

Before D. S. Tewatia & Surinder Singh, JJ.

GURTEJINDER SINGH GILL,—Petitioner.

versus

THE STATE OF PUNJAB AND ANOTHER,—Respondents.

Civil Writ Petition No. 3307 of 1984.

August 9, 1984.

*Punjab Municipal Act (III of 1911)—Sections 13 & 21—Section 13 providing for 5 years term for members of the Committee—Such term extended beyond such period by a Government Notification—President of the Committee not yet completing 5 years term Such President—Whether entitled to continue during extended period of Committee—Implications of Section 21—Explained.*

Held, that a reading of sub-section (2) of Section 13 of the Punjab Municipal Act provides that the term of the office of the elected members shall be five years which can be extended by the State Government by recourse to clause (1) of proviso to sub-section (2) of section 13 of the Act. Reading of sub-section (2) of Section 21 of the Act would further show that if a President is elected on the date on which he is elected as a member then his term of office would not go beyond five years even if his term as member stands extended by any period because sub-section (2) of Section 21 provides that such person shall remain President for five years or for the residue of his term as member of the Committee whichever is less.

(Para 3).

*Civil Writ Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble Court may be pleased to issue :—*

- (i) Writ of mandamus directing the respondents to hold fresh election for the office of the President of the Municipal Committee and co-opt the two members afresh.
- (ii) Any other Writ, order or direction deems proper in the circumstances of the case.

*It is further prayed that :—*

- (a) issuance of advances notices to the respondents may be dispensed with.
- (b) filing of certified copy or original one of the Annexure 'P-1, may also be dispensed with as the same is a Government notification.

Gurvinder Singh Dhillon Advocate, for the Petitioner.

H. S. Riar D.A.G. Punjab for the State.

## JUDGMENT

*D. S. Tewatia, J.*

(1) The petitioner, an elected member of the Municipal Committee, Faridkot, who alongwith other members, took oath of the office on 13th July, 1979 and thus entered upon his office, has sought a mandatory direction against the State Government and the Executive Officer of the Municipal Committee, respondents 1 and 2 respectively, to hold fresh election of the president of the said municipal committee in compliance with the executive instructions issued by the Directorate, Local Government, Punjab (Municipal Election Office), Chandigarh, to all the Executive Officers of the Municipal Committees in the Punjab, except Municipal Committees, Phagwara, Rajpura, Bhadaur, Jaitu, Malout, Kapurthala and Dasuya,—*vide* Memo No. MEO-84/EA/6047-6137, dated 26th July, 1984, directing them to hold *de novo* election to the offices of the President and Vice-President who were to complete their terms of office of five years prior to 31st December, 1984, the date to which the term of the elected members of all the municipal committees except Municipal Committees, Phagwara, Rajpura, Bhadaur, Jaitu, Malout, Kapurthala and Desuya, had been extended,—*vide* notification No. 18(2)LG-UI-84/18921, dated 27th June, 1984, published in the Punjab Government Gazette Extraordinary dated 27th June, 1984.

(2) It is alleged that the petitioner was elected as President for the given municipal committee, according to rules, on 31st July, 1979 ; that he continued as such upto 24th February, 1981 ; that thereafter Shri Jarnail Singh Sekhon was elected as President of the said municipal committee, who remained President for about a year and then Shri Kharaiti Ram, a member of the said municipal committee, was elected as President on 22nd September, 1982 ; that he submitted his resignation on 5th April, 1984 ; and that, later on, he alleged that he never resigned and the Government allowed him to continue as the President of the Municipal Committee. The case set up by the petitioner further is that the term of the office of the President of the Municipal Committee being five years, which came to an end on 31st July, 1984, the State Government was, therefore, duty-bound in view of its own directions, to have the President of the Municipal Committee elected afresh through the Executive Officer in accordance with law.

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(3) The stand taken on behalf of the respondent State and the Executive Officer is that the term of the members of the municipal committee having been extended upto 31st December, 1984 and by virtue of sub-section (2) of section 21 of the Punjab Municipal Act, 1911, hereinafter referred to as the Act, the term of the office of the President being five years or the remaining period of membership of the municipal committee, whichever is less, and since period of the membership of the members having been extended upto 31st December, 1984, the present incumbent Shri Kharaiti Ram, who was elected President only on 22nd September, 1982, is entitled to continue as such upto 31st July, 1984—the residuary period of his membership being less than the unexpired period of 5—years term of the presidency of the present incumbent of that office.

(4) Notification extending the term of the office of the elected members of the Municipal Committee is in the following terms :

Notification  
The 27th June, 1984.

No. 13(2) LG-UI-84/18921—Whereas the conditions in the State of Punjab are so disturbed that it is not practicable for the State Government to hold and complete elections in terms of sub-section (2) of section 13 of the Punjab Municipal Act, 1911 (Punjab Act No. 3 of 1911) to the Committees in the State before the expiry of the term of office of their elected members ;

Now, therefore, in exercise of the powers conferred by clause (i) of the proviso to sub-section (2) of the said section 13 of the aforesaid Act, the President of India is pleased to extend the term of office of the elected members of all the Committees in the State excepting the Committees of Phagwara, Rajpura, Bhadaur, Jainu, Malout, Kapurthala and Dasuya upto the 31st day of December, 1984.”

The direction issued by the Directorate, Local Government, Punjab, in the wake of the aforesaid notification, reads as under :

“Subject : Regarding extension of term to 31st December, 1984 of members of all the Municipal Committees in the State.

With reference to endorsement No. 13(2) LG-UI-84, dated 27th June, 1984 issued by the Government on the above-noted subject.

2. The term of elected members of all the Municipal Committees in the State (except Municipal Committees of Phagwara, Rajpura, Bhadaur, Malout, Jaitu, Kapurthala and Dasuya) has been extended upto 31st December, 1984 by the Government,—*vide* letter under reference. The term of office of the President of the Municipal Committee is fixed for five years under section 21(2) of the Punjab Municipal Act, 1911. According to these provisions in case the term of 5 years of the office of President is completed prior to 31st December, 1984, the election to the post of President will naturally be held *de novo*. Similarly, the election to the office of Vice-President is to be held according to section 21(3) of the aforesaid Act in case the prescribed term as laid down in the Bye-laws of the Municipal Committee concerned expires prior to 31st December, 1984.

3. It is requested that necessary action may be taken as per the aforementioned position.

4. The receipt of this memorandum may be acknowledged." By virtue of the provision of section 20 of the Act, a member of the municipal committee is elected as President and sub-section (2) of section 13 of the said Act provides that the term of office of the elected members shall be 5 years. Sub-section (2) of section 21 of the Act, which provides for the term of office of a President, is in the following terms :

"21(2) The term of office of a president elected or appointed by name or elected by virtue of his office shall be five years or the residue of his term of office as member, whichever is less."

The term of the office of the elected members of the municipal committee, which sub-section (2) of section 13 of the Act envisages to be five years, stood extended upto 31st December, 1984 by virtue of notification dated 27th June, 1984, even if their five year term expired or was to expire before that date.

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(5) Even a plain reading of sub-section (2) of section 21 of the Act would show that if a President is elected on the day on which he is elected as a member, then his term of office would not go beyond five years, even if his term as member stands extended by any period, because sub-section (2) of section 21 of the Act provides that he shall remain President for five years or for the residue of his term as member of the municipal committee, whichever is less. If the term of his membership is extended from five years to 6 years, his presidential term would come to an end on the expiry of five years, because out of two periods indicated in the aforesaid provision, the period which is less has to be taken to be fixed by the said provision to be the term for the office of the President.

(6) However, on behalf of the petitioner it is canvassed that the term of five years envisaged in sub-section (2) of section 21 of the Act is for the office of the President, that is, the same is the total period of the office of the President of a given municipal committee and this five year term of office as President is not for a given incumbent of that office. Learned counsel cited *Nandlal Khodidas Barot. v. V. B. Buch and others*, (1) *C. R. Shivananda v. The Election Officer and Head Quarters Assistant to the Deputy Commissioner, District Office, Chickmagalur and others* (2) and *Ashok Kumar Mittal and others v. The State of Punjab and others*. (3).

(7) The ratio of none of the aforesaid decisions is attracted to the facts of the present case. In *Nandlal Khodidas Barot's case* (supra), the question before the Gujarat High Court was as to whether the municipal board could reduce the term of the President once determined under section 33(1) read with section 32(3) of the Gujarat Municipalities Act, 1963, which provisions are in the following terms :

“33(1) Save as otherwise provided in this Act, a president or vice-president shall hold his office for such term as the municipality shall, previous to his election, determine, not being less than two years or the residue of the

(1) A.I.R. 1974 Guj. 45.

(2) A.I.R. 1976 Kar. 225.

(3) 1982 P.L.R. 664.

term of office of the municipality, whichever be less, and not exceeding five years, and he shall be eligible for re-election:

Provided that the term of office of such president or vice-president shall be deemed to extend to and expire with the date on which his successor is elected."

Sub-section (3) of section 32 of the Gujarat Municipalities Act, 1963, in terms, laid down that no business other than the determination of the term of office of the president and vice-president and the election of the president and vice-president shall be transacted at such meeting.

(8) The Gujarat High Court held that the Municipal Board had no power to curtail the term of the President once fixed under section 33(1) except by passing a no-confidence motion. The only power specifically conferred upon the general board to remove a President even before the term of the office determined under section 33(1) was by passing a motion of no-confidence and that too by the requisite majority prescribed in section 36. Thus, it would be apparent that not only the question posed before the Gujarat High Court, but also the relevant provisions bearing upon that question were entirely different.

(9) In *C. R. Shviananda's case* (supra), the facts were that one H. R. Keshavamurthy was elected as President of the Town Municipal Council, Chickmagalur. His term of office was one year. Before the expiry of the period, he resigned. In the vacancy caused thereby, the petitioner in that case was elected as President. After the expiry of one year from the date on which the petitioner's predecessor was elected to the office of the President, the Election Officer wanted to hold fresh election stating that the petitioner had no right to remain in the office beyond the term of Mr. Keshavamurthy. The petitioner challenged the validity of the proposed election in the Karnataka High Court. The two relevant provisions that came up for consideration were sections 42, clauses (11) and (12) of the Karnataka Municipalities Act, 1964, which are in the following terms :

"42(11) The term of office of every President and of every Vice-President shall, save as provided in this Act, cease

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on the expiry of the term of office as councillor ; provided that the Government may, with the consent of the municipal council concerned, direct that their term be limited to one year and that elections therefor be held every year.

- (12) In the event of the non-acceptance of office, death, resignation or removal from office of a president or vice-president or of his election being held void, or his becoming incapable of acting in such office or having ceased to be a councillor, previous to the expiry of his term of office as president or vice-president, the vacancy shall be filled up by appointment or election, as the case may be, in accordance with the provisions of the foregoing sub-sections. When any vacancy not otherwise provided for occurs the Government may appoint any person to perform all the duties and exercise all the powers of a president or vice-president during such vacancy."

The Karnataka High Court held that the petitioner in that case was entitled to continue as president only for the unexpired term of his predecessor, as the total term of a president could not exceed one year and the petitioner was not entitled to remain president for full term of one year. The aforesaid provisions of the Karnataka Act are entirely different and are not in *pari materia* with the relevant provisions of the Punjab Act.

(10) In *Ashok Kumar Mittal and others' case* (supra) the question that cropped up for consideration was as to from which point of time the period of the elected members began. In that case it was held that the term of their office began from the date on which they entered upon office. They did not so on the date on which oath was administered to them. The ratio, again, of this decision is not relevant to the facts of the present case.

(11) For the reasons aforementioned, we find no merit in this petition and dismiss the same *in limine*.

Surinder Singh J—I agree.

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H. S. B.