

In the High Court of Punjab and Haryana at Chandigarh

**CWP No. 4507 of 2015
Decided on 12.3.2015**

Shamsher Singh

--Petitioner

Vs.

State of Punjab and others

--Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Deepak Bhardwaj, Advocate, for the petitioner

Rakesh Kumar Jain,J: (Oral)

The petitioner has returned from Ward No.11 of Nagar Panchayat, Chamkaur Sahib in the election held in February 2015.

The Department of Local Bodies, Punjab issued a notice dated 23.2.2015 to all the Deputy Commissioners in the State regarding administering oath to the members elected in the general elections of the Municipal Councils/Nagar Panchayats and for conducting election of President, Senior Vice President, Vice President and Junior Vice President.

Notice was also issued under Section 12 (ii) of the Punjab Municipal Act,1911 to the concerned M.L.A, being an ex officio member, for participating in the general election of President and Vice President and to vote therein.

The petitioner is aggrieved against the aforesaid part of notice dated 23.2.2015. It is contended that the M.L.A is an ex-officio member/nominated member and has no right to cast his vote in the election.

Learned counsel for the petitioner has referred to Section 20 of the Act and Rule 3 of the Punjab Municipal (President & Vice President) Election Regulations, 1994. It is submitted that an ex-officio member has not been given a right to vote either in the Act or in the Rules. It is further submitted that even Rule 3 of the Rules provides notice only to the elected member and not to the nominated member but learned counsel for the petitioner has very fairly attached a recent pronouncement of Five Judges Bench in the case of **Sanjeev Kumar Verma Vs. The Director, Urban Local Bodies, Chandigarh and others** passed in LP.A.No. 592 of 2013 (O&M) decided on 11.2.2015 as Annexure P-2 with this petition for the perusal of this Court.

In the said case, there were three questions before the Full Bench to decide which read as under:-

“(i) Whether in counting/calculating' not less than two-thirds of the elected members of the Committee' for successful carrying out the no confidence motion against the President or Vice President, as provided under Section 21 (3) of the Act, the nominated members who have been nominated under clauses (ii) and (iii) of Section 9 (3) by virtue of their being members of the House of People and the Legislative Assembly, or members of the Council of States, have to be taken into consideration ?

(ii) Whether the members of the State Legislative Assembly, the House of the People or the member of Council of States, who have been nominated as members of the Committee under clauses (ii) and (iii) of Section 9 (3) by virtue of their being members of the House of People and the Legislative Assembly; or the Council of States, can be deemed to be the 'elected members of the Committee' merely because they are elected members of House of People

and the Legislative Assembly, or the Council of State, particularly in view of Section 13-B of the Act ?

(iii) Whether a member of the House of the People and Legislative Assembly can remain as elected member of the Municipal Committee or Council, as the case may be, in view of the bar created under Section 13-B of the Act ?

Learned counsel for the petitioner has submitted that the Full Bench has decided question No. 2 to the effect that Member of the State or the Legislative Assembly or the House of People or Member of the Council of State "would only be nominated members and would not be elected member". However, at the same time, it has been held by the Full Bench that "thus in our opinion, a nominated member of the Committee under clauses (ii) and (iii) of Section 9 who has been nominated as member of the Committee by virtue of his office can be considered to be member of the Committee, but in light of the aforesaid Sections 18 (1), 13-B and 9 (3) of the Act, he cannot be considered and held to be an elected member of the Committee. Being a nominated member, he may cast vote at the time of election of President or Vice President, but in view of the bar created vide proviso added vide Haryana Act No.10 of 2005 he shall not have any right to contest the election of the President or Vice President as he is not the elected member of the Committee and as per Section 18 (1) of the Act, only the elected member of the Committee can be elected as President or Vice President.

Learned counsel for the petitioner has submitted that the aforesaid observation has been expressed by the Full Bench while interpreting the provisions of the Haryana Municipal Act, 1973, while the provisions of the Punjab Municipal Act 1911, are different.

I have heard leaned counsel for the petitioner and after examining the record, am of the considered opinion that there is no merit in this petition because in both the Haryana and Punjab Municipal Act, Member of the Legislative Assembly is a nominated member. Right to vote is given to an elected member but still the Full Bench of this Court in the case of **Sanjeev Kumar Verma** (Supra) has held that being a nominated member, he may cast his vote at the time of election of the President or Vice President.

In view of the aforesaid discussion, I do not find any merit in this petition and the same is hereby dismissed.

12.3.2015
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(Rakesh Kumar Jain)
Judge