

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

CWP No.8854 of 2021
Date of decision: 20.12.2021

Kashmiri Lal and others

...Petitioners

Vs.

State of Punjab and others

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. Siddharth Gupta, Advocate,
for the petitioners.

Mr. S.P.S. Tinna, Additional A.G., Punjab.

Ms. Kavita Arora, Advocate,
for respondent No.7.

Ritu Bahri, J. (Oral)

Petitioners are seeking setting aside of the proceedings of meeting dated 15.04.2021 (Annexure P-4) with respect to the election of President, Senior Vice President and Vice President of Municipal Council, Goniana, District Bathinda.

During the pendency of this petition, vide order dated 21.05.2021, petitioners were given liberty to amend the present petition by challenging the notification dated 20.04.2021, vide which the office bearers of the Municipal Council, Goniana, District Bathinda, stood notified. Pursuant to the said order, petitioners have now filed the amended petition vide CM No.6865 of 2021.

Along with the proceedings of election meeting dated 15.04.2021 (Annexure P-4), petitioners have now challenged the notification dated 20.04.2021 (Annexure P-12), whereby respondent No.2-

Director, Department of Local Government has notified the election of respondent No.7-Manmohan Dhingra as President of Municipal Council, Goniana.

Pursuant to the notifications dated 27.11.2020 and 07.01.2021, issued by the Department of Local Government, Punjab, elections to elect the members of Municipal Corporations/Municipal Councils and Nagar Panchayats were to be held by 20.02.2021. Thereafter, respondent No.3, vide its notification dated 30.01.2021 (Annexure P-1), issued the election program to conduct the General/By Election to elect the members of Municipal Corporations/Municipal Councils/Nagar Panchayats, as per the provisions contained in Section 35 of the Punjab State Election Commission Act, 1994. Last date of filing the nomination papers for the proposed candidates was fixed as 03.02.2021 and the last date for withdrawal of the candidature was fixed as 06.02.2021. The date of polling was fixed as 14.02.2021 and the counting of votes was ordered to be taken place on 17.02.2021. The whole election process was to be completed by 20.02.2021. As per notification dated 30.01.2021 (Annexure P-1), election of Municipal Council, Goniana, for 13 different wards, was to be held on 14.02.2021. As per Section 12 (3) (ii) of Punjab Municipal Act, 1911, a member of the Legislative Assembly (MLA) is also an *ex-officio* member of the Municipal Council. At present, respondent No.6 is the sitting MLA from the Assembly Constituency, Bhucho-91 and the area of Municipal Council, Goniana falls within the jurisdiction of Assembly Constituency, Bhucho-91. After elections, following 13 persons, including 07 petitioners, were declared as elected on the post of Municipal Councillor(s) from their respective wards:-

Sr. No.	Name of the newly elected Municipal Councillor	Ward number
1	Smt. Manju Jain (petitioner No.7)	Municipal Council Ward No. 1.
2	Sh. Jalandhar Singh (petitioner No.2)	Municipal Council Ward No.2.
3	Sh. Surjit Singh	Municipal Council Ward No. 3
4	Smt. Monika (petitioner No.4)	Municipal Council Ward No.4.
5	Smt. Sapna Rani (petitioner No.3)	Municipal Council Ward No.5.
6	Sh. Manmohan Dhingra	Municipal Council Ward No.6.
7	Smt. Rekha Rani	Municipal Council Ward No.7.
8	Sh. Tara Chand	Municipal Council Ward No.8.
9	Sh. Manoj Kumar (petitioner No.5)	Municipal Council Ward No.9.
10	Sh. Kashmiri Lal (petitioner No.1)	Municipal Council Ward No.10.
11	Smt. Kamla Devi (petitioner No.6)	Municipal Council Ward No.11.
12	Sh. Mandip Singh	Municipal Council Ward No.12.
13	Smt. Veerapal Kaur	Municipal Council Ward No.13

After declaration of the result, certificate of election was issued to each and every winning candidate. Copy of one of such certificate issued in favour of Smt. Kamla Devi is attached as Annexure P-2. Vide notice dated 12.04.2021 (Annexure P-3), first meeting of the elected members was called for 15.04.2021. In the agenda of the meeting, it was mentioned that the said meeting was with regard to the election for the posts of President and Vice President of Municipal Council, Goniana.

Learned counsel for the petitioners has argued that on 15.04.2021, Smt. Rekha Rani, Municipal Councillor from Ward No.7, was not present in the meeting. Local MLA i.e. respondent No.6 was present there. Attendance of all 12 elected members, present in the meeting, was

obtained on the attendance register by respondent No.5-Convener. Learned counsel further argued that respondent No.5-Naib Tehsildar, who was the Convener of the meeting, in the presence of respondent No.6, took the view of each and every elected member present in the meeting. In this meeting, all the seven petitioners had given their consent and proposed the names of petitioner Nos.1 and 4 for the posts of President and Vice President. However, at the time of announcement, respondent No.7, petitioner Nos.1 and 4 were declared as President, Senior Vice President and Vice President respectively. Learned counsel for the petitioners further states that the petitioners had opposed this process of election there and then, but despite their objections, respondent No.5 in connivance with respondent Nos. 6 and 7, left the office of Municipal Council, Ganiana. Till date, majority of the members are in favour of petitioner No.1-Kashmiri Lal for the post of President. The proceedings of the meeting dated 15.04.2021 (Annexure P-4) have been prepared at the behest of respondent No.6. Learned counsel further states that all the petitioners have placed on record their affidavits (Annexures P-5 to P-11) demonstrating the illegal procedure adopted by respondent No.5 in connivance with respondent Nos. 6 and 7 while declaring respondent No.7 as President of the Municipal Council, Goniana. He further argued that as per the proceedings of the meeting dated 15.04.2021, the Municipal Councillor from Ward No.13 namely Smt. Veerpal Kaur, was present, but she did not put her signatures in the proceeding book. Hence, proper procedure has not been adopted before conducting the elections as required under Rule 3 of the Punjab Municipal (President and Vice President) Election Rules, 1994. Even in the proceedings written qua the election of respondent No.7, date under the

signatures of respondent No.5, was mentioned as 15.04.2019. He finally argued that in the subject/agenda of the meeting notice dated 12.04.2021 (Annexure P-3), it is nowhere mentioned that oath of allegiance will be administered to the newly elected members.

Petitioners have also placed on record copies of the news items dated 16.04.2021 (Annexures P-14 and P-15) showing their resistance regarding appointment of respondent No.7 as President of the Municipal Council, Goniana. Petitioners never proposed the name of respondent No.7 in the meeting dated 15.04.2021. Hence, there is no question of any election having been taken place in the said meeting. Learned counsel for the petitioners referred to the judgment passed in **Jayrajbhai Jayantibhai Patel vs. Anilbhai Jayantibhai Patel & Ors.**, JT 2006 (12) SC 34 and **Shimla Rani and others vs. State of Punjab and others**, 2008 (3) RCR (Civil) 138, wherein it has been held that if, the election is found to have been conducted in rigged manner, same has to be set aside.

Upon notice, short reply on behalf of respondent Nos. 1 and 2, by way of affidavit of Rakesh Kumar, Joint Secretary, Department of Local Government, has been filed, wherein it has been stated that vide notification dated 20.04.2021, respondent No.2 while exercising the powers conferred under Section 24 of the Punjab Municipal Act, 1911, has notified respondent No.7 as President of the Municipal Council, Goniana. Along with the reply, respondents have placed on record the recommendations (Annexure R-1/1) sent by the Deputy Commissioner, Bathinda for notifying the name of Sh. Manmohan Dhingra, MC Ward No.6, Municipal Council, Goniana. It was further stated that when there is no legal hurdle in notifying the name of the President, then the Government is bound to notify the name

of the concerned in the official Gazette under Section 24 (2) of the Municipal Act. It is further stated that the petitioner has not impleaded the Municipal Council or the Executive Officer as a party in this petition, as they had witnessed the process of election of President etc. So, on this ground alone, the present petition is liable to be dismissed. A further plea has been taken that notice of motion was issued in this case on 23.04.2021. During the pendency of this petition, a misc. application (CM No.6865 of 2021) has been filed seeking amendment of the petition, in which petitioners have sought quashing of the notification dated 20.04.2021 (Annexure P-12), whereby the respondents have notified respondent No.7 as president of the Municipal Council, Goniana. Prior to issuance of the notice of motion, petitioners were well aware about the notification dated 20.04.2021 (Annexure P-12) and the aforesaid misc. application for amendment of the petition, has been filed after a considerable delay.

Separate reply has been filed on behalf of respondent Nos. 4 and 5, wherein preliminary objection has been taken that the writ petition is liable to be dismissed on the ground of non joinder of necessary party i.e. other Municipal Councillors, who were elected as members of the Municipal Council, Goniana, District Bathinda. Out of 13 Municipal Councillors, 07 are the petitioners and 8th is respondent No.7, who is also elected member of the M.C., Goniana, Mandi. Besides this, there are five more elected members namely Rekha Rani, Tara Chand, M.C., Ward No.8, Surjit Singh, M.C., Ward No.3, Mandeep Singh Makkar, M.C., Ward No.12 and Veerpal Kaur, M.C., Ward No.13. Out of these five elected members, four participated in the first meeting held on 15.04.2021 after conducting the elections of Municipal Council, Goniana Mandi. In the first meeting,

one elected member namely Rekha Rani wife of Anil Kumar, M.C., Ward No.7, was absent. They all are necessary parties, but have not been arrayed in this petition. Respondents have placed on record proceedings of the elections of President, Vice President and Senior Vice President as Annexure R-4/A. It is further stated that as per the report dated 23.08.2021 of the Naib Tehsildar, goniana-cum-Convener/respondent No.5, the election procedure was properly followed as provided under Rules 3, 4 and 5 of the Punjab Municipal (President and Vice President) Election Rules, 1994. As per Rule 5 of the said Rules, if the name of only one candidate for the post of President/Vice President is proposed, than he shall be declared to have been elected. Since the name of only respondent No.7 was proposed, he had to be declared as President. As per meeting attendance register and proceeding book maintained by the office of Municipal Council, goniana (Annexure R-1), 13 members (out of 14), including Ex-officio member, were present in the meeting and they all signed the attendance register. Proper videography was conducted and the same can be produced before the Court. None of the petitioners opposed the election process as the same was got conducted in a very legal and constitutional manner. After completing the proceeding book, space for filling the names of President, Senior Vice President and Vice President was left vacant to be filled later on, after conducting the elections. As per Section 20 (2) of the Punjab Municipal Act, 1911, 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. Hence, two Vice Presidents were elected as Senior Vice President and Vice President. It is further stated

that there was no pressure on respondent No.5 from respondent No.4. Signatures of all the consenting Municipal Councillors and Ex-officio Member were taken on the proceeding book as is evident from the proceeding book (Annexure R-1).

A separate detailed written statement has been filed by respondent No.7. He has placed on record photographs (Annexure R-7/1) to show that all the elected members were administered oath prior to the election of office bearers of the Municipal Council. Photograph No.2 reveals that Jalandhar singh, Municipal council (petitioner No.2) garlanded respondent No.7 and congratulated him on being elected as President. As per photograph No.3, elected President (respondent No.7) of the Municipal Council was taking blessings from Kamla Devi-petitioner No.6, while Sh. Kashmiri Lal, Senior Vice President (petitioner No.1), Monika, Vice President (petitioner No.4) and Manoj Kumar (petitioner No.5) along with Local M.L.A. were also seen in the picture. As per photograph No.4 Manju Jain, Municipal Councillor (petitioner No.7) was congratulating respondent No.7 after he was elected as President. Local M.L.A. (respondent No.6), Sh. Kashmiri Lal, Senior Vice President, Monika, Vice President and Kamla Devi are also seen in the picture. and Vice President respectively. Photograph No.5 depicts Manju Jain, Municipal Councillor (petitioner No.4) is congratulating Monika (petitioner No.4) on her being elected as Vice President and Sapna Rani (petitioner No.3) is being garlanding the President, while Kashmiri Lal (petitioner No.1) and Kamla Devi (petitioner No.6) are standing in the picture. Similarly, photograph Nos.6 and 7 depict that election of President (respondent No.7) has been duly accepted by all the elected members. It is again reiterated that the election was conducted as

per rules. Once, the petitioners congratulated the President, Vice President & Senior Vice President, as is evident from the photographs (Annexure R-7/1) and did not raise any objections at that time, the present petition is liable to be dismissed on the principle of estoppel. It is further stated that a representation could have been made to the Government seeking removal of respondent No.7 as President by exercising powers under Sections 16 or 22 of the Punjab Municipal Act, 1911. With respect to the participating of respondent No.6, who is the M.L.A. of Bucho Assembly Constituency, it is stated that as per Section 12 (3) (i) of the aforesaid Act, the M.L.A. of the Assembly Constituency is an Ex-officio member of the Municipal Council. In this backdrop, notice dated 12.04.2021 (Annexure P-3) had to be sent to him to come and be present in the election of office bearers of the Municipal Council. Reference has been made to a judgment passed by the Division Bench of this Court in **Kewal Krishan Jindal and others vs. State of Punjab**, 2009 (1) RCR (Civil) 471 (Annexure R-7/2). Finally, it is stated that respondent No.7 was unanimously elected as President and the elections have been conducted in accordance with law.

In the present case, no replication has been filed by the petitioners. Facts not in dispute are that the election program was provided in the notification dated 30.01.2021 (Annexure P-1). Thereafter, election to elect the members of Municipal Council, Goniana was held on 14.02.2021 and result was declared on 17.02.2021. After the elections, 13 persons were elected from different wards and accordingly, election certificates were issued to the winning candidates. Subsequently, a notice dated 12.01.2021 (Annexure P-3) was sent by respondent No.5 to each and every councillor and one such notice sent to petitioner No.4 has been placed

on record as Annexure P-3. In the agenda of the notice, it was mentioned that the meeting was to be held with regard to the election of President, Vice President of Municipal Council, Goniana. The meeting was to be held on 15.04.2021. Respondent No.6-local M.L.A. was also present in the meeting. The official respondents have placed on record copy of the attendance of Municipal Councillors. The proceedings were sent by the Executive Officer, M.C., Goniana to the Deputy Commissioner, Bathinda, vide letter dated 15.04.2021 (Annexure R-1). A perusal of Annexure R-1 shows that the Deputy Commissioner had informed the Chief Secretary, Local Government, Punjab, vide letter dated 19.04.2021 regarding the proceedings of the meetings conducted regarding election of the President and Vice President out of the newly elected councillors. As per this letter, the meeting was attended by 12 members and they were asked by the Naib Tehsildar-cum-Convener to recommend the names for the post President. Name of Sh. Manmohan Dhingra, Municipal Counsellor, Ward No.6, was recommended by Sh. Manoj Kumar, M.C., Ward No.9. This was supported by Sh. Mandeep Singh, M.C., Ward No.12. The Convener had asked for recommending the name of any other person for the post of President. But, all the members showed their consent on the name of Sh. Manmohan Dhingra by raising hands and no one had opposed his name for the post of President. Accordingly, Sh. Manmohan Dhingra was elected as President of the Municipal Council, Goniana.

For the post of Senior Vice President, name of Sh. Kashmiri Lal, M.C., Ward No.10, had been recommended by Sh. Tara Chand, M.C., Ward No.8, which was supported by Smt. Veerpal Kaur, M.C., Ward No.13.

No other name was submitted and all the members raised their hands in

consent on the name of Sh. Kashmiri Lal. In this way, he was elected as Senior Vice President.

For the post of Vice President, name of Smt. Monika, M.C., Ward No.4, was recommended by Sh. Jalandhar Singh, M.C., Ward No.2, which was supported by Sh. Surjit Singh, M.C., Ward No.3. No other name was suggested for the said post and all the members showed their consent by raising hands. In this manner, Smt. Monika was elected as Senior Vice President of the Municipal Council.

A bare perusal of letter dated 19.04.2021 (Annexure R-1/1) shows that the election of President, Senior Vice President and Vice President was conducted by way of show of hand and except, the aforesaid persons, no other name was suggested. In this way, the election was conducted in a fair manner as per Rule 3 (1) of the Punjab Municipal (President and Vice President) Election Rules, 1994. This fact is further clarified by perusing the photographs (Annexure R-7/1). In all the photographs, Sh. Manmohan Dhingra, Sh. Kashmiri Lal and Smt. Monika, who were elected as President, Senior Vice President and Vice President respectively, are being congratulated by other Municipal Councillors. The petitioners have not chosen to file any replication denying the contents of the photographs (Annexure R-7/1) as well as letter dated 19.04.2021 (Annexure R-1) sent by the Deputy Commissioner, Bathinda to the Chief Secretary, Local Government, Punjab. Respondent No.6 was present in the meeting being an ex-officio member of the Municipal Council and as per the judgment passed in **Kewal Krishan Jindal's** (supra), his presence was in accordance with law. In this judgment, it has been observed as under:-

“3. xxx xxx xxx

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.....

4. Therefore, in our view, in the instant case, no illegality has been committed either by the Deputy Commissioner while authorising SDM, Sangrur to convene the first meeting of the members of the Municipal Council or by the Presiding Officer while inviting all the 32 members of the Municipal Council to attend the first meeting of the Municipal Council. The contention of learned counsel for the petitioners that only elected members are required to attend the first meeting of the Council cannot be accepted, because in the first meeting, election of the President and Vice-President is also to be held and the MLA, who is the Ex-officio member, is also legally entitled to participate and cast his vote in the election of the President and Vice-President of the Municipal Council. The only embargo is that he cannot contest the election for the post of President and Vice-President....”

There is no evidence that he had persuaded or pressurised any of the members, present in the meeting, to unanimously elect respondent No.7 as the President of Municipal Council, Goniana. Moreover, if, the petitioners have any grievance against respondent No.7-President, they have a remedy to initiate 'no confidence motion' against him, in accordance with law. Since the election had been conducted as per rules, as stated above, no case is made out to set aside the proceedings of meeting dated 15.04.2021 (Annexure P-4). It is not the case of petitioners that respondent No.7 is disqualified for being appointed as President as per Rule 24 (3) of the Punjab Municipal Act, 1911. Hence, the notification dated 20.04.2021 (Annexure P-12) notifying the election of respondent No.7-Manmohan Dhingra as President of Municipal Council, Goniana, does not suffer from

any irregularity, much less illegality, warranting interference by this Court.

Further, as per the judgment passed in **Ashok Kumar Gupta vs. State of Punjab and others**, 2001 (4) RCR (Civil) 223, unless a person is disqualified, the Government is bound to notify the name of that person, who has been unanimously elected as President of the Municipal Council.

In para nos. 16 and 18 of the said judgment, it has been observed as under:-

“16. The grievance of the petitioner is that although he was duly elected, the State Government has failed in its duty to notify his election as such. The Contention of the respondents is that since the Deputy Commissioner did not recommend the election of the petitioner, as such the Government has not notified the same. Section 232 of the Act empowers the Deputy Commissioner to suspend any resolution or order of the committee. No provision of the Act or the Rules requires the recommendation of Deputy Commissioner for the purpose of notification of the election of the President. Section 24 of the Act refers to the notification of election and oath or affirmation of allegiance. Sub section (2) of Section 24 of the Act provides as under:-

“23 (2). The State Government shall notify in the Official Gazette every election of President of a Municipality and no President shall enter upon his duties as such until his election is so notified:

Provided that the State Government may refuse to notify the election as President of any person who has incurred a disqualification under this Act or under any other law for the time being in force, subsequent to his election as member of the Municipality:

Provided further that the State Government shall not refuse to notify the election of the President without giving an opportunity of being heard to the concerned person.”

xx xx xx

18. The facts and the circumstances discussed above show the action of respondent No.4 in cancelling the especially requisitioned special meeting on 21.08.2000 for election of President by order, Annexure P-5 as illegal and void *ab initio* and inconsequential. The election of the petitioner as President in the meeting held on 21.08.2000 in the presence of an authorised observer-respondent No.2 was a valid one. Since the office of the President was no more vacant after the election of the

petitioner, any such subsequent meeting convened by respondent No.4 for 25.09.2000 was without jurisdiction.”

In view of the above discussion, finding no merits, present petition is **dismissed**. However, in case, the petitioners have any grievance against the working of respondent No.7 as President, they have a remedy of initiating 'no confidence motion' in accordance with law.

(RITU BAHRI)
JUDGE

(ARCHANA PURI)
JUDGE

20.12.2021
ajp

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