

- (b) That the seats held by all the respondents excepting respondent Nos. 6 to 30 shall be deemed to have been declared vacant with immediate effect ;
- (c) That if the respondent-State decides to utilise the seats held by the private respondents in Engineering courses and now declared vacant, they shall divert all such seats to the open merit category seats and offer such seats to them in the order of their merit obtained in the competitive entrance examination within a period of two weeks ;
- (d) That if no such option is exercised within the aforesaid period all such seats shall be deemed to have been declared non-existent ;
- (e) That in case, the respondent-State intends to utilise these seats for the students in the open merit category, the cases of respondent Nos. 6 and 30 shall be considered for admission on the basis of their merit within the period of two weeks and if no such decision is taken within the time specified with respect to the aforesaid candidates, the seats held by them shall be deemed to have fallen vacant after the expiry of two weeks..

The petitioners are also held entitled to the payment of costs which are assessed at Rs. 5,000 to be paid by respondent No. 1.

J.S.T.

Before Hon'ble A. L. Bahri & N. K. Kapoor, JJ.

DR. HARBHAJAN SINGH,—Petitioner.

versus

STATE OF PUNJAB & OTHERS.—Respondents.

C.W.P. 13190 of 1994

10th October, 1994

Constitution of India, 1950—Arts. 226/227—Punjab Municipal Act (Act III of 1911)—Amending Act 11 of 1994—Section 25(3)—Empowers Vice-President to convene meeting in absence of President, if such requisition has been made by 1/5th members of the Committee—Any such meeting convened in absence of President is legal and valid.

Held, that Section 25 of the Act empowers the Vice President in the absence of the President to convene such a meeting if requisition has been made by not less than 1/5th members of the Committee. This way Vice President had the authority to convene such a meeting.

(Para 5)

Constitution of India, 1950—Arts. 226/227—Punjab Municipal Act (III of 1911)—Section 13—Co-opted members are not deemed to be elected members—Associate members term is co-terminus with his term as M.L.A.

Held, that as per Section 13, elected members were to hold office for a period of five years and the term of an associate member is co-terminus with his term as member of the Legislative Assembly. Similarly, the term of co-opted member is coterminus with the term of elected member. Phraseology used in the above two sections clearly bring out that elected members are a class apart. Co-opted members even when elected by such elected members are designated as co-opted members i.e. they are not deemed to be elected members.

(Para 17)

Constitution of India, 1950—Arts. 226/227—Ss. 12, 13—Coming into force of amending Act—Cumulative reading of Sections leads to conclusion that all committee constituted prior to Amending Act to be governed by earlier provision—Provisions of amending Act to be prospective.

Held, that cumulative reading of these provisions leads to an irresistible conclusion that these are intended to operate prospectively i.e. as and when fresh elections are held in respect of Municipalities presently existing. Even Section 13 (2) protects the existing Municipalities till the expiration of their term unless sooner dissolved by a resolution passed by the State Legislature. No resolution has been passed so far. It means earlier constituted Committees remained in existence and so the earlier provisions would govern such a constituted Committee till fresh elections are held.

(Para 18)

H. S. Mattewal, Sr. Advocate, with R. S. Virk, Advocate, for the Petitioner.

S. S. Shergill, DAG, Punjab, for Respondent No. 1.

S. C. Pathela, Advocate, for Respondent No. 2.

S. P. Jain, Sr. Advocate, with Rajesh Gumber, Advocate, for Respondent No. 3 and 4.

JUDGMENT

N. K. Kapoor, J.

(1) The petitioner seeks quashing of resolution No. 171 dated 15th September, 1994 of Municipal Committee, Guru Har Sahai,—*vide* which no confidence against its presidentship was passed on the ground that the meeting convened was in gross violation of the provisions of the Act, rules and bye laws; lack of adequate notice to the members and on account of casting of vote by the M.L.A. who was only an associate member as per section 12(1)(c) of the Punjab Municipal Act, 1911 (for short 'the Act') and thus had no right to cast the vote as the Municipal Committee was constituted before coming into enforcement of amending Act 11 of 1994, with a further direction in the nature of *mandamus* to allow the petitioner to function as President of the Municipal Committee, Guru Har Sahai, and to hand over to him the proceedings book and all other relevant documents.

(2) Before examining the various legal submissions made by the learned counsel for the petitioner, it would be appropriate to keep in mind the following brief facts. Municipal Committee, Guru Har Sahai, consisted of 11 elected members, three co-opted members and M.L.A. as its associate member. The petitioner had been elected as President and had been performing the duties of the President till the passing of the impugned resolution Annexure P.4. It is the case of the petitioner that eight members of the Municipal Committee, Guru Har Sahai, gave a requisition to the Vice-President Mr. Subhash Chander to call a meeting to pass a no confidence motion against the President who called the meeting in complete violation of the provisions of the Act and the Rules and so the proceedings conducted in such a meeting is non est. In addition, it has been stated that the M.L.A. being an associate member of the Municipal Committee had no right to cast a vote. If the vote cast by the associate member is excluded, the resolution passed by the remaining members fall short of 2/3rd requisite majority as per section 22 of the Punjab Municipal Act, 1911. Besides these factual averments, it has been stated that in the absence of the President, Vice-President has no right to convene such a meeting and even otherwise adequate notice was not given of the meeting on account of which some of the members could not reach in time to participate in the said meeting.

(3) The respondents, on the other hand, have tried to justify the requisitioning of the meeting on the ground that eight members of the Municipal Committee presented a requisition dated 9th September, 1994 for requisitioning such a meeting and since the President

was not in town on 10th, 11th September, 1994, Vice-President of the Municipal Committee exercising the powers under section 25 of the Act issued an agenda on 12th September, 1994 for summoning a meeting on 15th September, 1994 to consider the no confidence motion against the President. Pursuance to the notice issued by the Vice-President informing about the meeting of the Municipal Committee to be held on 15th September, 1994, all the members of the Municipal Committee except the petitioner and four other members received the agenda on 12th September, 1994. The petitioner and four other members, however, refused to receive the agenda as per report submitted by the Peon. It is thereafter that the Executive Officer, Municipal Committee, directed the office to send the agenda to the petitioner as well as four other members, namely, Sarvshri Rajinder Kumar, Niranjn Singh, Amrit Lal Vohra and Smt. Amrita through post under postal certificate as well as intimating them of the meeting through the telegrams. Thus, in the present case, more than 48 hours notice was given to the petitioner in respect of the agenda of the meeting to be held on 15th September, 1994. At the convened meeting, 10 out of 15 members of the Municipal Committee attended the meeting and passed the resolution removing the petitioner from the office of Presidentship of the Municipal Committee. The resolution having been passed by 2/3rd majority is valid in law. Casting of vote by the Associate Member-M.L.A. has been justified on the ground that in compliance with the 74th Amendment of the Constitution consequential amendments were effected,—*vide* amending Act No. 11 of 1994 in the Punjab Municipal Act, 1911, and the earlier bar that such a person though can take part in the proceedings of any meeting of the Municipal Committee or its sub-committee but has no right to vote has been removed. Thus, the M.L.A. rightly participated in the meeting as well and cast his vote. The impugned resolution has been passed after giving due notice to all the members and in complete conformity with the provisions of the Act and the Rules applicable and so does not call for interference by this Court.

(4) Learned counsel for the petitioner in the first instance has challenged the convening of the meeting by the Vice-President and lack of adequate notice for the meeting so convened. According to the counsel, such a meeting could not be convened by the Vice-President. It is only when the President is absent that Vice-President has been given the power to call for such a meeting if requisition by not less than 1/5th members of the Committee is made. According to the counsel, as per section 25 of the Act, in

the first instance such a meeting can be convened by the President and in his absence by the Vice-President within a period of 14 days from the date of the receipt of the requisition. In the present case, there has been non-compliance of section 25(3) of the Act and on this account alone, the impugned resolution is unsustainable. Even if it be taken that the petitioner was not in town on 10th and 11th of September, 1994, this temporary absence will not clothe the Vice-President with the power to convene such a meeting. The real intention of section 25 appears to be that in case of long absence of the President, Vice-President may exercise such powers of the President including the calling of a meeting to consider no confidence motion within a fortnight from the date of requisition. Haste in which the meeting has been convened by the Vice-President is not only against the spirit of Section 25 of the Act but is illegal as well. Even if it be taken that such a meeting was rightly convened by the Vice-President, the same is invalid on account of lack of proper notice to all the members. Denying the service of notice of the proposed meeting on 15th September, 1994 through a Peon, it has been urged that the report so submitted by the Peon is merely a cover up and so is the alleged communication sent through post. As regards telegrams, the same was received on 14th September, 1994 in the after-noon. At best, this telegram if construed to be a notice did not give sufficient notice as per requirement of the by-laws of the Municipal Committee.

(5) There is no merit in this contention of the petitioner. As per averment in the written statement filed by respondent No. 2, 8 members of the Municipal Committee sought requisitioning of the committee to consider no confidence motion against the President on 9th September, 1994. Since the President was not in town on 10th as well as on 11th September, 1994, Vice-President of the Municipal Committee exercising powers under section 25 of the Act issued an agenda on 12th September, 1994 for summoning the meeting to consider no confidence motion against the President on 15th September, 1994. Document Annexure R.2/1 has been placed on record.—*vide* which 8 members of the Municipal Committee requisitioned this meeting on 9th September, 1994. It has not been denied by the petitioner that he was not in town on 10th and 11th September 1994. Section 25 of the Act empowers the Vice-President in the absence of the President to convene such a meeting if requisition has been made by not less than 1/5th members of the Committee. This way Vice-President had the authority to convene such a meeting.

(6) There is also no substance in the plea that no notice has been served upon the petitioner and four other members by the Peon who was deputed for this job. In any case, there is nothing to doubt the report submitted by the Peon in this regard. It is with a view to effect service upon the petitioner and other members who had refused to receive the agenda that the same was sent by UPC (under postal certificate as well as members were intimated of the proposed meeting telegraphically-Annexure R-2/2.

(7) The crux of the dispute still remains with regard to the passing of the resolution by the requisite majority and casting of vote by associate member and its effect upon the impugned resolution Annexure P-4 by the associate member. Learned counsel for the petitioner in support of his plea that the M.L.A. being an associate member of the Municipal Committee had no right to vote in the meeting relied upon sections 12 and 13 of the Act and amendment effected.—*vide* Act No. 11 of 1994 cannot be retrospectively applied to the existing municipality. Elaborating, the counsel urged that as per section 12 of the Punjab Municipal Act, 1911, constitution of the Committee comprised of; (i) elected members; (ii) co-opted member/members; and (iii) associate members. As per section 12 (c) of the Act, an associate member has no right to vote but only a right to speak and otherwise take part in the proceedings of any meeting of the committee or its sub-committee of which he may be a member. Thus, till the coming into enforcement of the amending Act 11 of 1994, M.L.A. being an associate member had no right to vote at any meeting of the committee. The change now effected.—*vide* substituted section 12.—(*vide* Act No. 11 of 1994) empowers all the members of the Legislative Assembly of the State representing constituency comprising wholly or partly the Municipal area, not only to participate but to vote as well. This provision is not applicable to the existing Municipality i.e. Municipality which has come into existence before the enforcement of Act No. 11 of 1994, whose period has not expired. In support of his above submission, reference was made to section 13(2) and (4) of the Amending Act No. 11 of 1994 which stipulates that all the Municipalities existing shall continue till expiration of their duration unless dissolved by a resolution passed to that effect by the Legislature. Since fresh elections have not been ordered, the earlier constituted Municipality would be governed as per provisions on the basis of which these have been constituted. The amending provision cannot be so construed conferring the right of an associate member to cast vote in respect of

the existing Municipalities. It is only when a new Municipal Council or Nagar Panchayat is constituted that the members of the Legislative Assembly would have a right to vote in respect of such Municipal Council or Nagar Panchayat.

(8) This has been seriously contested by the respondents. According to the respondents, it is pursuance to 74th amendment of the Constitution of India that steps were taken by the Legislature to effect the necessary changes in the Act to bring it in line with the constitutional mandate. Article 243-R of the Constitution of India envisages that all seats in the Municipality shall be filled by the persons chosen by direct election. In addition thereto, Legislature of the State may by law provide for representation in a Municipality of (i) persons having special knowledge or experience in Municipal administration; (ii) members of the House of People and the members of the Legislative Assembly of the State representing constituency which comprises wholly or partly the Municipal area; (iii) the members of the Council of the State and the members of the Legislative Council of the State; and (iv) Chairperson of the Committee constituted under section (5) of Article 243. It is in keeping with this mandate that section 12 of the Act has been substituted by Act No. 11 of 1994. As per the amending provision, Nagar Panchayat or Municipal Council constituted is to consist of (i) elected members; (ii) members of the Legislative Assembly of the State representing constituency comprising wholly or partly Municipal area. Thus, as per amended provision, member of the Legislative Assembly is now a full fledged member and thus has a right to vote.

(9) Refuting the assertion made by the counsel for the petitioner that the amending Act No. 11 of 1994 does not govern the existing Municipalities, reference was made to section 4(5) of the Act (as amended). According to the counsel, even the existing Municipalities are deemed to have been constituted under this Act (amended Act) and so the amended provisions are applicable to the existing Municipalities as well. Elaborating further, the counsel urged that the member of the Legislative Assembly even earlier was deemed to be a member of the Municipal Committee, had a right to participate in a meeting but did not have a right to vote. With the present amendment, proviso to section 12(c) of the Act has been omitted thereby removing the earlier bar preventing an M.L.A. from casting a vote in a meeting. The amending provision has been brought in line with the mandate of the Constitution of India which is not open to challenge in any manner. There is not much substance in

the plea of the petitioner that the expression associate member earlier used for a member of the Legislative Assembly as per section 12(1)(c) does not find mention in the amended section. Since the M.L.A. had a right to participate and vote, the vote cast by the concerned M.L.A. at the meeting convened to pass a no confidence motion against the petitioner was valid in law. The Municipal Committee comprised of 11 elected members, three co-opted members and an M.L.A., the resolution passed by 10 persons i.e. by 2/3rd majority of the members of the Municipal Committee is as per provision of the Act and the Punjab Municipal Rules and so does not call for any interference by this Court. Section 12 of the Act before amendment effected,—vide Act No. 11 of 1994 reads as under :—

“12. *Constitution of committees.*—(1) Subject to the provisions of section 17, a committee for each Municipality shall consist of the following members, namely :—

- (a) such number of elected members as the State Government may prescribe in this behalf ;
- (b) co-opted member, if any; and
- (c) associate members, namely, every member of the Punjab Legislative Assembly representing the constituency in which the municipality or any part thereof is situate :

Provided that an associate member shall not be entitled to vote at, but shall subject to the other provisions of the Act, have the right to speak in and otherwise take part in the proceedings of, any meeting of the committee or its sub-committee of which he may be a member.

Explanation.—1. If the constituency of a member of the Punjab Legislative Assembly comprises more than one municipality he shall be an associate member in respect of the committees of each such municipality.

- 2. If any municipality falls in more than one constituency the members representing each such constituency shall be the associate members of the committee of such municipality.

3. A person who is elected as member of a committee shall not be considered to be an associate member if he is a member of Punjab Legislative Assembly at the time of his election or becomes such member at any time thereafter and such person shall have all the rights and be subject to all the liabilities of an elected member.
- (2) The State Government may nominate to a committee such member of officials, not exceeding eight, to act as advisers, as it may think fit. Such advisers shall neither be deemed to be members of the committee nor shall they have right to vote in any capacity whatsoever but shall be entitled to participate in all proceedings of the committee in an advisory capacity.....”

(10) Section 12-A of the Act envisages co-option of one member amongst Balmikis, Churaus and Bhangis if not elected to a Committee. Section 12-B similarly stipulates co-option of two women as members of the committee. Section 12-C of the Act similarly envisages that in case no person amongst backward classes other than Scheduled Castes has been elected, one person belonging to any of the aforesaid classes is to be co-opted as a member. As per section 12-D co-option under section 12-A, 12-B and 12-C is to be made in the meeting of the elected members held for the purpose of administering oath of allegiance to them and in case of their failure to co-opt a member under section 12-A, 12-B and 12-C, the State Government has been given power to nominate such co-opted members as per section 12-E. Section 13 of the Act deals with the terms of office of the member.

(11) Section 13 before amendment,—*vide* amending Act No. 11 of 1994 reads as under :—

“13. *Term of office of member.*—(1) The term of office of *ex officio* advisers shall unless the State Government otherwise directs be coterminus with the term of office by virtue of which they are appointed.

(2) Save as otherwise provided under this Act, the term of office of the elected members shall be five years and the State Government shall cause fresh elections to be held and completed before the expiry of the aforesaid term :

Provided that—

- (i) Proviso as inserted by President's Act 2 of 1984 was omitted by Punjab Act 3 of 1985.
- (ii) while a proclamation of emergency under clause (1) of Article 352 of the Constitution is in operation, the

Government may extend the aforesaid term for a period not exceeding six months from the date of cessation of operation of such proclamation.

- (iii) an outgoing elected member shall, unless the State Government otherwise directs, continue in office until the date fixed for the meeting at which his successor is required to take oath of allegiance.

2-A. The term of office of an associate member shall be co-terminus with his term as member of the Legislative Assembly.

2-B. The term of office of a co-opted member shall be coterminus with term of elected member fixed under sub-section (2)."

(12) Both these sections i.e. Section 12 and 13 of the Act, have now been substituted,—vide Act No. 11 of 1994. Substituted Sections are hereunder reproduced :—

"12(1) *Composition of Municipalities.*—A Municipal Council or a Nagar Panchayat constituted under section 4 shall consist of a body of members, specified in section (3), having authority over such area.

(2) The Nagar Panchayat or the Municipal Council constituted under sub-section (1) shall be a body corporate having perpetual succession and a common seal with powers, subject to the provisions of this Act, to hold, acquire and dispose of property and may by that name sue or be sued.

(3) The Nagar Panchayat or the Municipal Council constituted under sub-section (1) shall consist of the following members, namely :—

- (i) such number of elected members as may be determined from time to time by the State Government in accordance with the prescribed principles; and
- (ii) all members of the Legislative Assembly of the State representing constituencies comprising wholly or partly the Municipal area.”

13(1) *Duration of Municipalities.*—Every Municipality save as otherwise provided in this Act, shall continue for five years from the date appointed for its first meeting and no longer.

Explanation.—In this section “first meeting” means the meeting of the newly constituted Municipality held for the election of its President and Vice-President under section 20 of this Act.

- (2) All Municipalities existing immediately before the commencement of the Constitution (Seventy-Fourth) Amendment Act, 1992, shall continue till the expiration of their duration unless sooner dissolved by a resolution passed to that effect by the State Legislature.
- (3) An election to constitute a Municipality shall be completed :—

- (a) before the expiry of its duration specified in subsection (1) ;
- (b) before the expiration of a period of six months from the date of its dissolution ;

Provided that when the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under clause (b) for constituting the municipality for such period.

- (4) The first election to a Municipality constituted under this Act after the commencement of the Punjab Municipal (Amendment Act 11, 1994, shall be held within a period of six months of its being notified as such.
- (5)
- (6)

(13) Section 12-A, 12-B, 12-C, 12-D and 12-E have been omitted,—*vide* Act No. 11 of 1994. As per section 12 of the Act (before amendment) constitution of the Committee consists of following categories, namely, (i) elected members; (ii) co-opted members; (iii) associate members and in addition thereto advisers who had a right to participate in all the proceedings of the meeting but had no right to vote. Associate members, namely, member of the Legislative Assembly representing the constituency in which the municipality or any part thereof situate also had no right to vote but had a right to speak or otherwise take part in the proceedings of any meeting of the Committee. Thus, though an MLA was a member of the Municipal Committee constituted under section 12 of the Act but had no right to vote. Co-opted members were elected by elected members of the Municipal Committee or nominated by the State Government had been conferred the power to cast their vote i.e. to say they were deemed to be full fledged members. With the substitution of Section 12,—*vide* Act No. 11 of 1994, there has been a qualitative change in composition of Municipality. Now it is to consist of elected member, as may be determined from time to time by the State Government in accordance with the prescribed principles, and all members of the Legislative Assembly of the State representing constituency comprising wholly or partly the Municipal area. Thus, as per present amended section 12, co-option of members either by elected members or their nomination by the State Government as per earlier section 12-E now stands omitted. Henceforth there is no provision for co-option of a member. Similarly, there is no provision for associate member. In fact, as per amended provision, the limited right which has been conferred upon the members of the Legislative Assembly has now been enlarged empowering them to cast their votes in all such Municipal areas which forms part of their constituencies which he or they represent in the Legislative Assembly.

(14) As per facts admitted on record, resolution of no confidence passed by 10 persons out of 15 members of the Municipal Committee included an MLA. Thus, if examined in the light of section 12 (before its substitutoin) leaves no manner of doubt that an associate member could not cast a vote and so if his vote is excluded, the impugned resolution does not satisfy the requirement of law which envisages that such a resolution must have been passed by 2/3rd majority of the total members. This is what has been urged by the learned counsel for the petitioner,

(15) Learned counsel for the respondents, however, urges that with the substitution of section 12 and 13, it is the amended provision which is to govern even the existing Municipalities. The existing Municipalities as per section 4 (5) of the Act have been deemed to have been constituted and, in fact Schedule II gives list of Municipal Committees deemed Municipal Council, Class I, II and III. Municipal Committee of Guru Harsahai is at serial No. 22 amongst Class II Municipal Councils. With the substitution of Section 12, earlier bar upon the associate member—M.L.A.—stands removed.

(16) The plea of the respondents though attractive does not stand the test of scrutiny. There are certain inherent contradictions as can be demonstrated. Admittedly, the Committee was constituted in terms of Section 12, 12-A, 12-B, 12-C, 12-D and 12-E of the Act (before amendment). The Municipal Committee consisted of following category of members ; (i) elected members ; (ii) co-opted members in terms of Section 12-A, 12-B and 12-C of the Act—in case elected by elected members within the stipulated period or having been nominated as per section 12-E ; (iii) associate members—every member of the Legislative Assembly representing the constituency in which the Municipality or any part thereof is situate.

(17) As per section 13, elected members were to hold office for a period of five years and the term of an associate member is coterminus with his term as member of the Legislative Assembly. Similarly, the term of co-opted member is coterminus with the term of elected member. Phraseology used in the above two sections clearly bring out that elected members are a class apart. Co-opted members even when elected by such elected members are designated as co-opted members i.e. they are not deemed to be elected members.

(18) Substituted section 12 does not make mention of the co-opted members of the existing Municipalities. Amending Act 11 of 1994 is silent in this regard. Whether these co-opted members cease to be members with the substitution of section 12 has thus relevance in the context of the present dispute. It is not the case of either of the parties that the persons co-opted earlier to the Amending Act No. 11 of 1994 have ceased to be member of the Municipal Committee or that they have no right to participate and vote. In fact, this point has not been taken up by either party. This is being examined to test the proposition whether the amended provisions are to govern the existing Municipalities. If the argument of the

counsel for the respondents is accepted, yet the resolution is unsustainable on the ground that the same was addressed to 15 persons, namely, 11 elected members, three co-opted members and an associate member. The matter can be examined from another angle also. *Vide* 74th Constitution Amendment, Part IX-A has been inserted in the Constitution which deals with the constitution of the Municipality, composition, reservation of seats and duration etc. It is in compliance with the mandate of this constitutional provision that the necessary amendments have been made in the Act,—*vide* Act No. 11 of 1994 which notably envisages reservation of seats for Scheduled Castes, backward classes and women. Seats in the aforesaid categories are to be reserved as per their population i.e. as nearly as possible the same proportion to the total number of seats to be filled by direct election in a Municipality (section 8). Section 8-A further stipulates that office of the President of the Municipality shall be reserved by rotation in the prescribed manner in the following ratio : (a) 5 per cent for the Scheduled Castes (b) 5 per cent for women including women belonging to the Scheduled Castes ; and (c) 2 per cent for the backward classes. Significantly, earlier provision for co-option of members has been deleted. Cumulative reading of these provisions leads to an irresistible conclusion that these are intended to operate prospectively i.e. as and when fresh elections are held in respect of Municipalities presently existing. Even section 13 (2) protects the existing Municipalities till the expiration of their term unless sooner dissolved by a resolution passed by the State Legislature. No resolution has been passed so far. It means earlier constituted Committees remained in existence and so the earlier provisions would govern such a constituted Committee till fresh elections are held.

(19) Admittedly, MLA has not only participated but cast his vote as well. In case one vote is excluded, resolution Annexure P-4 having not been passed by 2/3rd of the majority of the members of the Committee has no legal sanctity and consequently quashed.

(20) Accordingly, we accept the petition and quash resolution Annexure P-4.
