
R.N.R.

Before Alok Singh, J.

RAJ KUMAR AND OTHERS,—Petitioners

versus

STATE OF PUNJAB AND OTHERS,—Respondents

CWA W. No. 18387 of 2009

CWP
5th October, 2010

Constitution of India, 1950—Art.226—Punjab Municipal Act, 1911—S.20—Punjab Municipal (President and Vice President) Election Rules, 1994—Rl.3—SDM administering oath to all elected members/councilors—Name of petitioner No. 1 proposed for President—SDM instead of declaring petitioner No. 1 as President unopposed postponing meeting—Petitioner No. 1 should have been

declared as President as he stood elected for post of President in view of Rule 5(1)(a) of 1994 Rules—Rule 3 of 1994 Rules requires 48 hours clear notice to be served on members before convening meeting for election of President and Vice President—Since minimum of 48 hours notice not given meeting dated 21st December, 2009 held to be illegal and non est in eye of law—Alternative remedy—Whether High Court is competent to exercise writ jurisdiction under Art. 226—Held, yes—No need to file election petition since second election was absolutely void ab initio ipso facto illegal—Petition allowed, State directed to notify petitioner No. 1 as an elected President of MC.

Held, that instead of adjourning the meeting, the Sub Divisional Magistrate should have declared petitioner No. 1 as the President under Rules 5(1) (a) of the Rules there and then. There seems to be no justification to adjourn the meeting. Report or affidavits filed before this Court do not suggest that name of petitioner No. 1 Raj Kumar was opposed by others and members present wanted to propose name of other candidates. Not only this, out of 15 total elected members and one nominated member, 10 are before this Court and all the 10 members are in one voice saying that name of petitioner No. 1 was proposed and no other name was proposed. There is no dispute about this fact. Hence, in view of this, I find that only name of petitioner No. 1 was proposed for the post of President no other name was proposed, hence, petitioner No. 1 should have been declared as the President then and there as he stood elected for the post of President in view of Rule 5(1) (a) of the Rules.

(Para 13)

Further held, that from the perusal of Rule 3 of the Rules, I have no hesitation to hold that to convene the meeting for election of the President and Vice President of the Municipal Council, 48 hours clear notice is required to be served on the members. The meeting was convened on 21st December, 2009, however, notice thereof was served on most of the members on 20th December, 2009. Since minimum of 48 hours clear notice is not given for the meeting, which was held on 21st December, 2009, hence, meeting dated 21st December, 2009 is otherwise illegal and non-est in the eye of law.

(Para 15)

Further held, that there is no doubt about the ratio of the Judgment of the Full Bench of this Court in the matter of **Prithvi Raj versus State Election Commission, Punjab and others**, AIR 2007 Punjab and Haryana 178, however, if election was validly held on 29th October, 2009, in which the only name of petitioner No. 1 was proposed, he should have been declared validly elected, hence, this Court cannot be a Silent spectator and shall not refuse to exercise its writ jurisdiction under Article 226 of the Constitution of India, to issue mandamus commanding respondents No. 1 to 5 to notify election of petitioner No. 1 as President of the Municipal Council pursuant to the meeting, dated 29th October 2009. Since second election was not permissible for the post of President, in view of the meeting held on 29th October, 2009, hence so called election on 21st December, 2009 was absolutely void ab initio ipso fact illegal, hence there is no need to file election petition. Had it been a case of simple election, perhaps this Court would have refused to exercise its writ jurisdiction under Article 226 of the Constitution of India.

(Para 17)

Akshay Bhan and Gulshan Sharma, Advocates, *for the petitioners.*

S.K. Bhanot, Addl. A.G., Punjab, *for the State.*

Kanwaljit Singh, Sr. Advocate with H.S. Sethi, Advocate, *for the private respondents*

ALOK SINGH, J.

(1) With the consent of learned counsel appearing for the parties, both the petitions are being taken up together and are being decided by this common judgement in view of the fact that identical facts and questions of law are involved therein.

(2) Petitioners have filed first writ petition i.e. CWP No. 18387 of 2009 seeking relief of mandamus to declare petitioner No. 1 Raj Kumar to have been elected as President of Municipal Council, Patran, District Patiala, and further seeking relief of mandamus to command respondents No. 1 to 5 to conduct election of President/Vice President of Municipal Council, Patran and the election should be directed to be videographed.

(3) Brief facts of the present case are that election of the Municipal Council, Patran, was held on 30th August, 2009 and the notification thereof was issued by the government on 15th September, 2009. As per Rule 3 of the Punjab Municipal (President and Vice-President) Election Rules, 1994 (hereinafter referred to as the Rules), election to the office of the President/Vice President should have been conducted within 14 days of the publication of the notification of election of members of the newly constituted municipality. It has further been averred that respondent No. 4 i.e. the Sub-Divisional Magistrate, Patran issued a letter dated 9th October, 2009 convening meeting to administer oath of allegiance and to elect the President/Vice President of the Municipality, on 16th October, 2009. The meeting so fixed for 16th October, 2009 was postponed/adjourned on the ground of some administrative reasons and ultimately was fixed for 29th October, 2009. Instead of the Sub-Divisional Magistrate, Patran, this time, Divisional Magistrate, Samana with *malafide* intention, was appointed as an officer to administer oath and to preside over the meeting for the election of President/Vice President of the Council. On 29th October, 2009, all the 15 elected members/councilors, including petitioners No. 1 to 9 and respondents No. 6 to 11 as well as nominated member i.e. MLA—petitioner No. 10 were present. Oath was administered by the Sub-Divisional Magistrate, Samana. After administering oath, name of petitioner No. 1 was proposed for the post of President by the local MLA Mr. Nirmal Singh—petitioner No. 10. However, instead of declaring petitioner No. 1 as President unopposed as required by Rule 5 of the Rules the Sub-Divisional Magistrate, Samana unnecessarily postponed the meeting for an indefinite time.

(4) This petition was filed on 30th November, 2009. Petition came up for preliminary hearing for the first time on 1st December, 2009. Learned Deputy Advocate General, Punjab accepted notice on behalf of respondents No. 1 to 5 and petition was directed to be listed on 22nd December, 2009. Thereafter, second writ petition i.e. CWP No. 89 of 2010 was filed with the allegation that on 22nd December, 2009, the date fixed in the first writ petition, a resolution dated 21st December, 2009 electing respondents No. 6 and 7 as President and Vice President of the Municipal Council, was brought to the notice of this Court, hence necessity arose for the second writ petition to challenge the resolution dated 21st December,

2009 electing respondents No. 6 and 7 as President and Vice President of the Council. It has further been averred in the second writ petition that thereafter, resolution dated 21st December, 2009 was approved by respondent No. 2 and notification dated 24th December, 2009 was published in the official Gazette whereby notifying the name of respondent No. 6 as President of the Municipal Council and name of respondent No. 7 was notified as Vice President of the Municipal Council. The resolution dated 21st December, 2009 is challenged in the second writ petition on the ground that in the meeting dated 21st December, 2009, only six members out of 16 members, were present and there was no quorum for the election.

(5) In reply filed, it has been stated by the government that meeting dated 29th October, 2009 was postponed as there was blatant rowdyism. It has further been averred in the reply that a legal notice as required under Rule 3 of the Rules, was issued to all the elected members for the meeting to be convened for 21st December, 2009 and the petitioners were informed and served with the notice for the aforesaid meeting, hence resolution dated 21st December, 2009 is perfectly valid. It has further been averred that after the election was over on 21st December, 2009 and has been notified on 24th December, 2009, now first writ petition has been rendered infructuous and the second writ petition is not maintainable, since petitioners have legal remedy to challenge the election by way of election petition.

(6) Mr. Akshay Bhan and Mr. Gulshan Sharma, learned counsel appearing for the petitioners vehemently argued that from the proceedings dated 29th October, 2009, it is very much clear that the only name of petitioner No. 1 was proposed by the MLA for the post of President of the Council and no other name was proposed nor respondents suggested in their reply that any other name was proposed, hence petitioner No. 1 ought to have been declared as elected President then and there and postponement of the meeting was not proper. It has further been averred that out of 15 elected members and one nominated member i.e. MLA, 10 are petitioners before this Court, hence there was no question of any quarrel and rowdyism on 29th October, 2009. Learned counsel for the petitioners further stated that during the pendency of the writ petition, it was not proper for the respondents to convene a meeting on 21st December, 2009, only one day before the date fixed in the first writ petition. Mr. Bhan further

contended that no legal notice as required under Rule 3 of the Rules was issued/served on the petitioners, hence meeting/resolution/election allegedly held on 21st December, 2009 is illegal and void ab initio. He further contended that if the alleged election is void and illegal, then there is no need to challenge the same in the election petition and the jurisdiction of this Court under Article 226 is not ousted.

(7) Mr. Kanwaljit Singh, learned Senior Advocate assisted by Mr. H.S. Sethi, appearing for the private respondents as well as Mr. S.K. Bhanot, Additional Advocate General, Punjab, submitted that there was quarrel between the petitioners themselves on 29th October, 2009 because everyone wanted to become President/Vice President and the petitioners started throwing chairs on each other, hence there was no other alternative before the Sub Divisional Magistrate except to adjourn the meeting. Mr. Kanwaljit Singh further stated that since the election has been held on 21st December, 2009 and relief claimed in the first writ petition was to hold election, hence the State was duty-bound to hold election without waiting result in the writ petition, hence election was validly held on 21st December, 2009.

(8) I have heard learned counsel for the parties and perused the record.

(9) Undisputedly, election to elect councilors/members of the municipality was held on 30th August, 2009. Undisputedly, first meeting was convened on 16th October, 2009 for administering both of allegiance to the newly elected councilors, which was directed to be adjourned due to some administrative reasons. Thereafter, a second meeting was convened *vide* letter dated 26th October, 2009 on 29th October, 2009, Undisputedly, on 29th October, 2009 all the 16 members were present and oath of allegiance was administered to all the newly elected members on 29th October, 2009. It is clear from the proceedings of the meeting dated 29th October, 2009 (Annexure 4 to the writ petition i.e. CWP No. 18387 of 2009) that name of petitioner No. 1 was proposed by the local MLA for the post of President of the Municipal Council. It is clear from the proceedings dated 29th October, 2009 that the meeting was directed to be adjourned by the Sub Divisional Magistrate, Samana, saying soon after the proposal of the name of Raj Kumar, Member, Ward No. 5 for the post of President, shouting/noise was raised and some members picked up chairs in their hand and atmosphere was not proper for the election for the

President, and hence, meeting was postponed. It is alleged that one day before the date fixed the first writ petition i.e. CWP No. 18387 of 2009, the meeting was convened *vide* notice dated 19th December, 2009 for 21st December, 2009 and in that meeting, respondents No. 6 and 7 were declared elected as President and Vice President of the Municipal Council. In the meeting allegedly held on 21st December, 2009, only six members participated and none of the petitioners was present in the meeting dated 21st December, 2009. Thereafter, election of respondents No. 6 and 7 as President/Vice President was notified on 24th December, 2009.

(10) From the respective arguments advanced by the learned counsel for the parties, following questions arise for the consideration of this Court :—

1. As to whether if only one name is proposed for the post of President in a meeting called under Section 20 of the Punjab Municipal Act, 1911 (hereinafter referred to as the Act) read with Rule 3 of the Rules, must be declared elected ?
2. As to whether alleged meeting held on 21st December, 2009 was void and illegal for want of notice for the period of not less than 48 hours as required under Rule 3 of the Rules ?
3. As to whether this Court is competent to exercise writ jurisdiction under Article 226 of the Constitution of India if the Court finds that meeting dated 21st December, 2009 is illegal, void and *in violation of Rule 3 of the Rules* ?
- (4) As to whether jurisdiction of this Court under Article 226 of the Constitution of India is barred merely because alternative remedy of filing election petition is available to the petitioners ?

Question No. 1.

(11) Undisputedly, name of petitioner No. 1 was proposed by petitioner No. 10, local MLA for the post of President and no other name was proposed. Rule 5 of the Rules reads as under :—

“5. Conduct of election.—(1) When the office of the President or the Vice President is to be filled:—

- (a) *if only one candidate for the office is proposed, he shall be declared to have been elected;*

- (b) *if there is more than one candidate, the candidate who obtains the largest number of votes shall be declared to have been elected ; and*
 - (c) *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 the members attending the meeting.*
- (2) *When there are two offices of Vice-President of a Municipality and both such offices are to be filled :—*
- (a) *voting shall take place at the same election for both the office of the Vice Presidents of a Municipality and each member of the Municipality shall record one vote only ;*
 - (b) *the two candidates who obtain the largest number of votes shall be deemed to be elected :*

Provided that if owing to the fact that two or more candidates have obtained an equal number of votes, it is impossible to decide which of the two candidates have obtained the largest number of votes, the matter shall be decided by a lot in the manner specified in clause (c) of sub-rule (10) ; and

- (c) *the candidate obtaining the largest number of votes shall be deemed to have been declared by the Municipality to be the Senior Vice President and the candidate obtaining the second largest number of votes shall be deemed to be the junior Vice President, provided that if both the candidates elected have obtain an equal number of votes, the matter shall be decided by a lot in the manner specified in clause (c) of sub-rule (1)."*

(12) Form the perusal of Rule 5 (1)(a) of the Rules , I have no hesitation to hold that in a meeting held to elect the President or Vice President of the Municipal Council, if only one candidate for the office of

President is proposed, he shall be declared to be elected then and there. Neither the Sub Divisional Magistrate nor the private respondents stated in their affidavits that other names were ever proposed nor report of the Sub Divisional Magistrate suggests that any name was ever proposed except the name of petitioner No. 1. Report of the Sub Divisional Magistrate reads as under :—

“Sr. No. Resolution which was presented.

Today on 29th October, 2009 at 11.30 A.M. in the office of Nagar Council, Patran, a meeting was convened under the Charimanship of Shri Sukhwinder Singh Gill, PCS, Convener-cum-Sub Divisional Magistrate, Samana for the election of President and Vice President of Nagar Council, Patran and the following members participated in the meeting :—

Shri/Shrimati

1.	Nirmal Singh	MLA	Sd/-
2.	Gurwant Kaur	Member	Sd/- Ward No. 1
3.	Gurcharan Singh	Member	Sd/- Ward No. 2
4.	Balveer Chand Sharma	Member	Sd/- Ward No. 3
5.	Jasvir Kaur	Member	Sd/- Ward No. 4
6.	Raj Kumar	Member	Sd/- Ward No. 5
7.	Narinder Kumar	Member	Sd/- Ward No. 6
8.	Suman	Member	Sd/- Ward No. 7
9.	Vinod Kumar	Member	Sd/- Ward No. 8
10.	Mahavir	Member	Sd/- Ward No. 9
11.	Puspa Devi	Member	Sd/- Ward No. 10
12.	Faqir Chand	Member	Sd/- Ward No. 11
13.	Mohan Lal	Member	Sd/- Ward No. 12
14.	Gurdeep Kaur	Member	Sd/- Ward No. 13
15.	Sukhjeet Singh	Member	Sd/- Ward No. 14
17.	Tarsem Singh	Member	Sd/- Ward No. 15

Resolution No. 2

Resolution which was passed.

Today on 29th October, 2009 at 11.30 A.M. in the office of Nagar Council, Patran, the proceedings were initiated under the Charimanship of Shri Sukhwinder Singh Gill, PCS, Convener-cum-Sub Divisional Magistrate, Samana for the election of President and Shri Nirmal Singh, MLA of Shutrana Constituency proposed the name of Shri Raj Kumar Member, Ward No. 5 and immediately shouting/noise was raised and some members picked up chairs in their hands and atmosphere was not proper for the election of the President, so seeing the circumstances this election is postponed till further orders.

Sd/-

Convener-cum-SDM,
Samana, 29-10-2009.”

(13) In the opinion of this Court, instead of adjourning the meeting the Sub Divisional Magistrate should have declared petitioner No. 1 as the President under Rule 5(1)(a) of the Rules there and then. There seems to be no justification to adjourn the meeting. Report or affidavits filed before this Court do not suggest that name of petitioner No. 1 Raj Kumar was opposed by others and members present wanted to propose name of other candidates. Not only this, out of 15 total elected members and one nominated member, 10 are before this Court and all the 10 members are in one voice saying that name of petitioner No. 1 was proposed and no other name was proposed. There is no dispute about this fact. Hence, in view of this, I find that only name of petitioner No. 1 was proposed for the post of President and no other name was proposed, hence, petitioner No. 1 should have been declared as the President then and there as he stood elected for the post of President in view of Rule 5(1)(a) of the Rules.

Questions No. 2.

(14) In view of the findings recorded by this Court that petitioner No. 1 ought to have been declared President then and there, I have no hesitation to hold that no second meeting was required to be convened to elect the President of the Municipal Council. Meeting dated 21st December, 2009 was neither legal nor proper. Rule 3 of the Rules reads as under :—

“3. *Manner of election.*—(1) *The Deputy Commissioner or any other officer authorised by him in this behalf (hereinafter referred as to the Convener) shall, within a period of*

fourteen days of the publication of the notification of the election of members of newly constituted Municipality fix, by giving not less than forty-eight hours notice to be served at the ordinary place of residence of all the elected members a date for convening the first meeting of the elected members of such Municipality by stating in the notice that at such meeting the oath of allegiance will be administered to the members present and also stating that the President and Vice President or Vice Presidents as the case may be, shall be elected.

Provided that all subsequent meetings to fill casual vacancies of the office of President and Vice President or Vice Presidents as the case may be, shall be convened by the Convener.

(2) *If due to any reason, the elected member is unable or refused to take oath of allegiance as required by sub-rule (1) within the stipulated period, then he will be allowed to take such oath of allegiance in the subsequent meeting unless he is debarred from taking the same by the Government for any reason. In case any such member does not take the oath of allegiance as aforesaid, then a fresh election to the constituency to which that member represents, shall be held."*

(15) From the perusal of Rule 3 of the Rules, I have no hesitation to hold that to convene the meeting for election of the President and Vice President of the Municipal Council, 48 hours clear notice is required to be served on the members. The meeting was convened on 21st December, 2009, however, notice thereof was served on most of the members on 20th December, 2009 as is clear from page 83 of the paper book. Since minimum of 48 hours clear notice is not given for the meeting, which was held on 21st December, 2009, hence, meeting dated 21st December, 2009 is otherwise illegal and nonest in the eye of law. I hold accordingly.

Questions No. 3 and 4.

(16) Learned counsel appearing for the respondents have placed reliance on the judgement of the Full Bench of this Court in the matter of **Prithvi Raj versus State Election Commission, Punjab and others, (1)**

(1) AIR 2007 Punjab & Haryana 178

and argued that writ petition is not maintainable and election petition should be filed to challenge the election of respondents No. 6 and 7, which was held on 21st December, 2009.

(17) There is no doubt about the ratio of the judgement of the Full Bench of this Court in the matter of Prithvi Raj (*supra*), however, in the opinion of the Court, if election was validly held on 29th October, 2009, in which the only name of petitioner No. 1 was proposed, he should have been declared validly elected, hence, this Court cannot be a silent spectator and shall not refuse to exercise its writ jurisdiction under Article 226 of the Constitution of India, to issue mandamus commanding respondents No. 1 to 5 to notify election of petitioner No. 1 as President of the Municipal Council pursuant to the meeting dated 29th October, 2009. Since second election was not permissible for the post of President, in view of the meeting held on 29th October, 2009, hence so-called election on 21st December, 2009 was absolutely void *ab initio ipso facto* illegal, hence there is no need to file election petition. Had it been a case of simple election, perhaps this Court would have refused to exercise its writ jurisdiction under Article 226 of the Constitution of India.

(18) In view of the observations made hereinabove, writ petitions are allowed. Mandamus is issued to respondent No. 1 to notify petitioner No. 1 as an elected President of the Municipal Council under Section 24(2) of the Act. Meeting held on 21st December, 2009 and notification dated 24th December, 2009 are hereby quashed. Respondents No. 1 to 5 are further directed to convene the meeting for the election of Vice President of the Municipal Council within 15 days from today. Election of Vice President shall be held in the presence of respondent No. 3. Proceedings of the aforesaid election shall be videographed.

(19) Both the petitions stand allowed accordingly. No Costs.

(20) A photocopy of the order be placed on the file of connected case.