

## MISCELLANEOUS CIVIL

*Before M. R. Sharma, J.*PARSHOTAM LAL, ETC.,—*Petitioners.**versus*THE STATE OF PUNJAB, ETC.,—*Respondents*

C.W. No. 2570 of 1972

April 9, 1973.

*Punjab Municipal Act (III of 1911)—Sections 12-A, 12-C and 12-E—Punjab Municipal Election Third Amendment Rules (1972)—Rules 2 and 3—Candidates for co-option securing equal number of votes—Convener instead of drawing lots reporting failure of the Municipal Commissioners to co-opt any member—Government—Whether can exercise its power of nomination under section 12-E—Elected members not given chance to make co-option because of faulty decision of Convener—Nomination—Whether can be made by State Government.*

*Held*, that the process of co-option of a member of a Municipal Committee is equivalent to an actual election of a Municipal Commissioner. In case of a tie of votes, the Returning Officer has to draw lots for declaring the result. If a Returning Officer fails to perform his statutory duties, it does not invest the State Government any jurisdiction under section 12-E of the Punjab Municipal Act, 1911 to nominate a member to the Municipal Committee. Thus where candidates for co-option secure equal number of votes and the Convener of the meeting instead of drawing lots reports failure of Municipal Commissioners to co-opt any member, the Government cannot exercise its power of nomination under section 12-E of the Act. (Para 2).

*Held*, that the State Government can nominate a person under rule 3 sub-rule (11) of the Punjab Municipal Election Third Amendment Rules, 1972 only if the newly elected members fail to co-opt a member belonging to a particular category. The expression 'fail to co-opt' means that a body, which is entrusted with this task consciously and knowingly omits to co-opt a member. A combined reading of rule 3(2) and 3(3) of the Rules shows that it is the duty of the Convener to ascertain whether co-option as required by sections 12-A, 12-B and 12-C of the Act is called for or not. He is empowered to hold such enquiries as he may deem necessary for coming to this conclusion. He may not even take into confidence the newly elected members. In case of controversy on this point, the decision has to be given by the Convener. The State Government steps in only when the elected members fail to perform their

Parshotam Lal, etc. v. The State of Punjab, etc. (Sharma, J.)

duty. If they are not given any chance to make the co-option because of a faulty decision given by the Convener, the State Government cannot be allowed to step in to make a nomination. In that event, the State Government should again inform the newly elected members of their right to make a co-option and proceed to nominate a member only when such members fail to perform their duty.

(Para 3).

*Petition under Articles 226 and 227 of the Constitution of India praying that a Writ of Certiorari/Quo Warranto or any other appropriate writ, order or direction be issued quashing the co-option through nomination of respondents Nos. 3 and 4, and further praying that oath of allegiance be not administered to respondents Nos. 3 and 4 as co-opted members of Municipal Committee, Banga and they be restrained from participating in the election of the President and the Vice-President or in the alternative the election of the President and the Vice-President be stayed.*

S. C. Goyal and O. P. Goyal, Advocates, for the petitioners.

P. S. Mann, Advocate, for respondents 5 to 10.

S. K. Syal, Advocate, for Advocate-General, Punjab, for respondents 1 and 2.

#### JUDGMENT

SHARMA, J.—(1) This judgment will dispose of Civil Writs Nos. 2570 of 1972 and 3738 of 1972.

(2) Elections to Municipal Committee, Banga, were held on 18th of June, 1972. The first meeting of the Municipal Committee was held on 7th of July, 1972, under the Presidentship of Shri Gurdial Singh, respondent No. 2. At the outset the question regarding the making of co-option was taken into hand. The convener decided that since one member belonging to the Balmiki community has been elected, there was no necessity of making a co-option under section 12-A of the Punjab Municipal Act, 1911 (hereinafter called the Act). Similarly, he decided that Sarvshri Bachint Singh and Maluk Singh belonging to Lohar community had already been elected, so it was not necessary to co-opt a member from the backward community under section 12-C of the Act. Since no lady had been elected as a member of the Municipal Committee, the Convener took in hand the matter regarding the co-option of two lady members to this Committee. The nominations of four ladies were duly proposed and seconded for the two seats. As a result of the voting it

was found that Shmt. Daljit had secured 8 votes and Shmt. Susheela Devi, Shmt. Gunmala and Shmt. Prem Lata had secured 6 votes each. Since Shmt. Daljit had polled a majority of votes, she was declared to be co-opted as a lady member, for one seat. For the second seat, the Convener held that since the three lady members had secured equal number of votes, the first meeting of the Municipal Commissioners failed to make a co-option, and he reported this matter to the Government. The Government in its purported exercise of power under section 12-E of the Act, appointed Shmt. Gunmala as member of the Municipal Committee. The petitioners have challenged the nomination of Shmt. Gunmala on the ground that the Convener ought to have drawn lots instead of reporting to the State Government that the Municipal Commissioners failed to co-opt one lady member. In this respect, he has placed reliance on an earlier judgment given by me and reported in *Suraj Parkash v. The State of Punjab, etc.* (1). In that case I had held that the process of co-option of a member is equivalent to an actual election of a Municipal Commissioner and in case of a tie votes, the Returning Officer has to draw lots for declaring the result. If a Returning Officer fails to perform his statutory duties, then it does not invest the State Government any jurisdiction under section 12-E of the Act to nominate a member to the Municipal Committee. Following the view already taken by me, I set aside the nomination of Smt. Gunmala as a member of the Municipal Committee, and direct respondent No. 2 to draw lots between Shmt. Susheela Devi, Shmt. Gunmala and Shmt. Prem Lata, and declare the name of the winner as a duly co-opted member of the Municipal Committee.

(3) The other objection raised by the learned counsel for the petitioners is regarding the nomination of Shri Piara Singh, respondent No. 4, by the Government as a member of the backward classes. The main attack of the learned counsel for the petitioners is that the Convener decided on 7th of July, 1972, that two persons belonging to the *Lohar* community having been elected, it was not necessary to co-opt another member belonging to the backward classes. The learned counsel has also drawn my attention to rule 3(2) of the Municipal Election (Third Amendment) Rules, 1972, which shows that the question whether a member belonging to a particular community has to be co-opted or not, has to be decided by the Convener of the first meeting. According to the learned counsel, one

(1) 1972 C.L.J. 923.

Parshotam Lal, etc. v. The State of Punjab, etc. (Sharma, J.)

Shri Bakhshish Ram, who was President of the backward classes' Association filed a petition before the Deputy Commissioner praying therein that no member belonging to the backward classes had been co-opted as a member of the Municipal Committee and the Government took the impugned decision in an *ex parte* manner, which has resulted in the nomination of Shri Piara Singh, respondent No. 4. Rule 2 of the Municipal Election (Third Amendment) Rules, 1972, is as follows:—

“In the Municipal Election Rules, 1952 (hereinafter called the ‘said rules’), in rule 2, in clause (i), the words ‘and includes the co-option of a member’ shall be added at the end.”

A reading of this rule shows that co-option and actual election have been brought at par. In an election, the entire electorate participate and in a co-option the choice is made by an electoral college. In both the cases the choice is made by secret ballots and it represents the will of the electorates. The rule making authority has not equated the process of nomination with that of election, rightly so because the nomination has to be arbitrary. The rules do not provide any remedy against the illegal nomination made by the Government. Nor do the rules provide for any appeal or revision against any order passed by a Convener. The Government can, however, have an enquiry conducted under Rule 68 of the Municipal Election Rules and if on such an enquiry a finding is given that a member of a particular class had not been elected and yet the Convener failed to co-opt a member from that class, then it would be open to the Government to take suitable action in the matter. According to the allegations made by the petitioners themselves, one Shri Bakhshish Ram made a representation which was enquired into by the Deputy Commissioner. It is no doubt true that in this enquiry no notice was given to any of the members of the Municipal Committee, but no right of the members of the Municipal Committee, who have already been elected had been taken away. It is settled that when civil rights of a person have not been affected no notice be given to him in an enquiry. The Government in this case merely performed its statutory duties of giving due representation to one of the backward classes. If any of the Municipal Commissioners still feels aggrieved he can file a representation before the State Government under rule 68 to have the matter reviewed. This case would, therefore, have to be decided on the basis that one member belonging to the backward classes had to be co-opted. The State Government could nominate a person

under rule 3, sub-rule (11) of the Punjab Municipal Election Third Amendment Rules, 1972 (hereinafter called the Rules), only if the newly elected members fail to co-opt a member belonging to this category. This rule runs as follows:—

“3(11) In the case of a committee where the elected members fail to co-opt members as required by sections 12-A, 12-B and 12-C in a meeting held under sub-rule (1), sub-rule (6) or sub-rule (7), as the case may be, the convener shall report the fact to the State Government within seven days of the meeting.”

The expression ‘fail to co-opt’ means that a body which is entrusted with this task consciously and knowingly omits to co-opt a member. When the Convener presiding over the meeting does not afford to the newly elected members any opportunity to make the co-option, it cannot be said that such members fail to co-opt a member within the meaning of sub-rule (11) of rule 3 of the Rules. A combined reading of rule 3(2) and 3(3) shows that it is the duty of the Convener to ascertain whether co-option as required by section 12-A, 12-B and 12-C of the Act is called for or not. He is empowered to hold such enquiries as he may deem necessary for coming to this conclusion. In a given case, he may not even take into confidence the newly elected members. Even if a controversy is raised on this point, the decision has to be given by the Convener. In short, if these Rules are interpreted in the manner in which the Government has interpreted them in the instant case, then the newly elected members could be deprived of an important right at the whim and fancy of the Convener. The entire scheme of the Act shows that the Municipal Committees are formed by elected members. The amendment introduced in the year 1972 has for the first time made a provision for the representation of some of the backward classes, but there again the element of election has not been dispensed with. The newly elected members are allowed to make co-options. The State Government steps in only when they fail to perform their duty. When the elected members are not given any chance to make the co-option because of a faulty decision given by the Convener, the State Government should not be allowed to step in and to make a nomination. In that event, the State Government should again inform the newly elected members of their right to make a co-option and proceed to nominate a member only when such members fail to perform their duty. It is the admitted case of the parties that no such opportunity was given to the

electd members to make a co-option. After the receipt of the enquiry report, the State Government proceeded to nominate Shri Piara Singh forthwith. This action of the State Government on a proper interpretation of the Rules appears to be without jurisdiction and deserves to be set aside. I order accordingly and set aside the nomination of Shri Piara Singh, as a member of the Municipal Committee, Banga, made by the State Government and further direct the State Government to convene a fresh meeting of the newly elected members of the Municipal Committee for the purpose of making a co-option of one member under section 12-C of the Act. This petition is consequently allowed but without any order as to costs.

(4) In Civil Writ No. 3738 of 1972, the co-option of Smt. Daljit Kaur has been challenged on the ground that two ballot-papers each were given to all the members at the time of the first meeting of the Committee. This matter came up before a Division Bench of this Court in *Shrimati Sumitra Devi and others v. Shri Ram Niwas and others* (2). It was held that such a procedure adopted by the Convener is neither irregular nor illegal. This consideration apart, the petitioners hope to show that because of the alleged irregularity the result of the election has been materially affected. A reading of para No. 5 of the written statement filed by respondent No. 2 shows that he directed the voters to take care that two votes are not cast in favour of one lady member. It is also stated that only one member failed to cast his vote correctly. Under these circumstances, it cannot be held that Smt. Daljit Kaur did not poll a majority of votes.

(5) For the reasons mentioned above, Civil Writ No. 2570 of 1972 is allowed to the extent that respondent No. 2 is directed to draw lots between Smt. Susheela Devi, Smt. Gunmala and Smt. Prem Lata. Civil Writ No. 3738 of 1972 fails and is dismissed. In the circumstances, the parties are left to bear their own costs.

---

N. K. S.

---

(2) L.P.A. No. 456 of 1972 decided on 20th November, 1972.