

PETITIONER:
GURDEEP SINGH & ORS.

Vs.

RESPONDENT:
STATE OF PUNJAB & ORS.

DATE OF JUDGMENT: 07/04/2000

BENCH:
S.R.Nabu, R.C.Lahoti

JUDGMENT:

R.C. Lahoti, J.

A meeting of the newly elected members of the Municipal Council, Bareta for the purpose of electing President and Vice-President of the Municipality, as contemplated by Section 20 of the Punjab Municipal Act, 1911 (hereinafter the Act for short) read with Rule 3 of Punjab Municipal (President & Vice-President) Election Rules, 1994 (hereinafter the Rules for short) was convened for 7th April, 1998. There are 13 members of the Municipal Council. The local member of the legislative assembly is an ex-officio member of the Council, who was Shri Hardev Singh Arshi at the relevant time. On 7.4.1998 only 5 out of 13 elected members were present which did not make the quorum for the convened meeting. The convener of the meeting, therefore, adjourned the meeting for want of quorum to 11.4.1998 at 11 a.m. to be held in the office of the Municipal Council, Budhlada. On 11.4.1998, the thirteen elected members and ex-officio member Shri Hardev Singh Arshi, M.L.A. were all present at the appointed time and place. The meeting commenced. It was presided over by Shri Tej Kumar Goyal, P.C.S., General Assistant to the Deputy Commissioner, Mansa, as convener. As contemplated by Rule 3, oath of allegiance was administered to all the elected members. Proposals were then invited for the post of the President. The names of Shri Lachman Dass and Shri Gurdeep Singh were duly proposed and seconded. As there was a contest, the convener proceeded to call for voting. Shri Mohinder Singh, who had proposed the name of Shri Gurdeep Singh demanded the election to be held through open ballot. The convener declared that the Rules contemplated election by secret ballot. However, Shri Gurdeep Singh, Shri Mohinder Singh and their followers refused to abide by the opinion of the Presiding Officer and insisted on open voting. On the convener having refused to accede with their demand, Shri Gurdeep Singh, Shri Mohinder Singh and 6 others, i.e. in all 8 members, staged a walk out by leaving the place of the meeting. Shri Hardev Singh Arshi, M.L.A. and the remaining 5 members requested for Shri Lachman Singh being declared elected as President. However, the convener was of the opinion that before proceeding further he would like to seek guidance from the higher officers and the Government because of the legal point involved and he adjourned the meeting for further orders and drew up the

proceedings of the meeting recording the above said facts. Shri Lachman Dass and a few other members preferred a writ petition before the High Court seeking a mandamus to the convener of the meeting for resuming the meeting from the stage at which it was adjourned and concluding the election. By order dated 12.2.1999, which is under appeal, the High Court has allowed the writ petition couching its rule in following words :- In these circumstances, we direct the official respondents to continue the election from that stage by instructing either the fourth respondent or any other competent official to convene the meeting according to law after giving proper notice only to such of those members who remained present in the venue of the meeting after respondents 6 to 14 had walked out, and permit them to vote in the election for the office of the President. If any of such members choose to be absent on the date fixed for election to the office of the President in spite of the notice to them then, those members who are present shall be permitted to vote and elect the President. Whoever gets the highest number of votes as between the petitioner and the 10th respondent should be declared as elected as President.

So far as the office of the Vice-President is concerned, the election for the same shall be held separately in accordance with law, in a separate 'meeting.

This petition is ordered accordingly.

Feeling aggrieved, Shri Gurdeep Singh and 8 others have filed the present appeal by special leave.

We have heard the learned counsel for the parties. During the course of hearing it was submitted that Smt. Bachan Kaur, a female member, was illiterate and the petitioners were insisting on her ballot being cast with the help of a co-member of the confidence of Smt. Bachan Kaur, but that was not agreed to and this was the only controversy. However, we will not enter into disputed questions of fact and for the purpose of deciding this appeal we would go by the record of proceedings, as prepared by the convener of the meeting, who being a responsible government officer, his record of proceedings can be taken to be correct.

Rules 3 & 4 provide as under:-

3. Manner of election. The Deputy Commissioner or any Gazetted Officer authorised by him in this behalf (hereinafter in this rule referred to as the convener) shall, within a period of fourteen days of the publication of the notification of election of members of a newly constituted Municipality, fix, by giving not less than ninety hours notice to be served at the ordinary place of residence of all the elected members, a date for convening the first meeting of the elected members of such municipality by stating in the notice that at such meeting the oath of allegiance will be administered to the members present and also stating that the President and the Vice-President or Vice-Presidents as the case may be, will be elected.

4. Voting by ballot. (1) The voting for the offices of President and Vice-President or Vice-Presidents as the case may be shall be by the ballot by writing Yes or No on the ballot paper. Special ballot-papers shall be

used for such voting, each bearing an official mark to be placed thereon by the Deputy Commissioner.

(2) If any member is illiterate or is otherwise incapable of casting his vote by writing Yes or No on the ballot paper, the person presiding over the meeting shall record Yes or No, as the case may be, on the ballot paper on behalf of such member, in accordance with his wishes.

(3) The person presiding over the meeting convened under rule 3 shall ensure utmost secrecy while recording the wishes of the members as laid down in sub rule (2) and shall keep a brief record of each such instance, without indicating the manner in which the vote has been cast.

The Rules are clear, unambiguous and do not leave any room for doubt. In as much as there was a contest, the convener ought to have proceeded for voting through ballot papers observing utmost secrecy. There could not have been an open voting which, though demanded, should have been firmly ruled out. Sub rule (2) of Rule 4 reposes confidence in the convener, i.e. the person presiding over the meeting to assist any member who is illiterate or otherwise incapable to cast his vote by writing Yes or No on the ballot paper on behalf of such member. It is unfortunate that the members wanted the voting to be conducted in a manner inconsistent with the Rules. The convener should have over-ruled any such demand and should have proceeded to hold the election in the manner contemplated by the Rules. The convener was also not justified in adjourning the meeting on the ground of seeking guidance from the higher officers and the Government. There was hardly any occasion for such seeking of the guidance and adjourning the meeting. The learned counsel for the respondents submitted that the High Court was justified in directing the meeting to proceed from the point wherefrom it was adjourned and directing the 8 members who had staged a walk over to be excluded from the meeting as by their conduct they had shown that they were not participating in the meeting. We do not agree. Shri Gurdeep Singh had not withdrawn his candidature. The two candidates were duly nominated candidates and the stage for voting was set. Even if a few members including one of the candidates had left the place of the meeting, nothing prevented them from coming back and joining in the voting. If only the convener had commenced the voting and the members, who had earlier staged a walk-over, had returned and expressed their desire to join in voting, they could not have been prevented from doing so. The High Court was justified in directing the meeting to be resumed from the point at which it was adjourned but was not justified in directing the members, who had walked out, from being excluded from participation at such reconvened meeting. For the foregoing reasons, the appeal is partly allowed. The direction of the High Court for reconvening the meeting and resuming the same from the stage at which it was adjourned is sustained. So much part of the order as directs the notice of the meeting to be given to only those members who had remained present at the venue of the meeting and excludes the members staging walk-over from participation in the meeting and in the voting at the election for the office of the President is set aside. Instead it is directed that the notice of such reconvened meeting shall be given to all the members constituting the Municipality and all such

members, who choose to attend, shall be allowed to participate in the voting. The meeting having already adjourned once and the proceedings of the meeting having already commenced, it shall not be liable to be adjourned for want of quorum. S/Shri Gurdeep Singh and Lachman Dass shall be treated as duly nominated candidates for the office of President. The meeting shall be held and concluded in accordance with law. In view of the time which has already elapsed, it is directed that the official respondents shall convene the meeting within a period of two months from the date of communication of this order. No order as to the costs.

JUDIS