

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

Civil Writ Petition No.16990 of 2016

Date of Decision: December 02, 2016

Rajinder Kumar & Anr.

...Petitioners

Versus

State of Haryana & Ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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

Mr.Sandeep S.Mann, Sr.DAG, Haryana.

Mr.Lokesh Sinhal & Mr.Anil Kumar Rana, Advocates,
for respondent No.3.

Mr.M.S.Sindhu, Advocate, for respondent Nos.7 & 8.

Mr.Arvind Singh, Advocate, for respondent No.10.

RAMESHWAR SINGH MALIK, J.(Oral)

Present writ petition is directed against the order dated 30.11.2015 (Annexure P-14) passed by the Principal Secretary to Government Haryana, Urban Local Bodies Department-respondent No.1, whereby Adhoc Body for the delimitation of wards of Municipal Corporation, Faridabad, comprising Deputy Commissioner, Faridabad as Chairman, Director local bodies as ex-offico member and Administrator-cum-Commissioner, Municipal Corporation also as ex-offico member, with five other members belonging to various interests/ groups, was reconstituted.

Notice of motion was issued and in compliance thereof,

written statements were filed by the respondents. Petitioner filed his replication to the written statement filed by respondent No.3.

Heard learned counsel for the parties.

Facts necessary for disposal of the present writ petition are that vide order dated 18.06.2014 (Annexure P-1) at page 35-A of the paper book, Adhoc Body was constituted by the competent authority, deriving its powers under Rule 4 (1) of the Haryana Municipal Corporation Delimitation of Ward Rules, 1994, ("Rules of 1994" in short). This Adhoc Body was consisting of Deputy Commissioner, Faridabad as Chairman, Mayor of Municipal Corporation, Faridabad, Director, Urban Local Bodies, Haryana and Commissioner Municipal Corporation or his representative, as ex-officio members. This Adhoc Body headed by the Deputy Commissioner was also authorized to associate with it not more than five members belonging to various interests/groups out of the sitting members of the Corporation or out of the members of dissolved municipality, as envisaged under sub-rule (2) of Rule 4 of the Rules of 1994.

Thereafter, vide communication dated 06.02.2015 (Annexure P-2) five Councillors, including both the petitioners, who were enjoying the status of Senior Deputy Mayor and Deputy Mayor at that time, were nominated by the Mayor as associate members for the Adhoc Body, constituted vide above said order dated 18.06.2014 (Annexure P-1). In the interregnum, when the term of elected Councillors of the Municipal Corporation, Faridabad, was about to expire, respondent No.1, vide order

dated 26.05.2015 (Annexure P-9) appointed the Commissioner, Municipal Corporation, Faridabad, as Administrator of the Municipal Corporation, from the date of expiry of duration of the term of elected Councillors.

After having been appointed as Administrator of the Municipal Corporation, Faridabad, Commissioner, Municipal Corporation, Faridabad, in the capacity as Administrator, sought to change the associate members for the Adhoc Body, vide his order dated 20.07.2015 (Annexure P-10). This order dated 20.07.2015 (Annexure P-10) came to be challenged by the petitioners before this Court by way of CWP No.18860 of 2015 (***Rajinder Kumar & Anr. vs. State of Haryana & Ors.***) which was allowed by this Court, vide order dated 13.10.2015 (Annexure P-13).

Operative part of the order dated 13.10.2015 passed by this Court, needs to be referred here and the same reads as under:-

“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 Mayor. In place of Mayor, Administrator is appointed. If at all associated 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.”

A bare perusal of the order dated 13.10.2015 passed by this Court, including its abovesaid operative part, would make crystal clear that only the order dated 20.07.2015 (Annexure P-10) was under challenge before this Court. There was no challenge to the earlier order dated 26.05.2015 (Annexure P-9), whereby Commissioner, Municipal Corporation was appointed as Administrator of the Municipal

Corporation, Faridabad. This was the specific reason that there was no occasion for this Court to consider and appreciate the scope and ambit of sub-rule (3) of Rule 4 of the Rules of 1994.

Since the entire case revolves around the interpretation of Rule 4 of Rules of 1994, it would be appropriate to reproduce it and the same reads 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 ranks 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.”

Now the only issue that falls for consideration before this Court is; whether respondent No.1 has exceeded his jurisdiction, while passing the impugned order dated 30.11.2015 (Annexure P-14) whereby

Adhoc Body was reconstituted. Learned counsel for the petitioners vehemently contended that the impugned order dated 30.11.2015 (Annexure P-14) is in violation of the order dated 13.10.2015 (Annexure P-13) passed by this Court, whereby the earlier writ petition of the petitioners was allowed.

He further submits that expiry of the term of Mayor of Municipal Corporation, Faridabad, shall be of no consequence and the Adhoc Body which was rightly constituted vide initial order dated 18.06.2014 (Annexure P-1) must have been allowed to continue as it is. In support of his contentions, learned counsel for the petitioners places reliance on two judgments of the Hon'ble Supreme Court in **State of Tamil Nadu & Ors.** vs. **K.Shyam Sunder & Ors., 2011(8) SCC 737** and **Madan Mohan Pathak & Anr.** vs. **Union of India & Ors., 1978(2) SCC 50.** Concluding his arguments, learned counsel for the petitioners prays for setting aside the impugned order (Annexure P-14), by allowing the present writ petition.

Per contra, learned counsel for the respondents contended that once the Mayor of Municipal Corporation, Faridabad, ceased to be the member of Adhoc Body, in view of the order dated 26.05.2015 (Annexure P-9), whereby Commissioner, Municipal Corporation, Faridabad, was appointed as Administrator of the Municipal Corporation, Faridabad, Adhoc Body was bound to be reconstituted. They further submit that in such a peculiar fact situation, sub-rule (3) of Rule 4 of the Rules of 1994, would come into operation and neither the Mayor nor any

former councillor of the Municipal Corporation, would be in a position to claim any right under sub-rule (3) for becoming an associate member of the newly constituted adhoc body.

Learned counsels for the respondents further submit that since it was not the requirement of the provisions of sub-rule (3) of Rule 4 of the Rules of 1994 to nominate or appoint either the Mayor or former Councillors of the Municipal Corporation as associate members to the Adhoc Body, no error of law was committed by respondent No.1, while passing the impugned order dated 30.11.2015 (Annexure P-14). Neither any right of the petitioners was infringed nor any kind of prejudice was caused to them, while passing the impugned order and the same deserves to be upheld. They pray for dismissal of the writ petition.

Having heard learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, noticed hereinabove, instant writ petition has been found without any merit. Respondent No.1 has not exceeded his jurisdiction, while passing the impugned order and the same deserves to be upheld, for the following more than one reasons.

So far as the first judgment relied upon by learned counsel for the petitioners in ***K.Shyam Sunder's*** case (supra) is concerned, the question before the Hon'ble Supreme Court was about the legislative powers which is not the issue involved herein. As noticed herein above,

once the impugned action taken by respondent No.1 has been found within the four corners of law, the judgment of the Hon'ble Supreme Court in ***K.Shyam Sunder's*** case (supra) has not been found to be of any help to the petitioners, being distinguishable on facts.

Similarly, second judgment relied upon by learned counsel for the petitioners in ***Madan Mohan Pathak's*** case (supra) is also not applicable to the peculiar facts and circumstances of the case in hand. This judgment was dealing with an order whereby a judgment rendered by a Court of competent jurisdiction was sought to be nullified. Such has not been found the fact situation obtaining on record of the present case.

It is the settled proposition of law that peculiar facts and circumstances of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Further, sometimes difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in ***Padmausundara Rao & Anr. vs. State of Tamil Nadu & Ors., 2002(3) SCC 533.***

During the course of hearing, when confronted as to why sub-rule (3) of Rule 4 of the Rules of 1994 would not come into operation immediately after expiry of the term of election of the Mayor and Councillors of the Corporation, enabling respondent No.1 to reconstitute the Adhoc Body under sub-rule (3), learned counsel for the petitioners had no answer and rightly so, it being a matter of record. Learned counsel for the petitioners also could not point out any patent illegality or

perversity in the impugned order (Anenxure P-14). Further, no prejudice of any kind, whatsoever, has been shown, which might have been caused to the petitioners by passing the impugned order, warranting interference at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India.

Once the term of election of Mayor and Councillors of Municipal Corporation, Faridabad, had expired, they would have no indefeasible right to put their claim for becoming or continuing as associate members of the Adhoc Body, which was bound to be re-constituted and was rightly reconstituted, vide impugned order (Anenxure P-14). It is neither pleaded nor argued on behalf of the petitioners that the petitioners or former Mayor of Municipal Corporation, Faridabad, ever challenged the order dated 26.05.2015 (Annexure P-9), either at the time of filing the earlier writ petition or even by way of instant writ petition.

Once the order dated 26.05.2015 contained in Annexure P-9 has gone undisputed and unchallenged before any Court of law, respondent No.1 was well within his jurisdiction to reconstitute the Adhoc Body, invoking the provisions of sub-rule (3) of Rule 4 of the Rules of 1994. Having said that, this Court feels no hesitation to conclude that respondent No.1 committed no error of law, while passing the impugned order (Annexure P-14) and the same deserves to be upheld, for this reason also.

When there was no restraint order passed by this Court, while

allowing the earlier writ petition of the petitioners, vide order dated 13.10.2015 (Annexure P-13), there was no legal impediment for respondent No.1 in passing the impugned order, thereby reconstituting the Adhoc Body for the delimitation of wards of the respondent-Municipal Corporation. It is neither pleaded nor argued on behalf of the petitioners that order dated 26.05.2015 (Annexure P-9) was suffering from any patent illegality.

It is also not in dispute that at the time of passing the impugned order (Annexure P-14) term of election of Mayor as well as Councillors of the respondent-Municipal Corporation, including the petitioners, had expired and no elected body of the Municipal Corporation was existing. Under this undisputed fact situation obtaining on the record of the present case, it can be safely concluded that impugned order (Annexure P-14) passed by respondent No.1 does not suffer from any patent illegality and the same deserves to be upheld, for this reason as well.

So far as the allegation levelled on behalf of the petitioners, that impugned order was passed by respondent No.1 with a view to nullify the previous order dated 13.10.2015 (Annexure P-13) passed by this Court, is concerned, it has been duly considered but found wholly misplaced. As observed herein above, neither there was any restraint order passed by this Court precluding respondent No.1 from reconstituting the Adhoc Body nor there was any other legal hurdle in his way to pass the impugned order (Annexure P-14), with a view to

reconstitute the Adhoc Body.

In fact, after the expiry of the term of election of the Mayor and the petitioners, being the former Councillors of Municipal Corporation, Faridabad, passing of impugned order had become a compulsive necessity as a result of natural consequences, which has also been found duly supported by the relevant provisions of law contained in Rule 4 of the Rules of 1994. Thus, by no stretch of imagination, it can be said that either respondent No.1 intended or, as a matter of fact, violated the order dated 13.10.2015 passed by this Court, by passing the impugned order (Annexure P-14). Ordered accordingly.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that instant writ petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, present writ petition stands dismissed, however, with no order as to costs. All pending applications also stand disposed of.

December 02, 2016
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(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No