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**(2010) 06 P&H CK 0044**  
**In the Punjab And Haryana At Chandigarh**

Rajinder Singh Rana

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

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**Date of Decision :** 28-06-2010

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2010) 2 ILR (P&H) 715 : (2010) 159 PLR 807 : (2010) 3 RCR(Civil) 498

**Hon'ble Judges :** Alok Singh, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Alok Singh, J.—The petitioner has invoked writ jurisdiction of this Court under Article 226 of the Constitution of India assailing the order dated 9.4.2010 passed by Govt. of Punjab thereby removing the petitioner from the post of President, Municipal Council, SAS Nagar Mohali, Punjab.

2. The brief facts of the present case are that petitioner was charged for following actions:

(i) He being the President has abused his position by passing administrative order of transfer and posting of three officials in his office.

(ii) He as President directed to postpone the receiving of tenders for sanitation work.

3. Principle Secretary to Local Government, Department of Local Government has observed in the impugned order that under the Rules employee posted in the Municipality can be transferred only by Executive Officer from one place to another and President has absolutely no jurisdiction to transfer an employee of the Council, hence by transferring the three employees President has abused his powers. It has further been observed by Principal Secretary that by postponing the date of receiving of tender for the sanitation work from 4th May 2007 to future date strengthens the doubt that the real motive is to accommodate

ineligible contractors.

4. To appreciate the controversy involved in the petition, Section 22 of the Punjab Municipal Act, 1911 needs to be reproduced as under:

22. Resignation or removal of President and Vice President. - Whenever a President or Vice-President vacates his seat or tenders in writing to the committee his resignation of his office, he shall vacate his office; and any President or Vice-President may be removed from office by the State Government on the ground of a abuse of his powers or or habitual failure to perform his duties or in pursuance of a resolution requesting his removal passed by two-thirds of the members of the committee:

Provided that if a resolution requesting the removal of the President or the vice-President is passed by twothirds of the members of the committee, the President or, as the case may be, the Vice-President shall be deemed to be under suspension immediately after such resolution is passed:

Provided further that before the State Government notifies his removal, the reason for his proposed removal shall be communicated to him by means of a registered letter in which he shall be called upon to tender within twenty-one days an explanation in writing, and, if no such explanation is received in the office of the appropriate Secretary to Government within twenty-one days of the despatch of the said registered letter, the State Government may proceed to notify his removal.

5. From the perusal of Section 22 of the Act, it is clear that Govt. can remove President or the Vice-President if -

(i) Govt. finds that President/Vice President has abused his power

(ii) or is guilty of habitual failure to perform his duty

(iii) or 2/3rd members of the committee have resolved to remove him.

6. In the present case controversy revolves around first ground i.e. abuse of power. The moot question before this Court is as to whether transfer and posting of some of the employees of the Council from one place to another would amount to abuse of power and further whether postponement of the date of receiving of tenders would amount to abuse of power without causing any financial burden or loss on the Council?

7. Learned Counsel appearing for the petitioner has placed reliance on the judgment of the Apex Court in the matter of Tarlochan Dev Sharma Vs. State of Punjab and Others, and argued that every wrong action can not be said to be abuse of power without any element of illwill or dishonesty.

8. Hon"ble Apex Court in paragraph No. 8 and 10 has observed as under:

8. The phrase "abuse of powers" as providing a ground for proceeding u/s 22 is not defined in the Act. Black's Law Dictionary (Seventh Edition, 1999) gives the

meaning of "abuse" as to "to depart from legal or reasonable use in dealing with (a person or thing)", "to injure (a person) physically or mentally", "to damage (a thing)". In Corpus Juris Secundum (Vol. 1, P.402) it is so stated:

Abuse.

As Noun" It has been said that the word is not a term of art in the law and that its every day popular sense is well known; but that its proper signification when employed depends upon the context and subject-matter. In its largest sense, ill use or improper treatment of another; misuse. In the plural as used with reference to the authority of governmental commissions to correct "abuses", the word has been held to mean a disregard of duty imposed by law; any improper use of a right or privilege.

The word "abuse" as occurring in Section 5(1)(d) of Prevention of Corruption Act, 1947 came up for consideration of this Court in M. Narayanan Nambiar Vs. State of Kerala, . This Court observed:

"Abuse" means mis-use i.e. using his position for something for which it is not intended. That abuse may be by corrupt or illegal means or otherwise than those means. The word "otherwise" has wide connotation and if no limitation is placed on it, the words "corrupt", "illegal", and "otherwise" mentioned in the clause become surplusage, for on that construction every abuse of position is gathered by the clause. So some limitation will have to be put on that word and that limitation is that it takes colour from the preceding words along with which it appears in the clause, that is to say, something savouring of dishonest act on his part. The contention of the learned Counsel that if the clause is widely constructed even a recommendation made by a public servant for securing a job for another may come within the clause and that could not have been the intention of the Legislature. But in our view such innocuous acts will not be covered by the said clause. The juxtaposition of the word "otherwise" with the words "corrupt or illegal means", and the dishonesty implicit in the word "abuse" indicates the necessity for a dishonest intention on his part to bring him within the meaning of the clause.

10. The expression "abuse of powers" in the context and setting in which it has been used cannot mean use of power which may appear to simply unreasonable or inappropriate. It implies a willful abuse or an intentional wrong. An honest though erroneous exercise of power or an indecision is not an abuse of power. A decision, action or instruction may be inconvenient or unpalatable to the person affected but it would not be an abuse of power. It must be such an abuse of power which would render a Councilor unworthy of holding the office of President. Inasmuch as an abuse of power would entail adverse civil consequences, the expression has to be narrowly construed. Yet again, the expression employed in Section 22 is "abuse of his powers or habitual failure to perform his duties". The use of plural - powers, and the setting of the expression in the framing of Section 22 is not without significance. It is suggestive of

legislative intent. The phrase "abuse of powers" must take colour from the next following expression "or habitual failure to perform duties". A singular or casual aberration or failure in exercise of power is not enough; a course of conduct or plurality of aberration or failure in exercise of power and that too involving, dishonesty of intention is "abuse of powers" within the meaning of Section 22 of the Act. The legislature could not have intended the occupant of an elective office, seated by popular verdict, to be shown exit for a single innocuous action or error of decision.

9. The petitioner's case is that bye-law No. 49 of the Municipal Council empowers President to transfer employee of the Council from one place to another while case of the respondents is that even bye-laws No. 49 does not empower the President to transfer employees of the Council from one place to another. The only power to transfer vested with the President is to transfer the employees of the Council from Octroi and conservancy departments. Learned Counsels appearing for the respondents and Addl. A.G. Punjab argued that since employees transferred by President were not working in octroi and conservancy departments and bye-laws 49 does not empower the President to transfer other employees hence by transferring three employees President has abused his powers.

10. Without going into the question of authority of President in the matter of transfer of an employee, in the humble opinion of this Court mere transfer order by wrongly interpreting bye-laws 49 without any element of ill motive can not be said to be abuse of powers. Neither impugned order nor any material available on record goes to suggest that transfer order was illmotive for wrongfull gains for himself or to cause financial loss to the council or employees. This is not a case of fresh appointment in the office of President placing financial burden on the Municipality to pay salary to wrongly appointed person. Likewise postponement of the receiving of the tender for the future date without causing any financial loss to the Council does not amount to abuse of powers at all. Even in the case of Tarlochan Dev Sharma case (supra) Hon"ble Apex Court in paragraph No. 12 while discussing facts involved therein has observed that if the working of the Municipal Council was not obstructed by stopping the payment it would not amount to abuse of power. The observation of the Principal Secretary in the impugned order is that postponement of the tender strengthens doubt that the same was done with the intention to accommodate non-eligible contractors. This observation is unjustified and not supported by any evidence. No name is given who was non-eligible and granted contract subsequently.

11. Removal of the elected President only on the basis of some suspicion and doubt without any element of illmotive or malafide intention to gain wrongfully or to cause loss to the Council will not amount to abuse of power u/s 22 of the Punjab Muncipal Act, 1911. Hence order impugned can not be sustained in the eye of law.

12. This Court on 13.4.2010 has passed following order:

Notice of motion.

Mr. M.C. Berry, Addl. A.G. Punjab accepts notice on behalf of the respondents and prays for time to file reply and address arguments.

Counsel for the petitioner prays for stay of the impugned order and in alternative that election of the President, which is fixed for 15.4.2010 at 10.00 a.m. be stayed. He prays this primarily on the ground with regard to the interpretation given by the Hon"ble Supreme Court of Section 22 of the Punjab Municipal Act, 1911 in the case of Tarlochan Dev Sharma v. State of Punjab 2001 (30) R.C.R. (Civil) 809.

The prayer made by the counsel for the petitioner is declined.

However, the result of the election if held shall be subject to the decision of the writ petition.

To come up for consideration on 15.4.2010. Reply be filed and copy of the same be given in advance to the counsel for the petitioner.

13. In the light of order dated 13.4.2010 fresh elections were held and respondent No. 3 was appointed as President of the Municipal Council. Since election were held subject to the decision of writ petition hence in the event of allowing of present petition, respondent No. 3 has to go.

14. Writ petition is allowed. Order impugned dated 9.4.2010 (Annexure P-7 to the petition) is hereby quashed. Petitioner shall be given charge of the President of Municipal Council, SAS Nagar Mohali Punjab forthwith. Respondent No. 3 shall cease to occupy the office of the President of the Council forthwith.

15. No costs.