. Civil Writ Petition No. 5364 of 2015(O&M).

Kuldeep Kaur PETITIONER(s)
Versus
State of Punjab and others RESPONDENT (s)

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

Present: Mr. Ranjivan Singh, Advocate and
Mr. P.S.Kanwar, Advocate
for the petitioners.

Mr. G.P.Singh, Addl.A.G., Punjab.

1. Whether reporters of local papers may be allowed to see the judgment?
 2. To be referred to the reports or not?
 3. Whether the judgment should be reported in the digest?
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Hemant Gupta, J.

This order shall dispose of CWP No.4151 of 2015 (Kuljeet Singh Bedi v. State of Punjab and others) and CWP No.5364 of 2015 (Kuldeep Kaur v. State of Punjab and others) as common questions of law are raised herein.

The challenge in both the above writ petitions is to the notification dated 19.04.2001 whereby Punjab Municipal Corporations Mayor, Senior Deputy Mayor and Deputy Mayor Election Rules, 1991 (for short 'the Rules') were amended and Rule 3 was substituted contemplating election to the posts of

Mayor, Senior Deputy Mayor and Deputy Mayor by 'show of hands' substituting the earlier secret method. The Rule prior to amendment reads as under:-

“3. Manner of Election. - (1) A meeting of the [members and ex officio members] of a Municipal Corporation shall be convened by the Divisional Commissioner to elect a Mayor, Senior Deputy Mayor and Deputy Mayor and the election shall be held by way of ballot for which purpose special ballot papers bearing the official mark allotted by the Divisional Commissioner shall be used:

Provided that, if any [members and ex officio member] being illiterate or otherwise being incapable of casting his vote by writing 'Yes' and 'No' on the ballot paper, the person presided over the meeting shall record 'Yes' or 'No', as the case may be, on the ballot paper on behalf of such [member and ex officio member], in accordance with his wishes.”

The said Rule was interpreted by Hon'ble Supreme Court in a judgment reported as Gurdeep Singh and others v. State of Punjab and others, (2000) 9 SCC 9, wherein it was held that the convener ought to have proceeded for voting through ballot papers observing utmost secrecy. There could not have been an open voting which, though demanded, should have been firmly ruled out. After the said judgment, the Rule was amended on 19.04.2001. The amended Rule reads as under:-

“3. Manner of Election. - (1) A meeting of the members of a Municipal Corporation shall be convened by the Divisional Commissioner to elect a Mayor, Senior Deputy Mayor and Deputy Mayor and the election shall be held by show of hands.

(2) The person presiding over the meeting convened under sub-rule (1) shall keep a brief record in writing.”

We do not find any merit in the argument raised that the amended Rule is illegal, against the fundamental privilege of secrecy as provided in the Constitution of India.

A Constitution Bench of Hon'ble Supreme Court in Kuldip Nayar

amendment in the Representation of People Act, 1951 for the purposes of election to the Rajya Sabha whereby the 'secret vote' was substituted by 'open vote'. Hon'ble Supreme Court has held that by way of the amendment, right to vote is not taken away. Each elected member of Legislative Assembly of the State concerned is fully entitled to vote in the election to the Rajya Sabha. The only change that came into by the impugned amendment is that he has to disclose the way he casts his vote to the representative of his party. The relevant part of the judgment reads as under:-

“424. It follows that for “secret ballot” to be the norm, it must be expressly so provided. To read into Article 80(4) the requirement of a secret ballot would be to read the words “and the voting at such election shall be by secret ballot” into the provision. To do so would be against every principle of constitutional and statutory construction.

425. In view of it not being the requirement of the Constitution, as in the case of election of the President and the Vice President, it was permissible for Parliament when passing legislation like the Representation of the People Act to provide otherwise, that is, to choose between the system of secret ballot or open ballot. Thus, from this angle, it is difficult to hold that there is constitutional infirmity in providing open ballot system for the Council of States.

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450. It is, therefore, evident that the right to vote is a concept which has to yield to a concept of the attainment of free and fair elections. The nature of elections, namely, direct or indirect, regulates the concept of right to vote. Where elections are direct, secret voting is insisted upon. Where elections are indirect and where members are chosen by indirect means, such as, by parliament or by legislative assembly or by executive, then open ballot can be introduced as a concept under the electoral system of voting. In the case of direct elections, members are chosen directly by popular vote which is not the case under indirect elections. Therefore, it cannot be said that the concept of open ballot would defeat the attainment of free and fair elections.....

451 to 460. xx xx xx xx xx

461. By the amendment, the right to vote is not taken away. Each elected Member of the Legislative Assembly of the concerned State is fully entitled to vote in the election to the Council of States. The only change that has come owing to the impugned amendment is that he has to disclose the way he has cast

the vote to the representative of his Party. Parliament would justify it as merely a regulatory method to stem corruption and to ensure free and fair elections and more importantly to maintain purity of elections. This Court has held that secrecy of ballot and purity of elections should normally co-exist. But in the case of the Council of States, the Parliament in its wisdom has deemed it proper that secrecy of ballot should be done away with in such an indirect election, to ensure purity of election.

462. The procedure by which an election has to be held should further the object of a free and fair election. It has been noted by the Parliament that in elections to the Council of States, members elected on behalf of the political parties misuse the secret ballot and cross vote. It was reported that some members indulge in cross voting for consideration. It is the duty of the Parliament to take cognizance of such misbehavior and misconduct and legislate remedial measures for the same. Breach of discipline of political parties for collateral and corrupt considerations removes the faith of the people in a multi-party democracy. Parliament, therefore, necessarily legislated to provide for an open ballot. A multi-party democracy is a necessary part of the basic structure of the Constitution. An amendment to law intended to restore popular faith in parliamentary democracy and in the multi-party system cannot be faulted.

463. The principle of secrecy is not an absolute principle. The legislative amendment cannot be struck down on the ground that a different or better view is possible. It is well settled that a challenge to legislation cannot be decided on the basis of there being another view which may be more reasonable or acceptable. A matter within the legislative competence of the legislature has to be left to the discretion and wisdom of the latter so long as it does not infringe any constitutional provision or violate the fundamental rights.

464. The secrecy of ballot is a vital principle for ensuring free and fair elections. *The higher principle, however, is free and fair elections and purity of elections.* If secrecy becomes a source for corruption then sunlight and transparency have the capacity to remove it. We can only say that legislation pursuant to a legislative policy that transparency will eliminate the evil that has crept in would hopefully serve the larger object of free and fair elections.”

The statutory Rule does not provide for secret vote. Instead, the Rule provides the method of voting by raising of hands. Therefore, the said Rule cannot be said to be illegal in the absence of any provision in the Statute

contemplating voting by secret ballot or prohibiting any other method or

prescribing any other method of voting.

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).

In view of the above, we do not find any merit in both the writ petitions. The same are dismissed.

(HEMANT GUPTA)
JUDGE

(LISA GILL)
JUDGE

March 24, 2015.
'om'/D.Gulati'