

against the respondents, so recorded by the Sessions Judge on an inquiry entrusted to him by this Court. That apart, the petitioner unequivocally asserts that he is being threatened every day that he shall be eliminated in the same way his son was.

(9) For the reasons recorded above, this petition succeeds. Pre-arrest bail allowed to all the accused by the Sessions Judge,—*vide* order dated November 25, 1994 is cancelled. The respondents shall, however, be at liberty to apply for regular bail which shall be considered by the Sessions Judge, seized of the matter, on merits and, in particular, on the basis of evidence and quality thereof, collected by the prosecution agency culminating into final report against them under Section 173 Cr.P.C. It is made clear that all that has been discussed in this order is simply with a view to dispose of petitioner's prayer for cancellation of bail and nothing said in this order shall ever be construed to be an expression of opinion and the Sessions Judge dealing either with the regular bail or the trial would decide the matter being totally un-influenced of what has been said in this order.

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S.C.K.

Before Hon'ble N. K. Sodhi, J.

DWARKA DASS,—Appellant.

*versus*

HARJIT KUMAR & ANOTHER,—Respondents.

F.A.O. No. 307 of 1995 (O&M)

2nd March, 1995.

*Punjab State Election Commission Act, 1994—Ss. 68, 89 (1) (d) (iii) & 100—Punjab Municipal Act, 1911—S. 240—Punjab Municipal (President & Vice President) Election Rules, 1994—Rls. 3, 5, 5-A—Election for the office of President of Municipal Committee—Candidates polling equal number of votes—Election held by draw of lots in terms of section 68 of the Act—Election petition—Local M.L.A. member of Committee not available to cast vote—Such member of the committee also member of the Nagar Panchayat—Elections of both bodies held at the same time—Local M.L.A. not casting vote in the present election—Defeated candidate claiming political affiliation with local M.L.A.—Non-participation of any member including M.L.A. is no ground for declaring an election void—Election can be set aside on grounds mentioned in Section 89 of the Act.*

*Held*, that a plain reading of Section 89 makes it abundantly clear that non-participation of any member of the committee in the election for any reason whatsoever is not a ground to challenge the election of the returned candidate. The argument that since the M.L.A. has been prevented from participating in the election, the present case would be covered by sub-clause (iii) of clause (d) of Section 89 (1) of the Act is patently fallacious and cannot be accepted. Under sub-clause (iii), the election of the returned candidate can be declared void if there has been any improper reception, refusal or rejection of any vote or reception of any vote which is void. In the first instance, the M.L.A. of Ghagga cannot be said to have been prevented from participating in the election of the committee. It was open to him to have attended the meeting of the committee at Patran and not gone to the meeting of the Nagar Panchayat at Ghagga. He had a choice to attend either of the two meetings but he himself chose not to attend the meeting of the committee but attended that of the Nagar Panchayat at Ghagga. How then has he been prevented in the present case. It is, indeed, difficult to swallow the suggestion that the M.L.A. should be deemed to have been prevented from attending the meeting of the committee. Even if one were to assume that he was prevented, it cannot by any process of reasoning be said that the convener of the meeting refused to receive his vote within the meaning of sub-clause (iii) of clause (d) of Section 89 (1) of the Act. Again, mere refusal to receive a vote by itself is not a ground for getting the election of a returned candidate declared void. It has further to be shown that such refusal had materially affected the result of the election in so far as it concerns a returned candidate. Harjit Kumar-respondent is assuming that the M.L.A. would have cast the vote in his favour merely because he happened to belong to his party. There is no basis for such assumption.

(Para 11)

*Further held*, that the right to vote, right to contest election and the right to challenge an election are statutory rights. These are not inherent rights nor common law rights nor are they fundamental rights. Therefore, only such persons would have a right to vote in whom a right is created by a statute. Similarly, an election can be challenged only on the grounds that are provided by the statute and on no other. In the present case, since non-participation of any member including the M.L.A. is not a ground for having the election of the returned candidate declared void, the impugned order of the Election Tribunal cannot, therefore, be sustained.

(Para 12)

S. C. Kapoor, Sr. Advocate with Ashish Kapoor, Advocate, for  
the Appellant.

M. L. Sarin, Sr Advocate with G. S. Bhatia, Advocate, for the  
Respondent.

JUDGMENT

N. K. Sodhi, J.

(1) This appeal under section 100 of the Punjab State Election Commission Act, 1994 (for short, the Act) is directed against the order of the Election Tribunal, Patiala whereby the election petition filed by Harjit Kumar—respondent was allowed and the election of the appellant as President of Nagar Panchayat Patnan (herein after called the committee) was set aside.

(2) Facts giving rise to this appeal lie in a narrow compass and are as under :

(3) Municipal area of the committee was divided into thirteen wards and elections thereto were held some time in November 1994. Thirteen ward members including Dwarka Dass appellant and Harjit Kumar respondent were elected. Since the area of the committee was a part of Ghagga Assembly constituency, the M.L.A. of that constituency was also an *ex officio* member of the committee. The first meeting of the committee was fixed for 16th December, 1994 at 4.00 P.M. in which the President and Vice-President were to be elected. Accordingly, notice was issued by the Convener (respondent No. 2 herein) to all the members of the committee and at the time fixed for the meeting the appellant and respondent No. 1 contested the election for the office of President. The M.L.A. of Ghagga failed to turn up but all other members were present and they cast their votes. The appellant secured seven votes whereas Harjit Kumar respondent polled six votes. One vote in favour of the appellant was declared invalid as a result whereof both the candidates polled six valid votes each. Since the number of votes polled by both the candidates were equal, the Returning Officer decided the result of the election by draw of lots in terms of Section 68 of the Act read with Rule 5 of the Punjab Municipal (President and Vice-President) Election Rules, 1994 (referred to hereinafter as the Rules). As a result of the lots so drawn the appellant was successful and he was, therefore, declared elected as President of the committee. Harjit Kumar respondent challenged the election of the appellant by filing an election petition before the Election Tribunal Patiala on various grounds. It was alleged that the Returning Officer committed the following irregularities which materially affected the respondent in his election :

- (a) That the Returning Officer had not shown the two parchees (ballots) which he had prepared for drawing the lots.

- (b) That he had written the name of the appellant on both the parchees (ballots) and he secretly drew the parchec on which the name of the appellant had been written.

It was further alleged that 48 hours clear notice of the meeting to be held on 16th December, 1994 was not given to the respondent (petitioner before the Election Tribunal). The notice was said to have been served on the respondent at 11.00 P.M. on 14th December, 1994 whereas the meeting was convened at 4.00 P.M. on 16th December, 1994. This according to the respondent, was a violation of Rule 3 of the Rules. Another allegation that was made in the election petition was that the M.L.A. of Ghagga who is a member of the committee could not exercise his right to vote because on the same date and time a meeting of the Nagar Panchayat, Ghagga had also been convened of which he is a member. It may be mentioned that the municipal area of Nagar Panchayat Ghagga also forms a part of Ghagga Assembly constituency and, therefore, the M.L.A. from Ghagga is a member of Nagar Panchayat, Ghagga as well. Harjit Kumar also alleged that the appellant had committed the following corrupt practices :

- (i) That he used cars to transport voters ;
- (ii) That two of the voters were abducted two days before the election of the President and their where abouts were not known upto 3.00 P.M. on 16th December, 1994 ; and
- (iii) That the members who cast their votes had been promised gifts and money if they cast their votes in favour of the appellant.

(4) The election petition was filed on 17th December, 1994 and notice was issued to the appellant herein for 3rd January, 1995. On this date the appellant put in his appearance and sought an adjournment for filing his reply. The case was adjourned to 5th January, 1995 on which date the Election Tribunal after hearing counsel for both the parties decided the petition without recording their evidence. The Election Tribunal had the original record of the proceedings of the first meetings of the committee and Nagar Panchayat, Ghagga before it and since the points raised in the election petition, according to the Tribunal, could be disposed of by a reference to the official record, the Tribunal did not think it necessary to receive any other evidence.

(5) The appellant raised the preliminary objections before the Election Tribunal. It was contended that the petition under section

76 of the Act was not maintainable and that the elections that were held under the Rules framed under Section 240 of the Punjab Municipal Act, 1911 the Election Tribunal constituted under the Act had no jurisdiction to entertain or adjudicate upon the election dispute. Harjit Kumar—respondent while pleading his case before the Tribunal pressed only three points before it. His first submission was that 48 hours clear notice as required under Rule 3 of the Rules had not been given. The next submission that he made was that the convener while drawing lots had written the name of the appellant on both the slips out of which one was picked up and that no slip bearing the name of the respondent was put in the pool. The third and last contention that he advanced before the Tribunal was that the M.L.A. of Ghagga who was a member of the committee was prevented from casting his vote because on the same day and time the meeting of Nagar Panchayat Ghagga had also been convened of which the M.L.A. was a member. Harjit Kumar also contended that the M.L.A. belonged to his party and, therefore, he would have cast the vote in his favour and in this way the election was materially affected.

(6) The Tribunal after hearing counsel for the parties rejected both the preliminary objections raised by the appellant holding that the election petition under the Act was maintainable and that he could adjudicate upon the same. On merits, the first two contentions advanced by Harjit Kumar—respondent, were rejected. After referring to the original record of the committee and Nagar Panchayat, Ghagga the Tribunal found that notice had been given to all the elected members of the committee who were present at the time of the meeting and participated in the voting. Each one of them had been served. Even the M.L.A., Ghagga had been served though he is not an elected member of the committee. The Tribunal, therefore, concluded that even if 48 hours clear notice was not given, it did not cause any prejudice to the election petitioner and his contention in this regard was rejected. Similarly, the second contention of Harjit Kumar—respondent was also rejected by the Tribunal and it was found that he had participated in the proceedings when the draw of lots was held and he signed those proceedings in token of having accepted their correctness. The allegation that the convener had written the name of the appellant on both the slips while drawing the lots was specifically denied by the convener and there being nothing on the record in support of what the election petitioner was alleging, the Tribunal rejected the contention describing it as a wild allegation.

(7) The third submission made by Harjit Kumar, however, found favour with the Election Tribunal. It was held that the M.L.A., Ghagga who was also member of the committee was prevented from casting his vote which has materially affected the outcome of the election. As already noticed above, the M.L.A. of Ghagga was not only a member of the committee but also of the Nagar Panchayat, Ghagga. The first meetings of both the committee and Nagar Panchayat, Ghagga were fixed for the same day at the same time and, therefore, the M.L.A. could not be present at both places. He, however, opted to be present in the meeting of Nagar Panchayat, Ghagga. Patran is stated to be at a distance of about 7/8 kilometres from Ghagga. The Tribunal found that it was, therefore, impossible for the M.L.A. to attend the first meeting of the committee held on 16th December, 1994. He further found that the vote of the M.L.A. was crucial in deciding the fate of the candidates and had he participated the process of deciding the election by draw of lots would have been avoided. Non-participation of the M.L.A., according to the Tribunal, materially affected the outcome of the election and, therefore, the election of the appellant as President of the committee was set aside. It is this order that has now been impugned in the present appeal.

(8) Mr. S. C. Kapoor, Senior Advocate appearing for the appellant strenuously contended that the election of his client could not be set aside merely because the concerned M.L.A. chose not to participate in the meeting of the committee but, instead, of his own choice, attended the meeting of Nagar Panchayat, Ghagga. He also submitted that the Tribunal was in error in holding that non-participation of the M.L.A. had materially affected the result of the election because it cannot be assumed that he would have cast his vote in favour of the respondent no matter that he belonged to his party. Mr. M. L. Sarin, Senior Advocate appearing for the election petitioner-respondent, on the other hand, vehemently argued that since the meeting of Nagar Panchayat, Ghagga was fixed for the same day and time as that of the committee and the concerned M.L.A. attended the meeting at Ghagga, he must be deemed to have been prevented from attending the meeting of the committee. This, according to the learned counsel, amounted to improper refusal to receive his vote which materially affected the result of the election and, therefore, the election could be set aside under section 89(1)(d) (iii) of the Act. He also contended that the provisions of Rule 3 had been violated in as much as 48 hours clear notice was not given to his client and, therefore, the election of the returned candidate had to be set aside under sub-clause (iv) of Section 89(1) (d) of the Act.

(9) From the rival contentions advanced by learned counsel for the parties, the question that arises for determination is as to whether the election of the appellant as President of the committee could be set aside on the ground that the M.L.A. of Ghagga could not attend the meeting of the committee because of his having attended the other meeting and whether in these circumstances can the M.L.A. be said to have been prevented from attending the meeting.

(10) Section 89 of the Act provides the grounds on which an election can be declared void. It reads as under :—

“89. (1) Subject to the provisions of sub-section (2), if the Election Tribunal is of the opinion :—

(a) that on the date of his election, a returned candidate was not qualified, or was disqualified to be chosen to fill the seat under the Constitution of India or under this Act ; or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by other person with the consent of a returned candidate or his election agent ; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate has been materially affected :

(i) by the improper acceptance of any nomination ; or

(ii) by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent ; or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void ;  
or

(iv) by any non-compliance with the provisions of the Constitution of India or of this Act or of any rules or orders made under this Act ;

the Election Tribunal shall declare the election of the returned candidate to be void.

(2) If in the opinion of the Election Tribunal a returned candidate has been guilty by an agent, other than his

election agent, of any corrupt practice, but the Election Tribunal is satisfied :—

- (a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent ;
- (b) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election ; and
- (c) that in all other respects, the election was free from any corrupt practice on the part of the candidate or any of his agent ;

then the Election Tribunal may decide that the election of the returned candidate is not void.

- (3) In this section, the expression 'agent' has the same meaning as assigned to it in Explanation (1) given under clause (9) of section 108, but does not include election agent."

(11) A plain reading of the aforesaid section makes it abundantly clear that non-participation of any member of the committee in the election for any reason whatsoever is not a ground to challenge the election of the returned candidate. The argument of Mr. Sarin that since the M.L.A. has been prevented from participating in the election, the present case would be covered by sub-clause (iii) of clause (d) of Section 89(1) of the Act is patently fallacious and cannot be accepted. Under sub-clause (iii), the election of the returned candidate can be declared void if there has been any improper reception, refusal or rejection of any vote or reception of any vote which is void. In the first instance, the M.L.A. of Ghagga cannot be said to have been prevented from participating in the election of the committee. It was open to him to have attended the meeting of the committee at Patran and not gone to the meeting of the Nagar Panchayat at Ghagga. He had a choice to attend either of the two meetings but he himself chose not to attend the meeting of the committee but attended that of the Nagar Panchayat at Ghagga. How then has he been prevented in the present case. It is, indeed, difficult to swallow the suggestion that the M.L.A. should be deemed to have been prevented from attending the meeting of the committee.

Even if one were to assume that he was prevented, it cannot by any process of reasoning be said that the convener of the meeting refused to receive his vote within the meaning of sub-clause (iii) of clause (d) of Section 89(1) of the Act. Again, mere refusal to receive a vote by itself is not a ground for getting the election of a returned candidate declared void. It has further to be shown that such refusal had materially affected the result of the election in so far as it concerns a returned candidate. Harjit Kumar-respondent is assuming that the M.L.A. would have cast the vote in his favour merely because he happened to belong to his party. There is no basis for such assumption. The M.L.A. could well have voted for the appellant. If the M.L.A. was really interested in voting for the respondent, he would have chosen to attend the meeting of the committee instead of attending the meeting at Ghagga or atleast taken some steps in time to have the date or time of either of the meetings changed. Any how, these are all matters of conjecture and the Tribunal could not go into all these aspects to record a finding that the result of the election was materially affected. The argument of Mr. Sarin that non-participation of the M.L.A. in the circumstances of the case was covered by sub-clause (iii) of clause (d) of Section 89(1) of the Act is, therefore, rejected.

(12) It is by now well settled that the right to vote, right to contest election and the right to challenge an election are statutory rights. These are not inherent rights nor common law rights nor are they fundamental rights. Therefore, only such persons would have a right to vote in whom a right is created by a statute. Similarly, an election can be challenged only on the grounds that are provided by the statute and on no other. In the present case, since non-participation of any member including the M.L.A. is not a ground for having the election of the returned candidate declared void, the impugned order of the Election Tribunal cannot, therefore, be sustained.

(13) Mr. Sarin then half-heartedly contended that Harjit Kumar-respondent had challenged the election on various other grounds including corrupt practices allegedly committed by the appellant. He referred to the election petition filed by his client before the Election Tribunal. It is true that some vague allegations in regard to commission of the corrupt practices had been made in the election petition but those were not pressed before the Election Tribunal as is clear from paragraph 19 of the order under appeal. In this view of the matter, the respondent cannot now turn around and say that the Tribunal should have recorded evidence of the parties and given a finding on those allegations.

(14) It was also contended on behalf of the respondent that the Tribunal was in error in holding that the convener of the meeting had given 48 hours notice. He also challenged further observations made by the Tribunal to the effect that even if the notice was short the election petitioner (respondent herein) could not substantiate as to how he was prejudiced by that fact because all the members of the committee including the M.L.A. of Ghagga had been served. All the elected members of the committee were present in the meeting and cast their vote. In view of this factual position, I am of the opinion that the Tribunal was right in rejecting the contention of the respondent. There was no material on the record before the Tribunal to show as to how the respondent was prejudiced. Moreover, the prejudice caused should have materially affected the result of the election in so far as it concerned a returned candidate and not of any other candidate. I have, therefore, no hesitation in upholding the finding of the Tribunal in this regard.

(15) In the result, the appeal is allowed, the impugned order of the Election Tribunal, Patiala is set aside and the election petition filed by Harjit Kumar respondent dismissed. There is no order as to Costs.

R.N.R.

Before Hon'ble N. K. Sodhi, J.

M/S MARUTI UDYOG LTD.,—Petitioner.

versus

RAM LAL AND OTHERS,—Respondents.

C.W.P. No. 15728 of 1993

19th April, 1995

*Constitution of India, 1950—Arts. 226/227—Industrial Disputes Act, 1947—Maruti Limited (Acquisition and Transfer of Undertaking) Act, 1980—Workmen retrenched prior to acquisition of Maruti Udyog Limited—Retrenchment not challenged in any forum—After acquisition in 1980 workmen claiming preferential right of re-employment u/s 25-H—Under Acquisition Act only assets of Company in Liquidation Maruti Limited were taken and not liabilities—Acquired Company cannot be said to be Successor-in-Interest of Company which was under Liquidation at the time of acquisition—Claim for re-employment cannot be made against Maruti Udyog Limited, which was not a Successor of the Company so as to be under an obligation to offer re-employment.*