

(12) Since political asylum is normally sought by persons by representing to another country that they fear persecution and oppression in their own country, the apprehension of the respondents that the petitioner does not owe allegiance to the sovereignty and integrity of India, is not entirely unjustified.

(13) We, thus, find nothing wrong with the decision of the respondents in denying the passport to the petitioner for five years and placing him on Prior Approval Category.

(14) The writ petition is accordingly devoid of any merit and is thus dismissed.

R.N.R.

Before Satish Kumar Mittal & Jaswant Singh, JJ.

ISHAQ,—Petitioners

versus

STATE OF PUNJAB AND OTHERS,—Respondents

CWP NO. 13011 OF 2008

12th September, 2008

Constitution of India, 1950—Art. 226—Punjab Municipal (President & Vice President) Election Rules, 1994—Rl.5(c)—Election of President & Vice President of M.C.—Two candidates for each post obtaining equal number of votes—Whether Presiding Officer can postpone meeting without conducting draw of lots in presence of Members attending meeting—Held, no—Rl.5(c) requires P.O. to immediately conduct draw of lots between two candidates in presence of Members attending meeting—Action of PO in postponing meeting without conducting of draw of lots contrary to rules and not sustainable—Petition allowed, PO directed to again convene meeting for holding draw of lots.

Held, that the Presiding Officer was not legally justified to postpone the meeting on 23rd July, 2008 without declaring any result and thus, has committed grave illegality by not conducting the draw of

lots between both the candidates for the posts of President and Vice-President in presence of the Members attending the meeting as provided in Rule 5(c) of the Rules. A bare reading of Rule 5(c) provides that the result of the election for the office of President and Vice-President is to be declared in the same meeting itself and in case of equal votes, the draw of lots is to be held there and then in the same meeting in presence of the members attending the meeting. In such situation, the said meeting cannot be postponed on the request of any person or on the ground that one of the parties is not agreeing for the draw of lots. The action of respondent No. 3 in postponing the meeting without conducting the draw of lots as provided under the Rules is not sustainable being contrary to the aforesaid Rules. The action of respondent No. 3 may provide an opportunity to either of the parties to indulge in horse trading which is alien to the democratic process.

(Paras 6 & 7)

S. S. Salar, Advocate, *for the petitioners.*

N. S. Virk, Addl. A.G., Punjab, *for respondents No. 1 to 3.*

Sudhir Jain, Advocate *for respondents No. 4 and 5.*

SATISH KUMAR MITTAL, J.

(1) The sole question involved in this petition is whether the Presiding Officer of the meeting convened for the election of President and Vice President of the Municipal Council from the elected Municipal Councillors, can postpone the meeting without conducting draw of lots in presence of the Members attending the meeting in case two candidates contesting the election of President or Vice-President obtain equal number of votes, or, whether, in such situation, the Presiding Officer is required to immediately conduct the draw of lots in presence of the Members attending the said meeting.

(2) The Municipal Council, Malerkotla consists of 32 Members, including the Member of Legislative Assembly of the area. After the election, a special meeting of the elected Municipal Councillors was called on 23rd July, 2008 to administer oath and to elect President and Vice-President of the Municipal Council, Malerkotla. The Deputy Commissioner appointed Sub Divisional Magistrate (respondent No. 3 herein) to preside over the said meeting and to conduct the election

of President and Vice President. Petitioner No. 1 and respondent No. 4 contested the election for the office of President whereas Petitioner No. 2 and Respondent No. 5 for Vice-President of the municipal Council. Out of 32 members, including Member of Legislative Assembly of the area, attending the said meeting, 16 Members voted in favour of petitioner Nos. 1 and 2, and the remaining 16 Members (including Member of legislative Assembly) voted in favour of Respondents No. 4 and 5 for the office of President and Vice President, respectively. Thus, both groups secured equal number of votes, i.e. 16 each, (out of total 32 number of votes). The Presiding Officer asked both the groups for the conduct of draw of lots, but Respondents No. 4 and 5 did not agree for that, and in that situation, the Presiding Officer postponed the meeting without any result. The petitioners have challenged the said action of the Presiding Officer in this writ petition.

(3) The case of the petitioners is that in case two candidates secured equal number of votes, in that situation, in view of Rule 5(c) of the Punjab Municipal (President and Vice President) Election Rules, 1994 (hereinafter referred to as 'the Rules'), the Presiding Officer is required to immediately conduct draw of lots between two candidates in presence of the Members attending the meeting. Learned counsel submits that in this case the Presiding Officer has committed grave illegality while postponing the meeting without declaring the result. It is the case of the petitioners that the Presiding Officer has done so with mala fide purpose as the other parties, who are having the support of elected Member of Parliament and Member of Legislative Assembly want to indulge into horse trading.

(4) It has been stated that the Presiding Officer before postponing the matter of draw of lots had talked with a politician to postpone the draw of lots by observing that one party was not ready for draw of lots.

(5) In the written statement filed on behalf of Respondents No. 1 to 3, the aforesaid factual position has not been disputed. However, it has been denied that the Presiding Officer had postponed the meeting without declaring any result of the election under any political pressure, but the meeting was postponed without any result because Respondents No. 4 and 5 had refused to give their consent and were not ready for draw of lots.

(6) We have heard the counsel for the parties. In our view, in the instant case, the Presiding Officer was not legally justified to postpone the meeting on 23rd July, 2008 without declaring any result and, thus, has committed grave illegality by not conducting the draw of lots between both the candidates for the posts of President and Vice President in presence of the Members attending the meeting as provided in Rule 5(c) of the Rules, which reads as under :—

“If two or more candidates obtain an equal number of votes, the person presiding over the meeting shall at once decide between the candidates by drawing a lot in the presence of members attending the meeting.”

(7) A bare reading of the aforesaid Rule provides that the result of the election for the office of President and Vice-President is to be declared in the same meeting itself and in case of equal votes, the draw of lots is to be held there and then in the same meeting in presence of the members attending the meeting. In such situation, the said meeting cannot be postponed on the request of any person or on the ground that one of the parties is not agreeing for the draw of lots. In our view, the action of Respondent No. 3 in postponing the meeting without conducting the draw of lots as provided under the Rules is not sustainable being contrary to the aforesaid Rules. The action of respondent No. 3 may provide an opportunity to either of the parties to indulge in horse trading which is alien to the democratic process.

(8) In view of the above, the petition is allowed and the proceedings (Annexure P1) conducted by Respondent No. 3, whereby the meeting was postponed without declaring the result, are hereby quashed and respondent No. 3 is directed to again convene the meeting for holding the draw of lots between the petitioners and Respondents No. 4 and 5, who secured equal number of votes, by giving notice to all the Members attending the meeting held on 23rd July, 2008, within three weeks from the date of receipt of certified copy of the order, as provided under the Rules.

R.N.R.