

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

206

**CWP-15349-2018
DATE OF DECISION: 06.06.2018**

MOUSAM DAGAR

... Petitioner

Versus

THE STATE OF HARYANA AND ANOTHER

... Respondents

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL**

Present: Mr. Pankaj Maini, Advocate
for the petitioner.

Ms. Palika Monga, DAG, Haryana.

Mr. Lokesh Sinhal, Advocate
for respondent No.4.

G.S. SANDHAWALIA, J. (ORAL)

Written statement has been filed by the State and the same is taken
on record.

The grievance as such of the petitioner has been noted in the order
dated 05.06.2018 which reads as under:-

*“Inter alia submits that election to the post of
President is to be held for Haily Mandi, which has been
notified only for the General Category candidates, as per
notification dated 16.05.2018 (Annexure P-2). It is the case
of the petitioner that private-respondent No.4-Suresh
Kumar, who has also been elected as a Member of the
Municipal Committee on 13.05.2018 (Annexure P-3) as a
Backward Class candidate, is also being nominated for the*

post of President, which he would not be eligible. It is submitted that the said election is to take place on 06.06.2018 at 3 pm, as per communication dated 03.06.2018 (Annexure P-4). Notice of motion for 06.06.2018. Ms.Palika Monga, DAG, Haryana accepts notice on behalf of the State. Copy of the paperbook has been supplied to her. State Counsel shall verify the factum of the nomination of respondent No.4 and inform this Court tomorrow at 10 am. Copy of this order be supplied to the State Counsel, under the signatures of Special Secretary of this Court.”

Learned counsel for the State and the private respondent have, however, placed reliance upon the judgment in “**Bihari Lal Rada Vs. Anil Jain (Tinu) and Ors. 2009(4) SCC 1**” to submit that a Backward Class candidate is also eligible to contest for the post of President on the strength of his own merit and as such reserved candidate can also contest for the General seats. Learned counsel for the petitioner is not able to dispute the said legal proposition as such.

He further submits that there is an apprehension that when the oath is to take place for the members of the Municipal Committee, Hailey Mandi, the process of election for the post of President or Vice President will also be done in haste. It is, accordingly, submitted that the moment, the number of candidates is more than one, the recourse has to be taken to voting by ballot paper. Reference is made to Rule 71 of the Haryana Municipal Election Rules, 1978 (*hereinafter referred to as ‘the Rules’*), which reads as under:

“71. Ballot to be taken and result thereof.—(1) If only one candidate each for the offices of the President or Vice President is proposed, such candidate shall be declared to have been duly elected. If the number of proposed candidates is more than one for each office, the voting shall

be by ballot paper or electronic voting machine. The members present shall be required to vote by ballot paper by marking with arrow cross mark rubber stamp or by electronic voting machine, as may be directed by the State Election Commission. The candidate getting the maximum number of votes shall be declared to have been elected. Special ballot paper shall be used for such voting and it shall bear an official mark to be placed thereon by the Deputy Commissioner.

(2) ---

(3) All ballot papers used for such voting shall, immediately after the counting of votes has been completed, be enclosed in the stout envelope and sealed by the officer who presided at the meeting in the view of the members present thereat and the description of the election to which the ballot papers relate shall be inscribed thereon and such envelope shall be enclosed in another large envelope which shall be addressed, and delivered to the Deputy Commissioner. The Deputy Commissioner shall preserve the inner envelope intact until the expiry of one year from the date of the election, and shall then, subject to any direction to the contrary made by the State Government, a competent Court, or a person or persons appointed to hold an enquiry into an election under Part V of these rules, cause it to be destroyed with its contents.

(4) ----”

The State, in its reply, has taken a stand that no nomination has even been filed even by respondent No.4 as has been alleged in the petition. However, Mr. Sinhal, appearing for respondent No.4 candidly, could not deny, at this stage, the fact that his client may be a prospective aspirant for the post of the President.

Keeping in view the above, this Court is of the opinion that once the election process, as provided under Rule 70 of the Rules, is that the election of the President or Vice President is to be held in the meeting, which is the first meeting of the newly constituted Committee a 48 hours notice is to be issued and the said procedure prescribed in Section 71 should be strictly adhered to. The petitioner has apprehension that the procedure prescribed of ballot papers may not be resorted to.

Once Rule 71 provides so that a special ballot paper should be used for such voting and the same will bear an official mark to be placed thereupon by the Deputy Commissioner, it would be appropriate that such voting takes place in the presence of the Deputy Commissioner himself, as it is apparent that there are more than one candidate in the fray.

Learned counsel for the State has taken instructions from Viney Partap, IAS, Deputy Commissioner on telephone that he shall be present at Hailey Mandi when the oath is being taken by the elected members of the said Municipal Council under the control of the Convener. He shall also be present to oversee the voting process of the President or Vice President. Learned State counsel has further informed that the Deputy Commissioner is already *en route* to the venue, meeting of which is slated for 03:00 p.m.

Learned counsel for the petitioner has also placed on record the notice, which was sent to the elected members, giving 48 hours as such. He also placed on record the copy of an SMS sent to all the elected members to be present in the meeting.

Accordingly, the present writ petition is disposed of with an assurance from the State that the Deputy Commissioner shall be present and ensure that the procedure prescribed in Rule 71 is strictly adhered to. Needless

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to say, it will be open to any of the parties to challenge the result of the election, in accordance with law.

Copy of this order be given to the learned State counsel under the signatures of the Bench Secretary of this Court.

(G.S. SANDHAWALIA)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

06.06.2018
SwarnjitS

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No