
(1999) 10 P&H CK 0087
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9466 of 1998

Krishan Gupta President, Municipal Committee

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 29-10-1999

Acts Referred:

Citation : (1999) 4 ICC 569 : (2000) 2 PLJ 301 : (2000) 1 RCR(Civil) 444

Hon'ble Judges : S.S.Sudhalkar, J

Advocate : Mr. S.K. Mittal, Advocate., Advocates for appearing Parties

Judgement

S.S. Sudhalkar, J.

1. In December, 1994, election of Municipal Committee, Mohindergarh was held. In the said election, petitioner Krishan Gupta was returned as a Municipal Commissioner. Earlier, Leela Ram Saini respondent No. 6 was returned as President of the Municipal Committee. Haryana Municipal Second Amendment Act, 1966 (hereinafter referred to as the "Amendment" received the consent of the Government of Haryana on 8.12.1996. Thereafter in the meeting of "No Confidence Motion" held against Leela Ram Saini, 9 out of the 13 elected members voted in favour of the motion and 4 voted against it. Since 2/3rd members had voted in favour of "No Confidence Motion", the motion was passed. On the removal of Leela Ram Saini from the office of the President, again election of the President was held and petitioner Krishan Gupta was elected as President of Municipal Committee.

2. On 17.6.98 a meeting for considering "No Confidence Motion" against the petitioner was convened. Out of the 13 members, 9 participated in the meeting and all the 9 members cast their votes in favour of the "No Confidence Motion" and the motion was passed by 2/3rd majority of the members. After the said "No Confidence Motion", the election of the President was held on 29.6.98 and Mohan Lal respondent No. 5 was elected as President of the Municipal Committee.

3. By this writ petition the petitioner has challenged the resolution of "No

Confidence" passed against him on 17.6.98 (copy Annexure P/1). After the writ petition was filed, respondents No. 5 and 6 were impleaded as respondents vide order passed on their application. Counsel for Leela Ram Saini, respondent No. 6 has stated that he would not file any written statement. However, written statement has been filed by Mohan Lal respondent No. 5.

4. The contention of the petitioner is that "No Confidence Motion" has not been passed by 2/3rd members of the Committee. According to him. "No Confidence Motion" required to be passed by 2/3rd of all the members i.e elected members and nominated members and the total members were 18 and 2/3rd of said number would be 12 while "No Confidence Motion" annexure P/1 was passed on the votes of 9 members only. In this context, it will be proper to consider regarding the relevant provision of law. Regarding composition of Municipal Committee, the provision in section 9 of the Act is as under :

"Section 9 Composition of Municipalities (1) The Municipalities constituted under section 2A shall consist of such number of elected members not less than eleven as may be prescribed by rules.

(2) Same as provided in Sub Section (2), all the seats in the Municipality shall be filled in by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each municipal area shall be divided into territorial constituencies to be known as wards.

(3) In addition to persons chosen by direct election from the territorial constituencies, that State Government shall, by notification in the official gazette, nominate the following categories of persons as members of municipality :

(i) not more than three persons having special knowledge or experience in Municipal Administration;

(ii) members of the House of the People and the Legislative Assembly of State, representing constituencies which composite wholly or partly, the municipal area; and

(iii) members of the Council of States, registered as electors within the municipal area; provided that the persons referred to in clause (i) above shall not have the right to vote in the meetings of the municipality; provided further that the Executive Officer in the case of Municipal Council and the Secretary in the case of Municipal Committee, shall have the right to attend all the meeting of the municipality and to take part in discussion but shall not have the right to vote therein.

5. Regarding "No Confidence Motion" the provision in the Act is as under :

"Section 21 : Motion of NoConfidence against President or Vice President.

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 of a 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.

(3) If the motion is carried with the support of not less than twothirds of the members of the committee, the President or Vice President as the case may be shall be deemed to have vacated his office.

(4) If a noconfidence motion is passed against the President and the Vice President simultaneously or otherwise, the Sub Divisional Officer (Civil) of the area in which the Municipality is situated or any other officer not below the rank of an Extra Assistant Commissioner authorised by the Deputy Commissioner shall henceforth exercise the powers and discharge the functions of the President till the election (omitted) of a President is notified or a Vice President is Vice President is elected.

5) A meeting referred to in subsection (2) shall be presided over by the Deputy Commissioner or the officer authorised by him, but neither he nor such officer shall have the right to vote at such meeting."

6. The amendment of 1996 is as under :

"1. Short title : This Act may be called the Haryana Municipal (Second Amendment) Act, 1914.

2. Amendment of Section 9 of Haryana Act 24 of 1973

Sub Section (3) of Section 9 of the Haryana Municipal Act, 1973 (hereinafter called the Principal Act) :

(i) Clause (i) shall be omitted;

(ii) First proviso shall be omitted; and

(iii) for the second proviso, the followings proviso shall be substituted, namely :

"Provided that the persons referred to in clauses (ii) and (iii) above shall neither have right to contest for the election of President or Vice President nor right to vote in the meetings for the election of President and Vice President and in special meetings for the consideration of motion of No Confidence against the President or Vice President of the Committee, as the case may be."

7. The contention of the petitioner is that the amendment was brought when the term of the Municipal Committee was going on and, therefore, the amendment could not be said to have retrospective operation and, therefore, if the operation is not retrospective, the vote of "No Confidence" by 9 members will not amount to a vote of 2/3rd of the members and hence the "No Confidence Motion" is not legal and, therefore, it should be quashed. According to respondents No. 5 and 6, after the amendment the "No Confidence Motion" against Leela Ram Saini respondent No. 6 was passed. The motion was carried as 9 out of the 13 elected

members had cast their vote in favour of the resolution and, therefore, respondent No. 6 was removed from the office of the President and in the meeting held on 2.5.95, the petitioner was elected President. Therefore, it does not lie in the mouth of the petitioner to say that "No Confidence Motion" was not carried out because only 9 members had cast their vote in favour of the motion.

8. I have heard learned counsel for the parties.

9. Learned counsel for the petitioner relied on the Full Bench judgment of this Court in C.W.P. 6404 of 1997 *Krishan Kumar Singla v. The State of Haryana and others*, 2000(2) R.C.R.(Civil) 101 which was decided along with another CWP 14029 of 1997. In the said writ petition, after considering the relevant provision of law it was held as under :

"Having given our considered view to the entire matter we are unable to persuade ourselves to take any other view than the one taken by us in *Raj Pal Chhabra*'s case."

10. After holding as above, it was reiterated that the "elected members" naturally includes the members by virtue of having elected as members in the house of people, legislature (legislative ?) assembly or the council as the case may be. It is also held by the Full Bench that the amended provisions (Second proviso to Section 9 of the Act) to the limited extent in so far as it debars the members of the House of the People, Legislative Assembly or Council, as the case may be, from exercising their right of vote, that too only in special meetings or meeting of "No Confidence Motion" is invalid and unconstitutional. So the first point raised by the petitioner in his petition is already decided by the Full Bench. At the time of arguments, counsel for respondents No. 5 and 6 argued that there is no dispute regarding the law laid down by the Full Bench and he agreed that the position is that the MPs and MLAs have to be treated as "elected members". The main argument is that when respondent No. 6 Leela Ram Saini was removed by majority of 9 votes only and Municipal Committee was supported by the petitioner, then the petitioner took advantage of the said position, got elected as the President of the "No Confidence Motion" and, therefore it does not lie in the mouth of the petitioner now to say that the vote of "No Confidence Motion" was not passed by the requisite number of votes. He has argued that power of this Court under Article 226 of the Constitution is an equitable power and if the equity is not in favour of the petitioner, court would set its hands in not awarding any relief to the petitioner and, therefore this court need not exercise its discretion in favour of the petitioner. He has also argued that if one wrong order is quashed by another wrong order, the court may not interfere.

11. Learned counsel for respondents No. 5 and 6 has cited various decisions in support of his above arguments. He has cited the case of *British India Corpn. v. Industrial Tribunal, Pb.*, AIR 1965 Pb. 159 wherein it has been held that High Court will not interfere where no manifest injustice is done. He has cited the case of *Moin Uddin and others v. Dy. Director of Consolidation and others*, AIR 1978

Allahabad 241. It has been held therein that the fact that order passed is illegal and the party has right to get it quashed is no ground to set it aside in all cases.

12. Mr. Bhoop Singh also cited the case of Jagan Singh v. State Transport Appellate Tribunal, Rajasthan and another, AIR 1980 Rajasthan 1. In that case it was held without deciding the controversy that, the allowing the writ petition would result in restoring the illegal order of the R.T.A. and that there had been no failure of justice in the case and the High Court refused to interfere with the appellate order.

13. Mr. Bhoop Singh has also cited the case of Gadde Venkateswara Rao v. Government of Andhra Pradesh and others reported in AIR 1966 S.C. 828. He has referred to para 17 of that judgment in which it has been held that if the High Court had quashed the said order, it would have restored an illegal order and it would have given the Health Centre to a village contrary to the valid resolutions passed by the Panchayat Samithi and, therefore, the High Court rightly refused to exercise its extraordinary discretionary power in the circumstances of the case.

14. Mr. Bhoop Singh, learned counsel for respondents No. 5 and 6 has also cited the case of Suresh Chand and others v. Director of Panchayats, Haryana and others, 1985 R.R.R. 518 : 1979 P.L.J. 116. It has been held therein that irregularities or malfunctioning of Gram Panchayat resulting from orders not in conformity with law cannot be perpetuated by denying interference on hypertechnical objections of locus standi. He has cited this authority to say that illegality cannot be perpetuated even by granting a writ petition.

15. Learned counsel for respondents No. 5 and 6 has also cited the case of Om Prakash Shukla v. Akhilesh Kumar Shukla, AIR 1986 S.C. 1043. In that case the appellant has challenged the validity of competitive exam. as being not held as per law. However, the petitioner had also appeared in the examination without protest. However, on realisation that he would not succeed in the examination he had filed the said petition. It was held by the Supreme Court that relief ought not to be granted to the petitioner in such a case.

16. Mr. S.K. Mittal, learned counsel for the petitioner has relied on the case Rati Ram v. S.D.O. Budhana and another, AIR 1960 Allahabad 550. It has been held in that case that when petitioner's election was set aside and fresh election was ordered and the petitioner who took chance in the second election cannot subsequently ask first election to be restored. Relying on this authority, he has argued that the respondent, after the "No Confidence Motion", had taken part in the subsequent election and, therefore, having taken part in the subsequent election, he cannot now say that the earlier "No Confidence Motion" against the respondent was not legal. So far as the law cited by Mr. Bhoop Singh, learned counsel for respondents No. 5 and 6 is concerned, there cannot be any two opinions. Earlier Leela Ram Saini respondent No. 6 was also removed from the post of President by the same number of votes by which he petitioner is now

being removed.

17. Learned counsel for the petitioner argued that respondents No. 5 and 6 actually have no right to challenge this petition because they were not made parties and they themselves made an application to be joined as parties. However, when they are made parties, if they can successfully challenge the petition, the court has to take into consideration their objections.

18. From the above mentioned judgment of the Full Bench in the case of Krishan Kumar Singla v. The State of Haryana and others, it is clear that the order annexure P/1 by which the vote of confidence was passed against the petitioner cannot be said to be legal order. The same illegality was carried out when Leela Ram Saini was removed. However, it has to be seen that in this case the petitioner did not automatically become President after removal of Leela Ram Saini as President by the "No Confidence Motion". He had to be elected. Moreover by passing of the "No Confidence Motion" Annexure P/1, respondent No. 6 Leela Ram Saini is not automatically going to be reinstated. The question is whether it will be proper for me to deny the petitioner his right to file writ petition only because earlier when Leela Ram Saini was removed by vote of "No Confidence", he was party to the motion ? In my humble view as annexure P/1 is not automatically going to reinstate Leela Ram Saini respondent No. 6 as the President of the Committee, though the law cited by respondents No. 5 and 6 cannot be said to be unacceptable. The net result is this petition succeeds.

19. In view of the above, this petition is allowed and the "No Confidence Motion" Annexure P/1 is quashed.