

Bisakha Singh
and others
v.
Union of India
and another

Shamsher
Bahadur, J.

I would accordingly dismiss this appeal but would leave the parties to bear their own costs.

B.R.T.

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

SAT NARAIN AND OTHERS,—Petitioners.

versus

THE DEPUTY COMMISSIONER, FEROZEPURE AND
OTHERS,—Respondents.

Civil Writ No. 1665 of 1961.

1962

April 25th

Punjab Municipal Act (III of 1911)—Ss. 12, 17 and 24—Municipal Election Rules, 1952—Rules 5 and 41—Election of all the members not held—Election of members elected—Whether must be notified forthwith.

Held, that a combined reading of sections 12 and 17 of the Punjab Municipal Act, 1911, will show that a municipal committee can only function after all the members have been elected or nominated as the case may be. It cannot function if only part of the members have been elected. The only exception is when in a duly and properly constituted committee there occurs a casual vacancy. Section 24 of the Act and Rule 41 of the Municipal Election Rules do not oblige the Government to notify the election of members forthwith. All that these provisions require is that the Deputy Commissioner shall within seven days forward the result of the election to the Commissioner and thereafter the result is to be notified. No time limit is fixed either in the statute or in the Rules for such notification. Therefore, it must be held that the notification must be within a reasonable time. In the present case the Government is not notifying the result, because the entire election has not been completed and, therefore, it cannot be said that they are acting in any illegal or *mala fide* manner.

Petition under Article 226 of the Constitution of India praying that a writ of mandamus or any other suitable writ, order or direction in the nature of mandamus be issued to respondent No. 1, directing him to notify the election of the petitioners to the Municipal Committee of Abohar in the Punjab State Gazette.

S. C. GOYAL, ADVOCATE, for the Petitioners.

H. S. DOABIA, ADVOCATE, for the Respondents.

ORDER

MAHAJAN, J.—This is a petition under Article 226 of the Constitution of India, and the only grievance made is that the 13 elected members of this Committee have not so far been notified. The Committee in question is the Abohar Municipal Committee. It is constituted of 17 elected members. One was returned unopposed, 13 were elected and with regard to three, the election has been stayed by this Court. The election of the member who was elected unopposed has also been set aside. The result, therefore, is that out of 17 members 13 have been elected and election of four has yet to take place.

Mahajan, J.

The contention of the learned counsel for the petitioners is that the Government is acting in a *mala fide* manner in not notifying the election of those members who have been elected whereas the stand of the Government is that they will notify the election of members after the entire election has been completed, in other words, after the remaining four members have been elected. The State counsel has stated categorically that there is no intention on the part of the Government not to notify the election of these 13 elected members, but he states that no useful purpose will be served by notifying their election at the moment, because they cannot function as a committee till the entire election has been completed. This takes me to the consideration of the question under the Municipal Act as to whether a municipality can be constituted when only some of the entire strength of the municipal committee has been elected. In this connection reference may be made to sections 12 and 17 of the Punjab Municipal Act which are in these terms—

“12. Subject to the provisions of Section 17, a committee shall consist of such number of elected members as the State Government may prescribe in this behalf :

Provided that the State Government may nominate to each committee such

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number as may be fixed, but not exceeding eight, of officials to act as advisers. Such advisers shall not be deemed members of the committee and shall have no right to vote in any capacity whatever, but shall be entitled to participate in all proceedings of the committee in an advisory capacity."

"17. (1) Whenever a vacancy occurs by the death, resignation or removal otherwise than under the provisions of section 14(e) of any elected member, or by the vacation of his seat under the provisions of sub-section (5) of section 13 a new member shall be elected in accordance with the rules made under this Act to fill the place:

Provided that the State Government may direct in any such case that the vacancy shall be left unfilled:

Provided further, that if no qualified candidate appears for election, the State Government may appoint a member to fill the vacancy.

(2) Upon the death, resignation or removal of any appointed member, or when a member's seat has been vacated under the provisions of section 14(e), the State Government may, if it shall think fit, fill his place, either by appointment or by election.

(3) Every person elected or appointed to fill a casual vacancy shall hold his seat for the time for and subject to the conditions upon which it was tenable by the person in whose place he has been so elected or appointed, and no longer: but he may, if otherwise qualified, be re-elected or re-appointed."

A combined reading of these provisions will show that a municipal committee can only function after

all the members have been elected or nominated as the case may be. It cannot function if only part of the members have been elected. The only exception is when in a duly and properly constituted committee there occurs a casual vacancy. Here we are not concerned with a case of any casual vacancy. In the present case the elections to the municipal committee have not fully concluded. Reference may also usefully be made in this connection to the provisions of rule 5 of the Municipal Election Rules, 1952. The learned counsel for the petitioners drew my attention to section 24 of the Punjab Municipal Act and rule 41 of the Municipal Election Rules for his contention that the Government was bound to notify the election of members forthwith. I cannot hold in favour of the petitioners that this result follows from these provisions. All that these provisions require is that the Deputy Commissioner shall within seven days forward the result of the election to the Commissioner and thereafter the result is to be notified. No time limit is fixed either in the statute or in the Rules for such notification. Therefore, it must be held that the notification must be within a reasonable time. In the present case the Government is not notifying the result, because the entire election has not been completed and, therefore, it cannot be said that they are acting in any illegal or *mala fide* manner.

For the reasons given above, this petition fails and is dismissed, but there will be no order as to costs.

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