

adjustments, without violating any of the orders passed on the file earlier. This provision had come about after when the regular petition of Ran Singh petitioner had been dismissed on 10th August, 1961. That order, in view of the provisions of section 32-MM, was open to be taken to its logical conclusion, by affecting therein changes which were consequential in nature without the least affecting the merits of the case. In this view of the matter, the objections filed by the petitioners in proceedings under section 9 of the Punjab Land Reforms Act had to be viewed in the light of sections 3 and 32-MM of the Act. Nothing has been brought to my notice from the provisions of the Punjab Land Reforms Act, 1972, which would in any way take away the applicability of the aforesaid two sections. Nothing in the Punjab Land Reforms Act is inconsistent with the aforesaid two provisions. It seems to me that they sustain even now despite section 28 of the Punjab Land Reforms Act. Rather reiteratingly, even the Legislature has put section 13 in the aforesaid Act, which allows the same thing to be done as was required to be done under section 32-MM. The spirit behind such legislation is that not an inch of land of a small landowner should be taken in the surplus pool. Obviously, the respondent-officers did not apply the aforesaid provisions and thereby caused injustice to the petitioners. Their orders are thus unsustainable.

(6) For the foregoing reasons, this petition is allowed, orders Annexures P. 1 to P. 3 are set aside and the matter is remitted back to the Collector, Agrarian, for his re-consideration in the light of the afore-pointed provisions as also the observations. The parties through their counsel are directed to put in appearance before the Collector, Agrarian, for the purpose on 28th September, 1984. No costs.

N. K. S.

Before S. S. Kang, J.

CHANDU RAM AND OTHERS,—*Petitioners.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 4235 of 1981.

February 15, 1985.

*Punjab Municipal Act (III of 1911)—Sections 20, 232 & 236—
Punjab Municipal Election Rules, 1952—Rule 47—Election of a*

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President on the occurrence of a vacancy—Meeting of the Municipal Committee called by the Executive Officer—State Government adjourned the meeting on the alleged ground of non-compliance with Rule 47—Meeting held despite the adjournment by the State Government and a new President elected—Resolution of the Committee electing the new President suspended by the Sub-Divisional Officer—State Government—Whether has the power to postpone the meeting—Order of suspension passed by the Sub-Divisional Officer—Whether valid.

Held, that the Punjab Municipal Act, 1911 and the Punjab Municipal Election Rules, 1952 provide a complete Code for determination of disputes regarding elections of the members of the Municipal Committee or its President and Vice President. Even if there has been some non-compliance with the Rules in conducting the meeting in which the President was elected, the proper remedy was by way of an election petition. The State Government under Section 20 of the Act has the power to approve or disapprove the election of the persons. Similarly, it has power under Rule 68 of the Rules to order an inquiry to be held in the conduct of any election if there is reason to suspect that any irregularity had been committed in the conduct of the election. There is, however, no power with the State Government to adjourn a meeting called for the election of a President. There is no express provision in the Act or in the Rules empowering the State Government to postpone an election meeting. Once the process of election has been set in motion, it should be allowed to complete its course. It is all the more important in the context of section 20 of the Act. It provides that if the members of a Municipal Committee fail to elect the President within one month of the occurrence of the vacancy in the office, the State Government may appoint any one of the members to be the President. By postponing any election meeting, the State Government can deprive the members of the Committee to elect a President. The Sub-Divisional Officer had suspended the resolution because the meeting had been held in contravention of the orders of the Government adjourning the election meeting. His order was only a sequel to the order of the Government and is, therefore, invalid.

(Paras 7 & 9).

Civil Writ Petition under Articles 226/227 of the Constitution of India praying that this petition be accepted and the following reliefs be granted to the petitioner:—

- (i) *that records of the case be summoned;*
- (ii) *a writ in the nature of Certiorari be issued quashing the impugned order, Annexure P-5, being without jurisdiction, illegal and void;*

- (iii) any other appropriate writ, order or direction be issued which this Hon'ble Court may deem fit and proper in the circumstances of the present case;
- (iv) filing of certified of Annexures P—1 to P—5 be dispensed with;
- (v) service of prior notices upon the respondents be also dispensed with;
- (vi) costs of this petition be awarded to the petitioner.

It is further prayed that during the pendency of the writ petition, the operation of the impugned order, Annexure P-5, be stayed, and respondent No. 4 be directed not to obstruct Chandu Ram petitioner from functioning as President of the M. C. Bassi Pathana.

Satya Pal Jain, Advocate, (Parveen Goel, Advocate with him).

H. S. Riar, D.A.G. (Pb.) for the respondent Nos. 1 to 3.

Jagdev Singh, Advocate for Sarjit Singh, Advocate, for respondent No. 4.

JUDGMENT

Sukhdev Singh Kang, J.

At issue, in this writ petition, under Articles 226/227 of the Constitution of India, is the legality and validity of the orders dated August 26, 1981, of the State of Punjab, respondent No. 1, adjourning the meeting of Municipal Committee, Bassi Pathana, scheduled to be held on August 26, 1981, for the election of the President and orders dated August 27, 1981, of the Sub-Divisional Magistrate (Civil), respondent No. 3, suspending the resolution of the Municipal Committee dated August 26, 1981, electing Shri Chandu Ram, petitioner No. 1, as its President.

2. The factual matrix is of consequence in this case and may be projected in some detail.

3. Municipal Committee, Bassi Pathana, consists of 16 members. Shri Ram Kishan, the President of the Municipal Committee, submitted his resignation on July 28, 1981. Shri

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Surjit Kumar Singla, who was the Vice-President, assumed charge as Acting President, under section 30 of the Punjab Municipal Act (for short 'the Act'). On the resignation of the President, the members of the Municipal Committee had to elect one of the members as President within one month of the resignation. If the members of the Municipal Committee failed to elect the President within one month of such vacancy in the office of the President, the State Government is empowered to appoint any member of the Committee to be the President.

4. A meeting of the Municipal Committee was called by the Executive Officer for electing its President on August 26, 1981, at 10. 10. a. m. The agenda of the meeting was sent by him to the members. 14 out of the 16 members came to the venue of the meeting. 13 of them are the petitioners in this writ petition. 14th member, namely Shri Jaswant Singh though attended the meeting for sometime did not participate in the proceedings and left the place. Two members did not attend the meeting. In the meeting, the name of Shri Chandu Ram was proposed for the office of the President. It was duly seconded. No other proposal was received. The Acting President distributed ballot-papers, supplied by the Deputy Commissioner, to the members present and they cast their votes. Shri Chandu Ram polled 13 votes and he was declared elected President, by the Acting President. A resolution to that effect was passed. It was forwarded to the concerned authorities.

5. The Sub-Divisional Officer, Fatehgarh Sahib (Bassi), respondent No. 3, within whose jurisdiction this Municipal Committee falls, suspended the resolution,—*vide* orders dated August 27, 1981 (a copy of the same is Annexure P-5, appended to the petition), in exercise of the powers under section 232 of the Act. He observed that the Punjab Government had adjourned the meeting of the Municipal Committee fixed for the election of the President on August 26, 1981. The Executive Officer had informed the Acting President and the members present about the orders of the Government postponing the meeting, but the Vice-President and the members elected the President ignoring the orders of the State Government. Since the Committee had contravened the orders of the State Government, the resolution of the Committee electing Shri Chandu Ram as President was suspended. The petitioners have challenged these orders.

6. The respondents have contested the writ petition. Three separate written statements have been filed. It has been averred therein that the State Government had postponed the meeting of the Municipal Committee, because it had not complied with the formalities prescribed under rule 47 of the Punjab Municipal Election Rules ('the Rules' for short) in summoning the meeting. The Acting President and the members of the Committee present in the meeting were informed about the order of the Government postponing the meeting by the Executive Officer. However, they continued with the meeting and elected Shri Chandu Ram as the President. Since the meeting had been postponed by the government, the entire proceedings conducted by the petitioners were illegal and void. The election of petitioner No. 1 did not take place in accordance with law. The three members of the Committee, namely Sarvshri Jaswant Singh, Ram Kishan and Bant Singh, who did not attend or participate in the meeting, were made respondents 5, 6 and 7 respectively, but they have not chosen to file any written statement.

Section 20 of the Act confers a power upon the members of the Municipal Committee to elect a President within one month of the occurrence of a vacancy for the office of the President. A meeting of the Committee was called by the Executive Officer to elect a President on August 26, 1981. An agenda for this purpose had been issued to the members by him. 14 out of the 16 members attended the meeting. This indicates that a proper notice of the meeting had been given to the members. The respondents have not averred in the written statement that Ram Kishan or Bant Singh were not served with the notice and agenda or the notice of the meeting was less than 48 hours. Even in the letter of the Sub-Divisional Officer (Civil) addressed to the Executive Officer, respondent No. 4, reasons for adjournment of the meeting have not been given. It is not stated that rule 47 of the Rules was not complied with while summoning the meeting. In his return, the Executive Officer, respondent No. 4, has not averred that while fixing the meeting, rule 47 of the Rules had not been complied with or the notice given to the members was short. He has only stated that the meeting was fixed by the Acting President and he had issued the agenda in compliance with his orders. Rule 47 of the Rules reads as under:—

"47. *Election of President of Vice-President*—(1) No election of a President or Vice-President of a committee shall be held at a

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meeting unless not less than forty eight hours' notice of the holding of such meeting has been given to all members of the committee by delivery at their ordinary place of residence of a notice, which shall specify that such election is to take place at the meeting in question.

2. The person or persons elected shall, subject in the case of the election of a President, to the provisions of sub-section (1) of section 20 of the Act, assume office from the date of election."

Since in the written statements of the respondents, the clear and specific averments were not made as to in what manner rule 47 of the Rules had not been complied with, I had asked for the relevant records. The same were produced before me. A perusal of these papers revealed that the notice and agenda of the meeting to elect the President had been issued by the Executive Officer on August 20, 1981. Rule 47 of the Rules only requires 48 hours' notice. In the present case, there is a notice of full five days. So, there was in fact no non-compliance with rule 47 of the Rules. Respondents have not even produced the orders passed by the Government. They have not disclosed on what basis this conclusion was arrived at.

The orders of the government postponing the meeting were based on no material or evidence and are liable to be quashed on this score alone. The Act and the Rules provide a complete Code for determination of disputes regarding elections of the members of the Municipal Committee or its President and Vice President. Rule 52 of the Rules provides in clear terms that no election shall be called in question except by an election petition presented in accordance with these Rules. Rule 63 of the Rules furnishes the grounds for declaring the election void. A commission appointed by the Court for this purpose under rule 59 of the Rules could have gone into the allegations and if it holds that there has been any material irregularity then the commission may report that the election of such candidate should not be deemed to be valid. Under rule 51 of the Rules, material irregularity has been defined to include the non-compliance with the provisions of the Act or the Rules made thereunder. So, even if for the sake of arguments, it may be accepted that there had been any non-compliance with the Rules, the proper remedy was by way of an election petition. The State Government

under section 20 of the Act has the power to approve or disapprove the election of the persons. Similarly, it has powers under rule 68 of the Rules to order an inquiry to be held in the conduct of any election if there is reason to suspect that any irregularity had been committed in the conduct of the election. There is, however, no power with the State Government to adjourn a meeting called for the election of a President. In any case, the learned counsel for the respondents have not been able to bring to my notice any express provision in the Act or the Rules empowering the State Government to postpone an election meeting. Once the process of election has been set in motion, it should be allowed to complete its course. It is all the more important in the context of section 20 of the Act. It provides that if the members of the Municipal Committee fails to elect a President within one month of the occurrence of the vacancy in the office, the State Government may appoint any one of the members to be the President. By postponing an election meeting, the State Government can deprive the members of the committee to elect a President.

8. Mr. H. S. Riar, the learned Deputy Advocate-General, Punjab, argued that the power to postpone an election meeting held in contravention of any rule can be spelled out from section 236 of the Act. Section 236 of the Act reads as under:—

“S. 236. *Power of State Government and its officers over committee.*—(1) The State Government and Deputy Commissioner, acting under the orders of the State Government, shall be bound to require that the proceedings of the committees shall be in conformity with law and with the rules in force under any enactment for the time being applicable to Punjab generally or the areas over which the committee have authority.”

(2) The State Government may exercise all powers necessary for the performance of this duty and may among other things, by order in writing, annul or modify any proceeding which it may consider not to be in conformity with law or with such rules as aforesaid, or for the reasons, which would in its opinion justify an order by the Deputy Commissioner under section 232.

(3) The Deputy Commissioner may, within his jurisdiction for the same purpose, exercise such powers as may be

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conferred upon him by rule made in this behalf by the State Government.

The language of above section does not bear the construction canvassed by Shri Riar. It is not expressly stated in this provision that the State Government can postpone an election meeting. This can also not be implied from the language and tenor of this section.

9. In fairness to Mr. Riar, it must also be mentioned that he had argued that the order of the Sub-Divisional Magistrate passed under section 232 of the Act is only a conditional or tentative order which has to be approved by the State Government under section 235 of the Act. The petitioners should have represented to the State Government if they had any grievance against the impugned order. This contention has not commended itself to me. The meeting of the Municipal Committee had been postponed by the State Government. The order of the Sub-Divisional Officer was only a sequel to this order. He had suspended the resolution because the meeting had been held in contravention of the orders of the government adjourning the election meeting. In these circumstances, it would have been unfair to relegate the petitioners to seek redress from the same Authority with whose decision they have been aggrieved.

10. Mr. Riar had also raised a technical objection that the petitioners had not specifically assailed the order of the government postponing the meeting but this is not factually correct. In ground (b) of paragraph 13 of the writ petition, it had been specifically stated that respondent No. 3 had justified his action on the ground that the members of the municipal committee had contravened the order of the State Government adjourning the meeting but there was no justification for this argument, because there was no provision in the Act which authorises the State Government to postpone or adjourn the election.

11. In the result, I allow this writ petition, quash the orders dated August 26, 1981, of the State Government and orders dated August 27, 1981, of the Sub-Divisional Officer (Civil). The respondents shall pay the costs of the petition. Counsel fee Rs. 200.

N.K.S.