
(2012) 01 P&H CK 0172
In the Punjab And Haryana At Chandigarh
Case No : C.W.P No. 16834 of 2011

Ram Rati and another

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 10-01-2012

Acts Referred:

Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 — Section 123, 4

Citation : (2012) 01 P&H CK 0172

Hon'ble Judges : Ajay Tewari, J

Bench : Single Bench

Judgement

Ajay Tewari, J.—By this writ petition, the petitioners have challenged no confidence motion carried out against them. The primary ground taken by counsel for the petitioners is that notice was short.

2. Admittedly, the notice under rule 10 of the Haryana Panchayati Raj Rules, 1995 was issued on 30.8.2011 wherein it was stipulated that the meeting for no confidence would be held on 7.9.2011. Rule 10 of the aforesaid Rules reads thus :

10. No confidence motion against Chairman, Vice Chairman, President, Vice President.—(1) For purposes of Section 123 Deputy Commissioner shall be the prescribed authority.

(2) The notice of meeting for considering motion of no confidence shall be issued atleast seven days before the date fixed for the meeting, intimating the date, time and place of meeting by proclamation by beat of drum, in the Sabha areas concerned and by affixing a copy of same on the notice boards of the offices of concerned Gram Panchayats, Panchayat Samiti(s) and Zila Parishad and at other conspicuous places in the village. The notice shall also be issued to all the members by registered (A.D) Post at their ordinary place of residence and also by affixing a copy of the same at the notice board of Office of Block Development and Panchayat Officer, Additional Deputy Commissioner and Deputy Commissioner and through any other expedient manner deemed proper.....

3. It is also admitted that petitioner No.1 received the notice on 6.9.2011, while petitioner No.2 on 2.9.2011.

4. Counsel for the petitioners has argued that the requirement of the aforesaid rule having not been met, the entire subsequent proceedings are vitiated.

5. Counsel for the private respondents has, however, laid emphasis on the phrase "issue notice" in rule 10 (supra) and has argued that the relevant date would be the "date of issuance", and since the meeting was fixed on the 9th date after the issuance of the notice, it would be within the parameters of the law. Even in the written statement of the official respondents, the plea taken is that it is not the date of "service of notice" but the date of "issuance of notice" would be relevant.

6. Counsel for the petitioner has relied upon *The Northern India Caterers Private Ltd. Vs. The State of Punjab and Another*, wherein a Full Bench of this Court was construing Section 4 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959. Section 4 of the said Act reads thus :

"4. Section 4 deals with the procedure and manner of issuing notice to show cause against order of eviction.-

(1) If the Collector is of opinion that any persons are in unauthorized occupation of any public premises situate within his jurisdiction and that they should be evicted, the Collector shall issue in the manner herein after provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

(2) The notice shall

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the public premises, to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date of issue thereof.....

7. It would be seen that the expression used in the aforesaid Act was also "issuance" and not "service". After discussing the law on the subject, their Lordships in *The Northern India Caterers Private Ltd's case* (supra), held as follows :

34. I am inclined to hold that the notice served in this case upon petitioner no.1 is bad as it was short by one day. The intention of the Legislature appears to be to give notice of at least ten clear days which has not been done. But this error is of inconsequential nature for purposes of this petition. No rule of justice has been violated and in consequence of short notice no injury has resulted. I would in the circumstances overlook the short notice.

8. On the strength of the above judgment, counsel for the respondents have

vehemently argued that even after holding as above, the Hon''ble Full Bench was pleased to dismiss the writ petition on the ground that no injury had occasioned to the petitioners therein.

9. I am afraid the above argument would not apply in the present case since in The Northern India Caterers Private Ltd's case (supra) the petitioners therein had got stay of the proceedings and that is why their Lordships held that no injury had occasioned to the petitioners but in the present case no confidence motion has already been carried out.

10. In this view of the matter, it has to be held that in the present case the notice was short. In fact, intriguingly today another case of similar nature was fixed before this Court bearing CWP No.19725 of 2011 where also a similarly situated President of the Zila Parishad was sought to be removed by a similar no confidence motion. The State had filed a reply therein accepting the fact that the notice was short and that they intended to withdraw the notice and to proceed afresh in accordance with law against the petitioners therein. In my considered opinion that would have been the appropriate stand to have been taken in this case also. Consequently, this writ petition is allowed and the proceedings of no confidence motion taken against the petitioners are set aside while leaving it open to the official respondents to again take action on the requisition submitted by the private respondents, in accordance with law, within a period of two months. No costs.