Nachhatar Singh Saggu and Others Vs The State of Punjab and Others

Civil Writ Petition No. 6382 of 1995

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Sept. 7, 1995

Acts Referred:
Constitution of India, 1950 â€" Article 226#Punjab Municipal Act, 1911 â€" Section 25(3)

Citation: (1995) 111 PLR 674

Hon'ble Judges: P.K. Jain, J; Ashok Bhan, J

Bench: Division Bench

Advocate: S.P. Jain and Rajesh Gumber, for the Appellant; P.S. Patwalia and S.C. Pathela, for the Respondent

Final Decision: Dismissed

Judgement

Ashok Bhan and P.K. Jain, JJ.
There are 19 members of the Municipal Council, Jagraon, District Ludhiana. Member of the Legislative

Assembly from Jagraon is the ex-officio member of the Municipal Council, Jagraon (hereinafter referred to as "the council"). This raises the

strength of membership of the Council to 20. It is disputed as to whether the member of the Legislative Assembly from the area would have the

right to vote in the meeting of the Councilor not. This point is not in issue in this writ petition.

2. Petitioners numbering seven, all members of the Council belong to one group. Office of the Vice President of the Council had not been filled.

Petitioner submitted as requisition, requesting the President of the Council to convene a meeting of the Council u/s 25 of the Punjab Municipal Act,

1911 (hereinafter referred to as "the Act") for electing the Vice President of the Council, on 3.4.1975.

3. Section 25 of the Act provides that the President or in his absence the Vice President shall on a requisition by not less than 1/5th of the

members of the committee convene either an ordinary or a special meeting. If the President or the Vice President, as the case may be, fails to call

the meeting of the Committee within a period of fourteen days from the receipt of the requisition, the members who had signed the requisition can

convene a meeting in accordance with the bye-laws of the committee within 30 days of making such requisition and such convened meeting would

be a validly convened meeting notwithstanding anything to the contrary stated in the Act. Quorum provided for the meeting is 50% of the members

of the convened date of meeting, the quorum is not present than the Chairman of the committee may adjourn the meeting to another day. On the

adjourned day of the meeting the decision taken by the majority, irrespectively of the quorum would be deemed to be the decision of the

committee

4. Sections 25,26 and 27 of the Act, read as under:-

25. Times of holding Meetings.--(1) every Committee shall meet for the transaction of business at least once in every month at such time as may,

from time to time, be fixed by the bye-laws.

(2) The President or, in the absence or during the vacancy of his office or during his suspension u/s 22 a Vice-President may, whenever he thinks

fit and shall on a requisition specifying the purpose of the meeting made in writing by not less than one fifth of the members of the committee,

convene either an ordinary or a special meeting at any other time.

(3) If the President or the Vice-President, as the case may be, fails to call a meeting of the committee within a period of fourteen days from the

date of receipt of requisition, the members who had signed the requisition may convene a meeting of the committee in accordance with the bye-

laws of the committee within a period of thirty days of the making of such requisition and notwithstanding anything contained in this Act such

meeting shall be deemed to be a validly convened meeting :

Provided that no business other than that specified in the requisition shall be transacted in such meeting and the quorum for such a meeting shall be

as provided for a special meeting under sub-Section (1) of Section 27.

26. Ordinary and special meeting.-(1) Every meeting of committee shall be either ordinary or special.

(2) Any business may be transacted at an ordinary meeting unless required by this Act or the rules to be transacted at a special meeting.

(3) When a special and ordinary meeting are called for the same day the special meeting shall be held as soon as the necessary quorum is present.

27. Quorum.-(1) The quorum necessary for the transaction of business at a special meeting of a committee shall be one-half of the number of the

committee actually serving at the time but shall not be less than three.

(2) The quorum necessary for the transaction of business at an ordinary meeting of a committee shall be such number or proportion of the

members of the committee as may, from time to time, be fixed by the bye-laws, but shall not be less than three :

Provided that, if at any ordinary or special meeting of a committee a quorum is not present, the Chairman shall adjourn the meeting to such other

day as he may think fit, and the business which would have been brought before the original meeting if there had been a quorum present shall be

brought before, and transacted at, the adjourned meeting, whether there be a quorum present there at or not.

5. In this case, the requisition was sent by seven members on 8.4.1995, who are the petitioners in this writ petition. As the President of the Council

failed to convene the meeting within fourteen days of the receipt of requisition; on 19.4.1995, petitioners submitted a reminder to executive Officer,

requesting him to convene the meeting of the Council for electing the Vice-President otherwise the meeting would be held on 26.4.1995. Executive

Officer of the Council told the petitioners that the meeting could not be convened as he had not received the Ballot Papers from the Deputy

Commissioner, Ludhiana. As the President of the Council had failed to convene the meeting, the requisitionists held the meeting on 26.4.1995.

Only seven members were present which did not constitute the quorum and the meeting was adjourned to 28.4.1995. It has been averred in the

petition that due intimation to all the members of the Council was sent of the adjourned date of the meeting. Again, on the adjourned date of the

meeting, except seven members who had requisitioned the meeting, no other member of the Council was present. A Chairman of the meeting was

elected. The name of Nachhattar Singh Saggu, petitioner No. 1 was proposed and seconded and he was declared to be elected unanimously as

the Vice-President of the Council.

6. On 28.4.1995, the President of the Council convened the meeting of the Council for 2.5.1995, for electing the Vice-President of the Council.

Copy of this notice has been attached as Annexure P-8/A along with its true translation as Annexure P-8. Seven requisitionists, petitioners herein,

have challenged the notice, Annexure P-8, on the ground that Nachhattar Singh Saggu was duly elected as Vice-President of the Council in a

validly convened meeting on 28.4.1995 and his election could only be challenged by way of an Election Petition; that as the President of the

Council had failed to convene the meeting within fourteen days of the receipt of the requisition, u/s 25(3) of the Act, the requisitionists had the right

to convene the meting themselves and such a meeting would be a validly convened meeting. The meeting convened for 26.4.1995 could not

transact any business because of lack of quorum and on the adjourned day i.e. 28.4.1995, Nachhattar Singh Saggu was validly elected as Vice-

President of the Council; that without setting aside the proceedings of the meeting held by the requisitionists on 28.4.1995, the second meeting

called by the President of the Council for 2.5.1995 was bad in law and, therefore, liable to be set aside.

7. In the writ petition filed, the State of Punjab through the Secretary to Government Punjab, Department of Local Government, Chandigarh,

Municipal Council Jugraon, through its Executive Officer and the President of the Municipal Council, Jagraon, were impleaded as parties. Other

members of the Council were not impleaded as parties. On an application filed by other members of the council, they were ordered to be added as

respondents 4 to 13.

8. Notice of motion was issued, in response to which, written statements have been filed by the respondents including the added respondents 4 to

13.

9. In the written statement filed by the President of the Council, it has been stated that the petitioners, seven in number, form a splinter group in the

Council; that the petitioners knowing fully well that in case a free and fair election of the Vice -President was conducted, they would not be in a

position to get their candidate elected as the Vice-President, they being in minority, resorted to the method of convening a meeting on 26.4.1995

and, thereafter, on the adjourned date of the meeting i.e. 28.4.1995, to get their candidate elected as the Vice-President of the Council; that notice

of the meeting was not sent to all the members of the Council. It has beet; admitted that the President of the Committee had received a notice for

convening the meeting and the President directed the Executive Officer to complete all the formalities i.e. getting the signatures of the Deputy

Commissioner on the Ballot Papers, as it was required to be done under the Punjab Municipal Election Rules, 1994; that the Ballot Papers could

not be received from the Deputy Commissioner, Ludhiana, as he was busy with the preparation regarding the visit of the Prime Minister of India to

Ludhiana for 13.4.1995. The visit of the Prime Minister of India was postponed due to the death of the former Prime Minister of India Shri

Morarji Desai and, thereafter, the Prime Minister of India visited Ludhiana on 20.4.1995; that on receipt of the Ballot Papers, immediately, notices

were sent to all the members of the Council for convening the meeting for 2.5.1995; that the meeting convened for 2.5.1995 was valid and was not

liable to be set aside; that no proper meeting was convened for 26/28.4.1995 by the petitioners as proper notices had not been sent to all the

members of the Council and election, if any, held on 28.4.1995 was bogus, being fraudulent; that the petitioners were in minority and continue to

be in minority even today; that under the bye-laws of the Council, notice of every meeting has to be sent to each of the member of the Council,

stating therein the place, date and hour fixed for holding of the meeting atleast 40 hours before the meeting was held; that no such notice was issued

to all the members of the Council by the petitioners, convening the meetings of the Council for 26/28.4.1995.

10. Added respondents 4 to 13 have also filed their written statement, taking similar defence. They have specifically stated in the written statement

that no service was effected on them regarding the meeting held on 26.4.1995 and of the adjourned meeting on 28.4.1995, on which date,

Nachhattar Singh Saggu was allegedly elected as the Vice-President of the Council.

11. Counsel for the parties have been heard.

12. At the outset, it was put to the counsel for the petitioners, if the petitioners were prepared to face the elections at this stage under the

supervision of the Court to which he replied in the negative and stated that the petitioners have the support of only seven members, making it clear

to the Court that the petitioners are in minority. There is no doubt that u/s 25 of the Act, if the President or the Vice-President fails to convene the

meeting, on a requisition made, within fourteen days of the receipt of the requisition, then the requisitionists, within 30 days of making such

requisition, can convene a meeting of their own. Petitioners rightly convened the meeting for 26.4.1995. As they did not have'' the requisite

quorum, the meeting was adjourned to 28.4.1995, on which date, they elected their own Vice-President after nominating a person as the

Chairman of the Committee. There is no doubt that the petitioners informed the President of the Council regarding the adjourned date of the

meeting for 28.4.1995. In the writ petition, it has not been averred that respondents 4 to 13 i.e. members of the Council had been informed of the

convening of the meeting for 26.4.1995. Further there is nothing on the record to prove that respondents 4 to 13 were also informed of the

adjourned date of the meeting for 28.4.1995 although it has been averred in the petition that the President and the members of the Council were

informed of the adjourned date of meeting i.e. 28.4.1995. Petitioners were in minority and continue to be in minority. It is provided in the Punjab

Municipal Election Rules, 1994, and the bye-laws that each member of the Council has to be informed about the date of the meeting. In the

absence of any averment in the petition to the effect that all the members of the Council had been informed about the date of the meeting for

26.4.1995 and in the absence of any proof to the effect that these members were also informed of the adjourned date of the meeting for

28.4.1995, it cannot be held that there was a validly convened meeting by the requisitionists for 26.4.1995 or the adjourned date of the meeting

for 28.4.1995. Possibility that the petitioners, who were in minority and continue to be in minority even today, devised the novel method of

convening the meeting for 26.4.1995 and, thereafter, for 28.4.1995, without informing the other members and thereby elected their own Vice-

President; cannot be ruled out. This finding should not be taken as an aspersion on any of the petitioners or other members of the Council, but,

since, a doubt has come in our mind, we are not inclined to grant the relief to the petitioners in this writ petition.

13. Counsel for the petitioner''s argued that although in the writ petition it had not been averred that other members of the Council i.e. respondents

4 to 13 had been informed about the convening of the meeting for 26.4.1995 but, infact, these members had been informed and this fact finds

mention in the minutes of the meeting held on 26.4.1995 prepared by the requisitionists, copy of which has been attached as Annexure P-5. It is

true that in Annexure P-5, it has been mentioned that all the members of the Council had been informed but the respondents have to file reply to

the averments made in the petition and not to something which has been stated in the annexures to the writ petition. Respondents 4 to 13 have

categorically denied that notices of the convened meeting for 26.4.1995 or of the adjourned meeting for 28.4.1995 had ever been received by

them. No replication has been filed by the petitioners to the averments made in the written statement. Under the circumstances, it cannot be held

that respondents 4 to 13 had been informed of the convened meeting for 26.4.1995 or the adjourned date of the meeting for 28.4.1995.

14. Question of filing an election petition does not arise as we have held that there was no validly convened meeting for 26/28.4.1995. Since, there

was no validly convened meeting, we hold that no valid election of the Vice-President of the council was held.

15. Accordingly, this writ petition is dismissed with no order as to costs. However, the President of the Council as well as the Deputy

Commissioner, Ludhiana, are directed to convene a meeting of the Council within one month from today to elect the Vice President. The meeting

of the Council be held under the supervision of the Sub Divisional Officer (Civil) Jagraon.