
(1994) 02 P&H CK 0094
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petn No. 1448 of 1994

Dinesh Chand Garg and others	Vs	APPELLANT
Deputy Commissioner, Yamunanagar and another		RESPONDENT

Date of Decision : 02-02-1994

Acts Referred:

Haryana Municipal Act, 1973 — Section 21(1)

Citation : AIR 1995 P&H 110 : (1994) 107 PLR 63

Hon'ble Judges : N.K. Kapoor, J;Amrit Lal Bahri, J

Bench : Division Bench

Advocate : S.S. Dinarpur, for the Appellant; Arun Nehra, A.A.G., for the Respondent

Judgement

A.L. Bahri, J.—This is a case where notice of motion has not so far been issued to the respondents but we have heard Additional Advocate General, Haryana. The grant of ad interim relief in the facts of the present case would also have amounted to the grant of writ petition. Thus, after hearing the counsel, we are of the view that this writ petition should be allowed even without issuing notice to the respondents.

2. Under the Haryana Municipal Act, a duty is cast upon the Deputy Commissioner to summon meeting of the members of the Municipal Committee on an application to be submitted for the purpose of no confidence motion against President or Vice-President by any member, or members, of the Municipal Committee. The Deputy Commissioner on receipt of such application (Annexure P-1) moved by the five of the members of the Municipal Committee, Jagadhri, passed an order communicated to such members, as contained in his letter (Annexure P-2) dated December 23, 1993, that they should approach the President of the Municipal Committee, Jagadhri at the initial stage. Since the Deputy Commissioner did not call the meeting as required u/s 21(2) of the Haryana Municipal Act, the petitioners have approached this Court in this writ petition. Sub-sections (1) and (2) of Section 21 of the Act read as under:

"21. Motion of no-confidence against president or vice-president:--

(1) A motion of no-confidence against the president or vice-president may be made in accordance with the procedure laid down in the rules.

(2) The Deputy Commissioner or such other officer not below the rank or an Extra Assistant Commissioner, as the Deputy Commissioner may authorise, shall convene a meeting for the consideration of the motion referred to in sub-section (1) in the manner laid down in the rules, and shall preside at such meeting." ,

No rules have been framed as required u/s 21(1) of the Act. The provision aforesaid does not contemplate that no such motion can be moved by any one member. Additional Advocate-General, Haryana argued that at least 50 per cent of the members of the Municipal Committee should move the no-confidence motion before the Deputy Commissioner and it is on his prima facie satisfaction that he would call the meeting as required u/s 21(2) of the Act. This contention is devoid of merit. The provision aforesaid does not postulate any minimum number of members to move such a motion. Even one member could move no-confidence motion. It was not for the Deputy Commissioner to see as to whether motion would be carried out or not. Democratic process contemplates that it is to be decided in the meeting of the members of the Municipal Committee to express no-confidence motion against the President. Sub-section (3) of Section 21 of the Act specifically provides that such a motion would be carried out with the support of not less than 2/3rd members of the Municipal Committee. On carrying out of such motion, the President or Vice-President, as the case may be, would be deemed to have vacated the office. The decision, therefore lies with the members of the Municipal Committee to pass such a motion, with such a majority as mentioned in sub-section (3) of Section 21 of the Act. Action of the Deputy Commissioner in the present case, directing the petitioners to approach President or Vice-President for the purpose of calling meeting the members of the Municipal Committee to consider no-confidence motion against him, is not supported by law. Earlier such a matter was considered by this Court in *Surjit Mehta v. State of Haryana* 1992 P LJ 356, wherein it was held that it was the Deputy Commissioner who was to call such a meeting for considering no-confidence motion against the president or vice-president and not for the president or vice-president to decide whether to call such meeting or not.

3. For the reasons recorded above, we allow this writ petition and quash order Annexure P2, with further direction to the Deputy Commissioner respondent No. 1 to call the meeting of the members of the Municipal Committee, Jagadhri, as required u/s 21(2) of the Act promptly.

Dasti on payment.

4. Petition allowed.