
(2015) 02 P&H CK 0205
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 25102-2014

Kailash Kumar

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 18-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 243V(1)
Haryana Municipal Act, 1973 — Section 13-B, 14, 14-A, 18(1), 21

Citation : (2015) 02 P&H CK 0205

Hon'ble Judges : Paramjeet Singh, J.

Bench : Single Bench

Advocate : Sanjiv Bansal, for the Appellant; Sandeep S. Mann, Sr. DAG,
Advocates for the Respondent

Final Decision : Dismissed

Judgement

Paramjeet Singh, J.—Instant writ petition has been filed under Articles 226/227 of the Constitution of India for quashing the proceedings dated 21.11.2014 (Annexure P-6) whereby "no confidence motion" has been passed against the petitioner without counting the votes of all the elected members and local Member of Legislative Assembly and Member of Parliament in contravention of the provisions of the Haryana Municipal Act, 1973 (in short, "the Act") and law laid down by this Court in Krishan Kumar Singla Vs. The State of Haryana and Others, .

2. Brief facts of the case are to the effect that the petitioner was elected as Councillor to the Municipal Council, Narwana from Ward No. 7 in the year 2011. The total number of members elected from various wards in the Municipal Council is 21 and two other members i.e. local Member of Legislative Assembly and Member of Parliament nominated by the Government under Section 9(3) of the Act. The election for the post of President of the Municipal Council was held on 14.07.2013 and the petitioner was elected as President. At that time, elected members of the Municipal Council and Member of Legislative Assembly and

Member of Parliament had voted for electing the President by simple majority. An FIR No. 22 dated 28.01.2013 was registered against Smt. Ram Rati, Municipal Councillor, a complaint for removing/suspending her was received and the same was forwarded on 04.11.2014 by the Director Urban Local bodies to the Deputy Commissioner. She was required to be immediately removed and suspended under Sections 14 and 14-A of the Act, respectively. It is further pleaded that as a counter-blast to the initiation of action for suspension of the Councillor owing allegiance to the ruling party in power, "no confidence motion" was moved against the petitioner. Accordingly, notice dated 22.10.2014 (Annexure P-4) was issued for holding meeting regarding "no confidence motion". The meeting of the Council was held on 21.11.2014 and resolution with respect to "no confidence motion" against the petitioner was considered and on the basis of votes cast by 15 members, "no confidence motion" was passed against the petitioner resultantly he was removed from the post of the President vide impugned proceedings dated 21.11.2014 (Annexure P-6). In the said "no confidence motion", local Member of the Legislative Assembly and Member of Parliament were not permitted to vote for or against the "no confidence motion". However, they were required to be permitted to cast vote on the "no confidence motion". Reference has been made to Krishan Kumar Singla (supra) and Raj Pal Chhabra Vs. State of Haryana and Others, .

3. In pursuance of notice of motion, respondents put in appearance. Respondents no.4 and respondents no.5 to 19 filed their separate written statements with the averments that there are total 23 members of the Municipal Council. Out of them, 21 are elected from different wards of the Municipal Council and two are nominated being local Members of Legislative Assembly and Member of Parliament. It is further pleaded that local Member of Legislative Assembly and Member of Parliament are not entitled to cast vote for the purpose of "no confidence motion" and election of the President. It is further pleaded that the petitioner has rightly been removed from the post of the President as 15 members out of 21 elected members have voted in favour of "no confidence motion".

4. I have heard learned counsel for the parties and perused the record.

5. At the time of issuance of notice of motion, this Court ordered that result of the meeting called for electing new President of the Municipal Council, Narwana, shall be kept in a sealed over.

6. Learned counsel for the petitioner has vehemently contended that earlier there were two Full Bench judgments of this Court in Krishan Kumar Singla (supra) and Raj Pal Chhabra (supra) wherein it has been held that local Member of Legislative Assembly and Member of Parliament are treated as members of the Municipal Council and they are entitled to vote for the election of the President or even on "no confidence motion". Learned counsel further contended that the decision taken by 5-Judge Bench of this Court in LPA No. 592 of 2013, titled "Sanjeev Kumar Verma vs. The Director Urban Local Bodies, Chandigarh and others",

decided on 11.02.2015 will operate prospectively. The law declared by the larger Bench is not applicable to the "no confidence motion" in the present case which has taken place prior to this judgment. Therefore, "no confidence motion" in the present case should be proceeded with afresh in a time bound frame as per old law. In support of his contentions, learned counsel has relied upon judgments of the Hon'ble Supreme Court rendered in HDFC Ergo General Insurance Co. Ltd. vs. Smt. Lalta Devi and Ors. 2015 SCC Online Del 6505 and Ashok Sadarangani and Another Vs. Union of India (UOI) and Others, .

7. Per contra, learned counsel for the respondents vehemently contended that there is no issue of prospective applicability of Sanjeev Kumar Verma (supra) as no provision has been declared ultra vires, rather provisions existing in the Act have been interpreted by the larger Bench. It is settled law that interpretation relates to the proviso from the original date when the provision came on the statute book. Learned counsel further contended that "no confidence motion" was held exactly in consonance with the provisions of the Act. In support of their contentions, learned counsel relied upon Rajasthan State Road Transport Corporation and Anr. vs. Bal Mukund Bairwa 2009(3) RSJ 256.

8. I have given my anxious thoughts to the rival contentions of learned counsel for the parties.

9. The issue in respect of right of local Member of Legislative Assembly and Member of Parliament to cast vote on the "no confidence motion" or election of President of Municipal Council, is concerned, is no more res integra. In Sanjeev Kumar Verma (supra), the Larger Bench of this Court has held as under:

Now we will examine the impact of Section 13-B, which was inserted vide amendment made by Haryana Act No. 13 of 1997, and was not taken into consideration by the Full Bench in Krishan Kumar Singla's case (supra) while giving the interpretation that a nominated member of the Committee under Clause (ii) of Section 9(3) of the Act is deemed to be the elected member of the Committee and would fall under the expression "elected member" as provided under Section 21(3) of the Act. Clause (b) of Article 243V(1) clearly provides that a person shall be disqualified for being chosen as, and for being, a member of a Municipality if he is so disqualified by or under any law made by the Legislature of the State. Thus, this clause clearly empowers the State Legislature to enact a law providing disqualification for being a member of a Municipality. In view of the said provision, the State Legislature has enacted Section 13-B and inserted the same in the principal Act vide Haryana Act No. 13 of 1997. Sub-section (1) of Section 13-B clearly provides that no person shall be an elected member of Committee, member of Legislative Assembly of the State or member of Parliament simultaneously. Sub-section (2) further provides that if an elected member of the Committee is elected to the Legislative Assembly or Parliament, as the case may be, he shall cease to continue as an elected member of the Committee from the date he is declared as elected to the Legislative Assembly or Parliament, as the case may be. This Section clearly mandates that the member

of Legislative Assembly of the State or member of Parliament cannot be an elected member of the Committee, and if the elected member of the Committee is elected to the State Legislative Assembly or Parliament he shall cease to continue as an elected member of the Committee from the date he is declared as elected to the Legislative Assembly or Parliament. It means that a member of State Legislative Assembly or member of Parliament cannot remain as elected member of the Committee. If he cannot remain as elected member of the Committee, then he cannot be deemed to be the elected member of the Committee and, thus, would not fall under the expression "elected member" as provided under Section 21(3) of the Act. The said interpretation given by the Full Bench is contrary to the provisions of Section 13-B which was not even discussed by the Full Bench. Thus, in our opinion, a nominated member of the Committee under clauses (ii) and (iii) of sub-section (3) of Section 9, who has been nominated as member of the Committee by virtue of his office, can be considered to be member of the Committee, but in light of the aforesaid Sections 18(1), 13-B and 9(2) of the Act, he cannot be and held to be an elected member of the Committee. Being a nominated member, he may cast vote at the time of election of President or Vice-president, but in view of the bar created vide proviso added vide Haryana Act No. 10 of 2005 he shall not have any right to contest the election of the President or Vice-president as he is not the elected member of the Committee, and as per Section 18(1) of the Act only the elected member of the Committee can be elected as President or Vice-president. Merely because he has a right to cast the vote in the election of President or Vice-president being nominated member, he cannot be deemed to have a right to participate and vote in the proceedings of no-confidence motion as subsection (3) of Section 21 clearly provides that a motion of no- confidence can only be carried by two-third elected members of the Committee. The right to elect and right to be elected is a statutory right and not a common law right. It can only be conferred by the statute. Further the mode and manner of election to a post can be different from the scheme of removal of such person from the post. A member nominated under clause (ii) of Section 9(3) may have right to vote in the election of President or Vice-President, but he can be debarred by law enacted by the State Legislature to participate in the process of removal of President or Vice-President. Further in view of Section 13-B, a nominated member cannot be taken as elected member of the Committee for the purpose of participating in the special meeting convened under Section 21(3) for consideration of no-confidence motion against the President or Vice-President as the said sub- Section clearly provides that a motion of no-confidence can only be carried against the President or Vice- President with the support of not less than two-third elected members of the Committee. The language of Section 21(3) is clear and unambiguous. It is well settled as held in State through Central Bureau of Investigation Vs. Parmeshwaran Subramani and Another, that where there is no ambiguity in the provisions, and the intention of the legislature is clearly conveyed, there is no scope for the court to undertake any exercise to read something into the provisions which the legislature in its wisdom

consciously omitted. Such an exercise if undertaken by the courts may amount to amending or altering the statutory provisions. It is not the duty of the Court either to enlarge the scope of legislation or the intention of the legislature, when the language of the provision is plain and clear. The court cannot add words to a statute or read words into it which are not there. The court cannot, on an assumption that there is a defect or an omission in the words used by the legislature, correct or make up assumed deficiency, when the words are clear and unambiguous. In this regard, our view finds support from the judgment of the Constitution Bench of the Apex Court in *Nathi Devi Vs. Radha Devi Gupta*, . Para 11 of the judgment, which is relevant, is reproduced below for ready reference:-

The interpretative function of the Court is to discover the true legislative intent. It is trite that in interpreting a statute the Court must, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning, irrespective of the consequences. Those words must be expounded in their natural and ordinary sense. When a language is plain and unambiguous and admit of only one meaning no question of construction of statute arises, for the Act speaks for itself. Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may follow from giving effect to the language used. If the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In considering whether there is ambiguity, the Court must look at the statute as a whole and consider the appropriateness of the meaning in a particular context avoiding absurdity and inconsistencies or unreasonableness which may render the statute unconstitutional.

XXX to XXX

In our opinion, the expression "elected members" does not require any further interpretation. These words are plain and simple. Elected members means the members of the Committee who have been chosen through direct election from the territorial jurisdiction of the Municipality in the municipal area. It cannot be said that the elected members naturally would include the members who become members of the Committee by virtue of they having been nominated as members of the Committee being elected to the House of People, Legislative Assembly or Council, as the case may be. Merely because the nominated member may be having better understanding of issues when considered in a larger perspective being member of Parliament and Legislative Assembly, they cannot be given the status of "elected member of the Committee" and included in the expression "elected member" used in Section 21(3) of the Act. Thus, in our view the aforesaid law laid down by the Full Bench in *Krishan Kumar Singla*'s case is held to be contrary to the plain provisions of Sections 13-B and 21(3) of the Act and the same is hereby overruled. In the light of the above, all the three

referred questions are answered as under:-

(i) the members of the House of People and the Legislative Assembly of the State or the Council of the States, who have been nominated as members of the Committee under clauses (ii) and (iii) of Section 9(3) of the Act by virtue of their being members of the House of People, Legislative Assembly of the State or the Council of the States, cannot be deemed to be "elected members of the Committee".

(ii) in counting/calculating not less than two-third of "the elected members of the Committee" for successfully carrying out the No Confidence Motion against the President or Vice- President as provided under Section 21(3) of the Act, the nominated members who have been nominated under clauses (ii) and (iii) of Section 9(3) cannot be taken into consideration.

(iii) That a member of the House of People and the Legislative Assembly of the State cannot remain as "elected member of the Committee" in view of the bar created under Section 13-B of the Act.

The reference is answered accordingly.

Registry is directed to list this appeal for hearing before the Division Bench for further orders, as per roster.

10. Now the question arises whether fresh meeting is required to be held for considering "no confidence motion" by not allowing local Member of Legislative Assembly and Member of Parliament to participate therein and whether the decision rendered in Sanjeev Kumar Verma (supra) would apply to pending cases as the authorities were earlier following the decisions rendered in Krishan Kumar Singla (supra) and Raj Pal Chhabra (supra).

11. Let us understand the concept of prospective overruling. It is an acknowledged fact that when a judicial pronouncement is made by the Hon"ble Supreme Court and High Courts, it not only applies to a particular case but its ratio would apply to the future cases also. The law declared by the Hon"ble Supreme Court and High Courts is not descriptive but also prescriptive in the sense the Courts in future have to use it. There are two views prevalent in this regard. The first view is by Blackstone who believes that the doctrine of Stare Decisis should be followed by the courts in the administration of justice. The second view is by Cardozo.J. who is known as the originator and propounder of prospective overruling. The basic object of prospective overruling is to overrule a decision without having a retrospective effect. According to Cardozo J., if this doctrine is not given effect, it will wash away the whole dynamic nature of law and it will be against the concept of judicial activism. The law has to be dynamic and not static. The doctrine of prospective overruling originated in the American judicial system which was adopted by the Hon"ble Supreme Court for the first time in India in I.C. Golak Nath and Others Vs. State of Punjab and Another, . In L.C. Golak Nath and others (supra), sum and substance of the judgment is to

the following effect:

- (1) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution;
- (2) It can be applied only by highest court of the country i.e. the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the Courts in India;
- (3) The scope of the retrospective operation of the law declared by the Supreme Court superseding its earlier decisions is left to its discretion to be moulded in accordance with the justice of the cause or matter before it.

12. The doctrine of prospective overruling adopted by the Indian legal system differs from the American legal system. The traditional Blackstonian view of law is that the duty of the Court was not to pronounce a new rule but to maintain and expound the old one. The doctrine of prospective overruling is a deviation from the Blackston's view. Essentially, the doctrine of prospective overruling is meant to protect the interest of litigants when judicial overruling of a decision entails a change in law. In fact what is contemplated through the doctrine is to lay down the scope of judicial pronouncement in a particular case with regard to its applicability to future cases and disputes. The Courts always intend to do justice and may apply various criteria to reach their ends. The essence of prospective overruling is that the Hon"ble Supreme Court or High Courts lays down the parameters within which a law laid down in a case which overrules a previous judgment has to operate. The whole purpose is to avoid reopening of settled issues and also prevent multiplicity of proceedings. Therefore, all the actions prior to the declaration do not stand invalidated. In *Baburam Vs. C.C. Jacob and Others*, , the Hon"ble Supreme Court of India has observed that all the subordinate courts which are legally bound to apply the declaration of law made by the Hon"ble Supreme Court are also duty bound to apply such dictum to cases which would arise in future only. The above concept of prospective overruling is now also being applied in non-constitutional context and gradually followed by the High Courts.

13. In the light of above, I proceed to examine what is the effect of decision rendered by a Larger Bench of this Court in *Sanjeev Kumar Verma* (supra). In it, there is no specific direction whether it is applicable from the prospective date. No provision has been declared ultra vires.

14. In *Rajasthan State Road Transport Corporation* (supra), it has been held as under:

30. We may also observe that the application of doctrine of prospective overruling in *Krishna Kant* (supra) may not be correct because either a court has the requisite jurisdiction or it does not have. It is well settled principle of law that the court cannot confer jurisdiction where there is none and neither can the parties confer jurisdiction upon a court by consent. If a court decides a matter

without jurisdiction as has rightly been pointed out in Zakir Hussain (supra) in view of the seven-Judge Bench decision of this Court in A.R. Antulay (Supra), the same would be nullity and, thus, the doctrine of prospective overruling shall not apply in such cases. Even otherwise doctrine of prospective overruling has a limited application. It ordinarily applies where a statute is declared ultra vires and not in a case where the decree or order is passed by a court/tribunal in respect whereof it had no jurisdiction.

[See I.C. Golak Nath and Others Vs. State of Punjab and Another,

In M.A. Murthy Vs. State of Karnataka and Others, , this Court held:

...It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective overruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in a particular case will be prospective in its application by application of " the doctrine of prospective overruling..... (See also Ashok Kumar Sonkar Vs. Union of India (UOI) and Others,

As has been pointed by Justice Cardozo, in his famous compilation of lectures - The Nature of the Judicial Process - that in the vast majority of cases, a judgment would be retrospective. It is only where the hardship is too great that retrospective operation is withheld. A declaration of law when made shall ordinarily apply to the facts of the case involved.

15. Admittedly, this writ petition is a pending case. Vires of provisions of the Act have not been struck off, only the provisions have been explained by the Larger Bench of this Court in Sanjeev Kumar Verma (supra). In view of Rajasthan State Road Transport Corporation (supra), it has to be held that the judgment rendered by the Larger Bench of this Court would apply to all pending cases. The judgments cited by learned counsel for the petitioner are not applicable to the facts and circumstances of the present case. It is the case of petitioner that local Member of Legislative Assembly and Member of Parliament were not allowed to cast vote at the time of "no confidence motion". Since the members other than elected members of the Municipal Council have not been allowed to participate in the "no confidence motion" proceedings, no fault can be found with the impugned proceedings wherein "no confidence motion" has been passed against the petitioner. The impugned "no confidence motion" proceedings are strictly in accordance with the law laid down in Sanjeev Kumar Verma (supra).

16. Learned counsel for respondent no.5 has made a prayer that sealed cover be allowed to be opened and stay order be vacated. It goes without saying that the interim order dated 09.12.2014 whereby result of the meeting called for electing new President of the Municipal Council, Narwana, was directed to be kept in a sealed cover, stands vacated automatically when the main petition stands dismissed.

17. For the reasons stated above, instant writ petition is dismissed with no order

as to costs.