

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

**CWP No.7725 of 2020 (O&M)
Date of Decision: 04.06.2020**

Gajanand

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Mahir Sood, Advocate for the petitioner.

Mr. Sandeep Moudgil, Additional Advocate General, Haryana.

MAHABIR SINGH SINDHU, J.

Present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of the impugned election notice dated 01.06.2020 (P-1), vide which, election for the posts of President and Vice-President, Municipal Committee, Ateli, District Mahendergarh (*for short 'Committee'*) is scheduled to be held today i.e. 04.06.2020.

(2) It is contended by learned Counsel for the petitioner that President of the Committee can be elected only through direct election by voting of general public of the area and not by the Ward Members. Reference in this regard is made to sub-section 2 of Section 9 of the Haryana Municipal Act, 1973 (*for short 'Act of 1973'*). Further contended that as per sub-section 2 of Section 18A, before conducting the election of the Vice-President, it is imperative that firstly, the President should be elected and then only a meeting

would be convened consisting of the President along with other ward members at forty-eight hours notice for conducting the election of Vice-President.

On the other hand, learned State Counsel raised a preliminary objection regarding the maintainability of the writ petition in view of the provisions of Article 243-ZG of the Constitution as well as Section 275-B of the Act of 1973. Also submitted that the Election Tribunal constituted in terms of Clause (b) of Section 275-B is duly functioning within District Mahendergarh, thus, an effective and alternative remedy of election petition is available. Further submitted that President is to be elected by the ward members and not by the electors/voters of the territorial area of the Committee. He has also submitted that there is no bar for conducting the election for the post of Vice-President simultaneously with the President in view of the facts and circumstances of the present case as President of the Committee could not be elected despite various meetings for the last two years.

(3) Heard learned Counsel for the parties and perused the paper-book.

(4) Before proceeding with the matter, it would be appropriate to reproduce the provisions of Sections 9, 18, 18A, 275-B of the Act of 1973 as well as Articles 243-R and 243-ZG of the Constitution:-

Section 9. Composition of Municipalities.

(1) The municipalities constituted under section 2A shall consist of the president, vice-president and such number of elected members, not less than eleven, as may be prescribed.

(2) Save as provided in sub-section (3), all the seats in the municipality including the president shall be filled in by persons chosen by direct election from the territorial constituencies in the municipal area and for this purpose each municipal area shall, by a notification issued in this behalf, be divided into territorial constituencies to be known as wards.

(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 any right to vote in the meetings of the municipalities and the persons referred to in clauses (ii) and (iii) above shall not have any right to vote for the No Confidence Motion and to contest or vote for the election of 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.

Section 18. Election of vice-president - *(1) Every Municipal Committee or Municipal Council shall, from time to time, elect one of its elected members to be the vice-president:*

Provided that if the office of the vice-president is vacated during his tenure on account of death, resignation or no confidence motion, a fresh election for the remainder of the period shall be held.

(2) The term of office of the vice-president shall be for a period of five years or for the residue period of his office as a member, whichever is less.

Section 18A. Time line for oath of allegiance and election of vice-president. -

(1) Unless the State Government otherwise directs, the Deputy Commissioner or any gazetted officer appointed by him in this behalf shall, within thirty days of the publication of the notification of the names of the president and the members elected to a committee, convene the first meeting of the newly constituted committee at forty-eight hours notice to be delivered at their ordinary place of residence to administer an oath of allegiance under section 24. The notice shall clearly state that the oath of allegiance shall be administered to the president and members present.

(2) The Deputy Commissioner or any gazetted officer appointed by him in this behalf shall, within a period of thirty days of the meetings referred to in sub-section (1), convene a meeting of the president and members at forty-eight hours notice to be delivered at their ordinary place of residence. The notice shall clearly state that the oath of allegiance shall be administered to the left over members and that the election of the vice-president shall be held in the meeting. The convener shall firstly administer the oath of allegiance to the left over members and thereafter shall preside over the meeting of the election of the vice-president.

(3) If the president and members fail to elect the vice-president in the meeting convened under sub-section (2), the Deputy Commissioner or any gazetted officer appointed by him in this

behalf shall, within a period of thirty days of the meeting referred to in sub-section (2), convene meeting of the president and members for the election of the vice-president as per the procedure mentioned above until the vice-president are elected.

(4) If the president and members fail to elect the vice-president in the meetings convened under sub-sections (2) or (3) till the expiry of five months from the date of notification of the elected president and members by the State Election Commission, the Deputy Commissioner or any gazetted officer appointed by him in this behalf shall, convene a meeting of the president and members for the election of the vice-president at forty-eight hours notice to be delivered at their ordinary place of residence. The notice shall clearly state that if the members fail to elect the vice-president in the meeting, the committee shall be deemed to have been dissolved without any further notice or order.

(5) Notwithstanding anything contrary to this Act, if the president and members fail to elect the vice-president in the meetings convened after following the procedure provided under aforesaid provisions till the expiry of six months from the date of notification of the elected president and members, the committee shall be deemed to be dissolved with immediate effect without following any procedure provided under the Act or rules made thereunder:

Provided that such meeting shall be deemed to be validly convened meetings of the committee.

(6) Notwithstanding anything contained in any bye-laws made under section 31, the administration of the oath of allegiance and the election of the vice-president shall be recorded as part of the proceedings in the minutes of the meetings.

***275-B. Bar to interference by Courts in electoral matters. -
Notwithstanding anything contained in this Act -***

(a) the validity of any law relating to the delimitation of constituencies, made or purporting to be made under this Act, shall not be called in question in any court;

(b) no election to any municipality shall be called in question except by an election petition presented to the Tribunal and in such manner as may be prescribed by rules.

Article 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 Chairpersons 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.

Article 243ZG. Bar to interference by courts in electoral matters.-

Notwithstanding anything in this Constitution,—

- (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243-ZA shall not be called in question in any court;*
- (b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.*

Perusal of Article 243-R, reproduced hereinabove, reveals that all 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. Similar provisions were enacted by the State of Haryana under sub-section 2 of Section 9 of the Act of 1973, but subsequently, by way of an amendment dated 04.09.2019 (Haryana Act No.33 of 2019), sub-section 2 was amended and the words 'including the President' have also been incorporated with all the seats in the Municipality.

(5) Article 243-ZG starts with non-obstante clause and clause (b) thereof says that no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State. Somewhat similar provision is enacted by the State under Section 275-B of the Act of 1973 and that also starts with non-obstante clause and clause (b) thereof envisages that no election to any Municipality shall be called in question except by an election petition presented to the Tribunal and in such manner as may be prescribed by rules. The law is well settled by the

Hon'ble Supreme Court that ordinarily in election matter(s), petition under Article 226 before High Court is not to be entertained until and unless substantial injustice has ensued or is likely to ensue and reference in this regard can be made to (1955) 2 SCR 1, titled as **Sangram Singh Versus Election Tribunal**. Para 13 and 14 of the same read as under:-

“13. The jurisdiction which Articles 226 and 136 confer entitles the High Courts and this Court to examine the decisions of all Tribunals to see whether they have acted illegally. That jurisdiction cannot be taken away by a legislative device that purports to confer power on a tribunal to act illegally by enacting a statute that its illegal acts shall become legal the moment the tribunal chooses to say they are legal. The legality of an act or conclusion is something that exists outside and apart from the decision of an inferior tribunal. It is a part of the law of the land which cannot be finally determined or altered by any tribunal of limited jurisdiction. The High Courts and the Supreme Court alone can determine what the law of the land is vis-a-vis all other courts and tribunals and they alone can pronounce with authority and finality on what is legal and what is not. All that an inferior tribunal can do is to reach a tentative conclusion which is subject to review under Articles 226 and 136. Therefore, the jurisdiction of the High Courts under Article 226 with that of the Supreme Court above them remains to its fullest extent despite Section 105.

14. That, however, is not to say that the jurisdiction will be exercised whenever there is an error of law. The High Courts do not, and should not, act as Courts of appeal under Article 226. Their powers are purely discretionary and though no limits can be placed upon that discretion it must be exercised along recognised lines and not arbitrarily; and one of the limitations imposed by the Courts on themselves is that they will not exercise jurisdiction in this class of case unless substantial injustice has ensued, or is likely to ensue. They will not allow themselves to be

turned into Courts of appeal or revision to set right mere errors of law which do not occasion injustice in a broad and general sense, for, though no legislature can impose limitations on these constitutional powers it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be. Therefore, writ petitions should not be lightly entertained in this class of case.”

(6) Paper-book reveals that election for the members of the Committee was held in the year 2018 and 11 members were elected for constitution of the Committee apart from the nominated members.

On 14.06.2018, first meeting of the Committee was convened for the election of President and Vice-President; thereafter, till 12.01.2019, eight meetings were held, but neither President; nor Vice-President could be elected upto now.

(7) Still further, para 5 of the petition clearly reveals that petitioner is claiming that he is resident of Ateli and wishes to elect the President of the Committee by way of direct election, but there is no material on record to indicate that he is even a registered voter for the territorial area of the Committee.

(8) A perusal of impugned notice reveals that out of total 11 elected members of the Committee, 05 were removed by the competent authority, vide Notification dated 01.06.2020 and impugned election notice for the posts of President and Vice-President of the Committee was given to 06 remaining ward members apart from M.L.A. and M.P. of the area being nominated members. It is further made clear in the impugned notice that “*in case election of the President and Vice-President is not made in this meeting as per rules then the elected Council shall be deemed as dissolved without*

any notice or order”.

(9) Concededly, none of the ward members or nominated members have been impleaded as party respondent(s) in the present petition, who are to elect the President and Vice-President from amongst themselves, thus, they are necessary and proper party while challenging the impugned election notice.

The law is well settled that in the absence of a necessary party, the writ petition is incompetent and necessary party is one without whom no order can be made effectively and proper party is one in whose absence an effective order can be made, but his presence is necessary for complete and final adjudication of the matter and reference in this regard can be made to **(2002) 1 SCC 33, 'Ghulam Qadir Versus Special Tribunal and others'.**

Para 43 of the same reads as under:-

“This Court has, in Udit Narain Singh Malpaharia v. Additional Member Board of Revenue held that in the absence of a necessary party the writ petition itself is incompetent. It further held that a necessary party is one without whom no order can be made effectively and a proper party is one in whose absence an effective order can be made but whose presence is necessary for complete and final decision on the question involved in the proceedings. On the basis of various judicial pronouncements, the Court concluded that in a writ of certiorari not only the Tribunal or authority whose order is sought to be quashed but also parties in whose favour the said order is issued, are necessary parties.”

(10) Undisputedly, present petition has been filed by the petitioner in his individual capacity, but he is neither proved to be a voter; nor claiming a prospective candidate for the post of President or Vice-President, thus, in the opinion of this Court, petitioner cannot be termed as an “aggrieved person”

who is likely to suffer any injustice much less substantial injustice.

(11) It is equally well settled legal proposition that for invoking the jurisdiction under Article 226 of the Constitution for issuance of a writ of certiorari, it is pre-requisite to prove the legal injury suffered by a party (except in case of PIL) approaching the Court, but petitioner has miserably failed to substantiate the same. Thus, the petitioner is having no cause to file the present writ petition under Article 226 to challenge the impugned election notice and lacks standing for the discretionary relief based on extra ordinary jurisdiction of this Court.

(12) In view of the facts and circumstances, discussed hereinabove, petitioner has miserably failed to show that he is an aggrieved person for the relief claimed in the present writ petition. Consequently, this Court has no option except to dismiss the same only on this ground.

Ordered accordingly.

It is clarified that this Court has not examined the legality and validity of the impugned election notice dated 01.06.2020 on the touchstone of Sections 9 and 18A of the Act of 1973.

June 04, 2020

Gagan

**(MAHABIR SINGH SINDHU)
JUDGE**

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>