

CASE NO.:

Special Leave Petition (crl.) 9325-9326 of 2000

PETITIONER:

STATE OF PUNJAB & ORS.

Vs.

RESPONDENT:

BHAJAN SINGH & ANR.

DATE OF JUDGMENT: 27/02/2001

BENCH:

K.T.Thomas, R.P.Sethi

JUDGMENT:

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SETHI, J. Leave granted. Election process was scuttled and the democratic values throttled by a bureaucrat who happened to be Principal Secretary of the Local Government Department (hereinafter referred to as "the said Secretary") of the State of Punjab at the relevant time. Flouting all norms, violating statutory provisions and showing scant respect to the principles of law, the said Secretary deprived respondent No.1, the elected representative of the people, to perform his duties firstly as Member and then as the President of the Municipality, obviously to oblige his political opponents who incidentally happened to belong to the ruling parties (Shiromani Akali Dal and BJP) in the State of Punjab. Inaction attributable to the said Secretary in performance of his statutory obligations and instead ill-action taken by him is a matter of concern not only for the respondent No.1 but all those who believe in the rule of law and the preservice, development and conservation of democratic institutions with their values in the country. There is no gainsaying that free, fair, fearless and impartial elections are the guarantee of a democratic polity. For conducting, holding and completing the democratic process, not only a potential law based upon requirements of the society tested on the touchstone of experience of times, but also an independent, impartial apparatus for implementing and giving effect to the results of the election is the sine qua non for ensuring the compliance of statutory provisions and thereby strengthening the belief of the common man in the rule of law, assured to be given to the people of this country. Any attempt made to weaken the system, particularly when its intention is likely to affect the socio-political fabric of the society, if not checked and curtailed, may result in consequences which could not be else but disastrous to the system. No person, much less a civil servant, can be permitted to frustrate the Will of the people expressed at the elections, by his acts of omission and commission. The law relating to the elections is the creation of the statute which has to be given effect to strictly in accordance with the Will of the Legislature. The respondent NO.1 was a candidate to the elections of the Municipal Council, Samrala

(Punjab) held on 2.1.1998. He was a candidate of the CPI (M) and was elected as a Municipal Councillor along with 12 others. A meeting was called by the Sub-Divisional Magistrate on 6.4.1998 for administering the oath of allegiance to the elected members of the Municipal Council and for election of its President and Vice President. It appears that all the elected members, with the exception of those belonging to BJP and Shiromani Akali Dal attended the meeting and took the oath. Congress Members proposed the name of respondent No.1 and the Returning Officer declared him elected as President of the Municipal Council (Annexure P-6). Despite election of the President and the Vice President, the notification in terms of Section 24 of the Punjab Municipal Act, 1911 (hereinafter referred to as "the Act") was not issued by the State Government. Aggrieved by the inaction of the appellants, particularly the said Secretary, the respondent No.1 on 15.5.1998 filed a writ petition being Writ Petition No.7105 of 1998 praying therein for the issuance of a writ of mandamus directing the appellants to issue notification regarding his election as President of the Municipal Council, Samrala in the meeting held on 6.4.1998. Written statement in the said writ petition was filed in the High Court on 13th August, 1998. In the meanwhile a show cause notice dated 1.7.1998 was issued to the respondent NO.1 proposing to take action against him under Section 16(1)(e) of the Act and removing him from the Membership of Nagar Panchayat/Council, Samrala (Ludhiana). The show cause notice was accompanied by the details of the allegations wherein it was stated: "Regional Deputy Director, Local Government, Ludhiana has intimated vide his letter No.DDLG/S3/ 2258 dated 21.4.1998 before the issuance of the notification for the President in accordance with the instructions of the Government you have interfered in the working of the Nagar Council and did not behave properly. By doing so you have misused the powers vested under Section 16(1)(e) of the Punjab Municipal Act, 1911. Therefore, it is proposed to take action under Section 16(1)(e) of the Punjab Municipal Act, 1911 and to remove him from the membership."

The respondent No.1 submitted his reply on 23rd July, 1998 and the said Secretary vide his notification No.6/16/980-3LGIII/4498 dated 9.4.1998 removed the respondent No.1 not only from the Presidentship but also from the Membership of the Nagar Council, Samrala. Feeling aggrieved, the respondent No.1 filed a writ petition in the High Court which was allowed vide the order impugned by quashing the impugned notification and issuance of directions to the respondents therein to notify the name of the respondent No.1 herein within a week. The respondent No.1 was also held entitled to the payment of costs which was quantified at Rs.10,000/-. Assailing the judgment of the High Court, Mr.Rajiv Dutta, Senior Advocate who appeared for the appellants submitted that as the respondent No.1 had not been properly elected as President of the Municipal Council, he by assuming the charge of that post abused his position and incurred a disqualification to be a member of the Municipal Council. Referring to Sections 16 and 24 of the Act, the learned Senior Advocate submitted that the action of the said Secretary was legal, valid and according to law. The judgment of the High Court has been termed to be contrary to law. According to him, the State Government had the discretion to notify or not to notify the election of the President in terms of sub-section (2) of Section 24

of the Act. It is contended that as the respondent No.1 was proved to have 'flagrantly abused' the position as Member of the Council, he had incurred a disqualification under clause (e) of sub-section (1) of Section 16 which justified the action by the appellants for his removal. Chapter III of the Act deals with the constitution of Council which has been defined under Section 2(4) to mean a Municipal Council or a Nagar Panchayat, as the case may be, constituted under Section 12 of the Act. Under Section 13A, the State Government has been empowered to direct holding of general elections of the members of the Municipalities or an election to fill the casual vacancy by the issuance of notification. As soon as a notification is issued, the Election Commissioner is mandated to take necessary steps for holding such elections. It may be noticed at this stage that the general elections to the Panchayat and the Municipalities are to be conducted by the State Election Commission constituted under the Punjab State Election Commission Act, 1994 (Punjab Act No.19 of 1994). After the general elections of the Municipality, election of President and Vice President is to be conducted in terms of Section 20 of the Act. The term of the office of the President of a Municipality is co-terminus with the term of Municipality under Section 21 of the Act. No elected member of a Municipality can enter upon his duties as such member until he has taken or made, at a meeting of the Municipality, an oath or affirmation of his allegiance to India in the form prescribed under sub-section (1) of Section 24. Sub-section (2) of Section 24 of the Act provides: "The State Government shall notify in the Official Gazette every election of a President of a Municipality and no President shall enter upon his duties as such until his election is so notified:

Provided that the State Government may refuse to notify the election as President of any person who has incurred a disqualification under this Act or under any other law for the time being in force, subsequent to his election as member of the Municipality;

Provided further that the State Government shall not refuse to notify the election of the President without giving an opportunity of being heard to the concerned person."

It is not disputed that despite the election of respondent No.1 as President on 6.4.1998, a notification in terms of sub-section (2) of Section 24 of the Act was not issued forcing the respondent NO.1 to file Writ Petition No.7105 of 1998 in the High Court on 15.5.1998. We do not agree with the argument of Mr.Dutta that the State Government or the said Secretary had an unbridled power or option to notify or not to notify the election of the President in the Official Gazette. Such an argument will not only be contrary to the concept of democracy and the rule of law but in fact flagrant violation of the mandate of the Act as incorporated in Sub-section (2) of Section 24 of the Act. A duty is cast upon the Government to notify in the Official Gazette every election of President of Municipality as is evident from the words "shall notify in the Official Gazette" used in the sub-section. The State Government has the authority to refuse to notify the election of a President, of any person who has incurred a disqualification under the Act or under any other law for

the time being in force, subsequent to his election as Member of the Municipality provided that before refusing to notify the elections the State Government gives an opportunity of being heard to the concerned person. Admittedly, the State Government has failed to notify the election of the President in the Official Gazette without assigning any reason, much less "giving an opportunity" to the respondent No.1. The omission and inaction of the said Secretary cannot be made a basis for frustrating the provisions of law and thereby nullifying the peoples' verdict returned in an election conducted in accordance with the provisions of law applicable in the case. Even if the respondent No.1 had allegedly incurred some disqualification, the State Government was obliged to inform him that his election as President of the Municipality could not be notified for the aforesaid reason. In the absence of such intimation, the omission to notify cannot be justified on such ground. It has been contended that as the respondent No.1 had allegedly incurred a disqualification in terms of clause (e) of sub-section (1) of Section 16 of the Act, the State Government was not obliged to notify his election as President and was justified in removing him from the Membership of the Municipal Council. Section 16(1)(e) provides: "Powers of the State Government as to removal of members: (1) The State Government may, by notification remove any member of a committee other than an associate member

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(e) if, in the opinion of the State Government he has flagrantly abused his position as a member of the committee or has through negligence or misconduct been responsible for the loss, or misapplication of any money or property of the committee."

It may be noticed that Section 16 deals with the powers of the State Government to remove a member under the circumstances mentioned therein and does not refer to the disqualification mentioned in proviso (1) to sub-section (2) of Section 24 of the Act. We also do not agree with Mr.Dutta that Section 16 prescribes the disqualification referred to in the aforesaid proviso. It is also not correct to say that no other disqualifications are prescribed under the Act or under any other law and Section 16 of the Act is the only provision upon which the State Government can rely for taking action under sub-section (2) of Section 24 of the Act. It appears that the appellants have overlooked the provisions of the Punjab State Election Commission Act, 1994 which deals with the constitution of the State Election Commission and for vesting the superintendence, direction and control of the preparation of the electoral rolls for and in the conduct of all elections to the Panchayat and Municipalities in the State of Punjab and to provide for all matters relating to or ancillary or in connection with the provisions of the Panchayat and Municipalities in terms of the provisions of Part IX and IXA of the Constitution. Chapter IV in general and Section 11 in particular deals with the disqualifications for Membership of a Panchayat or Municipality. Section 11 reads: "Disqualifications for membership of a Panchayat or a Municipality - A person shall be disqualified for being chosen as, and for being a member of a Panchayat or a Municipality, -

(a) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State; or

(b) if he is of unsound mind and stands so declared by a competent court; or

(c) if he is an undischarged insolvent; or

(d) if he has, in proceedings for questioning the validity or regularity of an election, been found guilty of any corrupt practice; or

(e) if he has been found guilty of any offence punishable under Section 153A or Section 171E or Section 171F or Section 376 or Section 376A or Section 376B or Section 376C or Section 376D or Section 498A or Section 505 of the Indian Penal Code, 1960 or any offence punishable under Chapter XIII of this Act unless a period of six years has elapsed since the date of such conviction; or

(f) if he holds an office of profit under a Panchayat or a Municipality; or

(g) if he holds an office of profit under the Government of India or any State Government; or

(h) if he is interested in any subsisting contract made with, or any work being done for, that Panchayat or Municipality except as a share-holder (other than a Director) in an incorporated company or as a member of a co-operative society; or

(i) if he is retained or employed in any professional capacity either personally or in the name of a firm in which he is a partner, or with which he is engaged in a professional capacity, in connection with any cause or proceeding in which the Panchayat or the Municipality is interested or concerned; or

(j) if he, having held any office under the State Government or any Panchayat or any Municipality or any other State level authority or any Government company or any incorporated body owned or controlled by the State Government or Government of India, has been dismissed from service, unless a period of four years has elapsed since his dismissal."

Disqualification contemplated "under any law for the time being in force" under proviso to sub-section (2) of Section 24 are, therefore, the disqualification as mentioned in Section 11 of the Punjab State Election Commission Act, 1994. The appellants have nowhere stated or alleged any such disqualifications attributable to the respondent No.1. We also do not accept the plea of the appellants that by assuming his duties as President, the respondent had allegedly, "flagrantly abused" all his position as a member, thereby incurring the wrath of the State Government in terms of Section 16(1)(e) or Section 20 of the Act. The clause "flagrantly abused of his position as member" means the doing of such act or acts by a member of a committee in disregard of his duty which would shock a reasonable mind.

The nature of the 'abuse' before it could be termed as 'flagrant', must, in the circumstance be glaring, notorious, enormous, scandalous or wicked. There is nothing on record to show or suggest that the respondent No.1 in his capacity as member or President took any undue advantage of his position or under the colour of his office committed any particular irregularity or reprehensive acts. Any alleged contravention of the provisions of the Act cannot be categorised as "flagrant abuse of power" by a member of the Committee. The mere contravention, if any, (which was not in this case) in respondent No.2 entering upon his office as President before his name was approved and published in the Official Gazette, particularly on account of wilful omission of the State Government cannot be called either a 'flagrant abuse of position' as a member or 'abuse of power' within the contemplation of Section 16(1)(e) and Section 20 of the Act. The appeal which is bereft of any merit is liable to be dismissed. We are at pain to note that by his acts of omission and commission the said Secretary has consistently and persistently deprived the respondent No.1 of the duty to assume and discharge his duties as member and President of the Municipal Council, despite his election from 2.1.1998 till date. The term of the office of the Municipality is a fixed term out of which three years of the respondent No.1 have been wasted in uncalled for and forced litigation upon him. No law can compensate the loss of opportunity provided to the respondent No.1 for serving the people after his election as Member and President of the Municipality. We find it a fit case to award exemplary costs and are of the firm view that such costs should not be burdened upon the State exchequer. The said Secretary who is responsible for the violation of the statutory provisions and weakening the concept of rule of law, is, therefore, personally liable to pay the costs from his own pockets. While dismissing this appeal we direct the said Secretary to personally pay the costs of Rs.25,000/- to the respondent No.1 within a period of two months.