

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CWP No.5362 of 2015

Date of Decision: 30.03.2015

Darshan Singh & another

...Petitioners

Versus

State of Punjab & others

...Respondents

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

Present: Mr. Amit Jhanji, Advocate,
for the petitioners.

Mr. Vinod S. Bhardwaj, Addl. AG, Punjab,
for respondent Nos.1 to 4.

HEMANT GUPTA, J.

Challenge in the present writ petition is to the instructions dated 23.02.2015 (Annexure P-4), whereby ex-officio members have been permitted to vote in the elections of the President and Vice President of a Municipal Council. The relevant instructions read as under:

“Your kind attention is invited towards Rule 3(1) of the Punjab Municipal (President & Vice President) Election Regulation, 1994, with an intimation that a meeting of all the elected members of Municipal Council/Nagar Panchayat is to be convened by serving 48 hours notice to the said members at their residential address, within a period of 14 days from publishing the names of elected members in official gazette. It is further to be made clear by you in the notice that oath will be administered in the said meeting and election of President, Senior Vice President, Vice President or Vice Presidents, as is appropriate, is to be got conducted.”

The grievance of the petitioners is that the ex-officio members i.e. elected members of the Parliament or Legislative Assembly, who are

members of the Municipal Council in terms of Section 12 of the Punjab Municipal Act, 1911 (for short ‘the Act’) have no right to vote in the elections for President or Vice President of the Municipal Council.

To appreciate the argument raised, apart from Article 243-R of the Constitution of India, certain provisions of the Punjab Municipal Act, 1911 and Punjab Municipal (President and Vice President) Election Rules, 1994 need to be extracted. The same are as under:

“243 R. Composition of Municipalities – (1) Save as provided in Clause (2), all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial Constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.

(2) The Legislature of a State may, by law, provide –

(a) for the representation in a Municipality of –

- (i) persons having special knowledge or experience in Municipal Administration;
- (ii) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;
- (iii) the members of the Council of States and the members of the Legislative Council of the State registered as electors within the Municipal area;
- (iv) the Chairperson of the Committees constituted under clause (5) of Article 243 S;

Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality;

(b) the manner of election of the Chairperson of a Municipality.”

The Punjab Municipal Act, 1911

“3. Definitions - In this Act, unless there is something repugnant in the subject or context –

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(5b) ‘ex-officio member’ means a member referred to in clause (ii) of sub section (2) of Section 12 of this Act.

(9b) ‘newly constituted committee’ means a committee the members whereof have been elected at a general election but have not taken or made an oath or affirmation of allegiance as required under section 24.

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12. Composition of Municipalities - (1) A Municipal Council or a Nagar Panchayat constituted under Section 4 shall consist of a body of members, specified in section (3), having authority over such area.

(2) The Nagar Panchayat or the Municipal Council constituted under sub-section (1) shall be a body corporate having perpetual succession and a common seal with powers, subject to the provisions of this Act, to hold, acquire and dispose of property and may by that name sue or be sued.

(3) The Nagar Panchayat or the Municipal Council constituted under sub-section (1) shall consist of the following members, namely:-

- (i) such number of elected members as may be determined from time to time by the State Government in accordance with the prescribed principles; and
- (ii) all members of the Legislative Assembly of the State representing constituencies comprising wholly or partly the Municipal area.

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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 be 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.”

The Punjab Municipal (President and Vice President) Election Rules, 1994

“3. Manner of election – (1) The Deputy Commissioner or any other officer authorized by him in this behalf (hereinafter 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 residence 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 as such meeting, the oath of allegiance will be administered to the members present and also stating that the President and Vice President or Vice President 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.”

The argument of learned counsel for the petitioner is that an ex-officio member stands at par with a nominated member in terms of Article 243-R(2)(a)(i) and, thus, cannot have any right to vote. It is also argued that only elected members are required to take oath of affirmation at the time of constitution of the Municipal Council and keeping in view the fact that ex-officio member cannot contest elections for the post of President or Vice President, as the case may be, therefore, an ex-officio member has no right to vote in the process of elections for the President or the Vice President. Reliance is placed upon a five Judges’ Bench judgment of this Court in LPA No.592 of 2013 titled ‘Sanjeev Kumar Verma Vs. The Director, Urban Local Bodies, Chandigarh & others’ decided on 11.02.2015 dealing with the

provisions of the Haryana Municipal Act, 1973 in respect of two nominated Members i.e. Member Parliament from Ambala and Member Legislative Assembly, Naraingarh, nominated under Section 9(3) of the Haryana Municipal Act, 1973. The relevant provision i.e. Section 9(3) of the Haryana Municipal Act, 1973 reads as under:

“9. Composition of Municipalities – (1) The municipalities constituted under Section 2A shall consist of such number of elected members not less than eleven as may be prescribed by rules.

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(3) In addition to persons chosen by direct election from the territorial constituencies, the State Government shall, by notification in the Official Gazette, nominate the following categories of persons as members of a municipality:-

- (i) not more than three persons in case of Municipal Council and not more than two persons in case of Municipal Committee having special knowledge or experience in municipal administration;
- (ii) members of the House of the People and the Legislative Assembly of State, representing constituencies which comprise wholly or partly, the municipal area; and
- (iii) members of the Council of States, registered as electors within the municipal area;

Provided that the persons referred to in clause (i) above shall not have right to vote in the meetings of the municipalities and the persons referred to in clauses (ii) and (iii) shall not have any right to contest for the election of President or Vice President.

Provided further that the Executive Officer in the case of a Municipal Council and the Secretary in the case of a Municipal Committee, shall have the right to attend all the meeting of the municipality and to take part in discussion but shall not have the right to vote therein.”

Though the provisions in the present case are differently worded, but substantially they are same as in the Haryana Municipal Act,

1973. The members nominated having special knowledge or experience in municipal administration have not been granted right to vote. Such provision is in terms of Article 243-R of the Constitution. The members of the House of People and Legislative Assembly have no right to contest elections for President or Vice President. In Sanjeev Kumar Verma's case (supra), 15 Members including 2 elected Members were given notice to attend meeting to consider No Confidence Motion, which was attended to by 9 Members. It was declared to be carried out with support of 2/3rd of the elected Members. The Bench held that for calculating 2/3rd elected Members of the Committee, the nominated Members such as Members of Legislative Assembly and the Members of Parliament under clauses (ii) & (iii) of Section 9(3) of the Haryana Municipal Act, 1973 cannot be taken into consideration. It may be noticed that in terms of Section 21(3) of the Haryana Municipal Act, 1973, a No Confidence Motion can be carried with the support of not less than 2/3rd of the elected Members of the Committee. Therefore, the reliance of the petitioners on the said judgment is not tenable for the reason that the same does not deal with the right of ex-officio member to vote for the election of President or Vice President. In the said case, the provision is that only elected members can vote for the no confidence motion.

Mr. Jhanji has referred to two other judgments in Kewal Krishan Jindal & others Vs. State of Punjab & others (2009) 1 PLR 36 and Harbans Lal Vs. State of Punjab & others (2009) 1 PLR 69, to contend that judgment in Kewal Krishan Jindal's case (supra), does not lay down good law, as in the said case, it has been held that Member of the Municipal Council is required to attend the said meeting to participate in the election of the President, but he cannot contest the elections for the post of Vice

President. It is contended that such observations run counter to the provisions of the Statute. We do not find any merit in the said argument.

The Municipal Council has two set of Members in terms of Section 12 (3) of the Act. First set is of the elected Members, whereas the second set is of members of the Legislative Assembly of the State representing constituencies comprising wholly or partly the Municipal Area. The second set of Members is defined to be ex-officio members under Section 3(5b) of the Act. Therefore, the Municipality has the elected members and the ex-officio members as its members. Section 20 of the Act contemplates that “every Municipality shall, from time to time, elect one of its members to be its President or Vice President”. Such Municipality is the Municipality constituted under Section 12 of the Act, which has both members i.e. the elected members or the ex-officio members. Therefore, the elected members and the ex-officio members have a right to vote in the election of President or the Vice President. The only embargo in terms of sub-section (3) of Section 20 of the Act is that the ex-officio member shall not be eligible for election as a President or Vice President of the Municipality. Therefore, in terms of Section 20 read with Section 12 of the Act, ex-officio member as a member of the Municipality has a right to vote in the election of President or Vice President, but he cannot be a candidate for the election of President or Vice President. Such is the view taken in Kewal Krishan Jindal’s case (supra), when it has been held as under:

“A bare perusal of the aforesaid Rule shows that after the election, the Deputy Commissioner is required to empower an officer for convening the first meeting of the Municipal Council. In the said meeting, the oath is to be administered to the newly elected members and the election of President and Vice-President is also to be held. Since the MLA of the area is also a member of the Municipal Council, therefore, he is also required to attend the said

meeting to participate in the election of the President and Vice-President, but he cannot contest the election for the post of President or Vice-President. In the present case also, notices of the first meeting were issued to all the 32 members of the Municipal Council, i.e. 31 elected members and one MLA of the area. In the election for the post of President and Vice-President, both the groups secured equal number of votes. In that situation, in view of the provision contained in Rule 5 of the Rules, election was to be held by draw of lots. In view of this legal position, this Court while allowing CWP No. 13011 of 2008 had held that adjourning of the meeting was not proper and the Presiding Officer was required to hold draw of lots, in case the candidates of two groups secure equal number of votes.”

In Harbans Lal’s case (supra), again a Division Bench held that all members are entitled to elect one of them, but not the member of the Legislative Assembly as President of the Municipal Council. We find that the view taken in Kewal Krishan Jindal and Harbans Lal cases (supra) is in tune with the provisions of Section 12 and Section 20 of the Act, as the ex-officio members are the members of the Municipality in terms of Section 12(3) of the Act. There is no *pari materia* provision in the Act, as is provision under Section 21 of the Haryana Municipal Act, 1973 contemplating that only elected members would vote at the time of consideration of resolution of no confidence motion.

In view of the above discussion, we do not find any merit in the present writ petition. Consequently, the same is dismissed.

(HEMANT GUPTA)
JUDGE

30.03.2015
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(LISA GILL)
JUDGE