
(2013) 02 P&H CK 0052

In the Punjab And Haryana At Chandigarh

Case No : CWP Nos. 15125 and 19532 of 2012

Sanjeev Kumar Verma

APPELLANT

Vs

The Director, Urban Local Bodies and Others

RESPONDENT

Date of Decision : 06-02-2013

Acts Referred:

Citation : (2013) 170 PLR 142

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Judgement

Rameshwar Singh Malik, J.—The present writ petition is directed against the notice dated 17.7.2012 (Annexure P-3) issued to the petitioner u/s 21 of the Haryana Municipal Act, 1973 ("the Act" for short) regarding "No Confidence Motion" and also the resolution dated 3.8.2012 (Annexure P-4), vide which "No Confidence Motion" was passed against the petitioner as President of the Municipal Committee, Naraingarh. The second writ petition filed by the petitioner bearing CWP No. 19532 of 2012 is against giving charge of the post of President, Municipal Committee, Naraingarh, to its Vice President-respondent No. 4. Since these two writ petitions have been filed by the same petitioner, the primary issue involved is regarding his removal from the post of President, Municipal Committee, Naraingarh, consequent upon "No Confidence Motion" having been passed against the petitioner, both these writ petitions are being decided together. However, for the facility of reference, facts are being culled out from CWP No. 15125 of 2012.

2. Brief facts of the case are that the petitioner was elected as Member of Municipal Committee, Naraingarh and thereafter the election was notified vide Annexure P-1 dated 22.5.2010. As per notification (Annexure P-1), there were total 13 members of Municipal Committee. Consequent upon the impugned agenda, notice dated 17.7.2012 (Annexure P-3) having been issued, a "No Confidence Motion" came to be passed against the petitioner by nine members, who constituted 2/3rd majority of the total 13 elected members, thereby

removing the petitioner from the post of President, Municipal Committee, Naraingarh. "No Confidence Motion" came to be passed in the meeting held on 3.8.2012 and the copy of impugned resolution is appended at Annexure P-4.

3. Feeling aggrieved against the above-said notice (Annexure P-3) u/s 21 of the Act and also the impugned resolution dated 3.8.2012 (Annexure P-4), petitioner has approached this Court by way of instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari for quashing the impugned notice (Annexure P-3) and the resolution (Annexure P-4).

4. Notice of motion was issued by this Court on 8.8.2012, passing the following order:-

As per the counsel, out of 15 members, only 9 members have voted for "No Confidence". It would not be two-third of total number of members.

Notice of motion for 1.10.2012.

Till further orders, respondents are restrained from holding the election for filling up the post of President of Municipal Committee, Naraingarh.

5. In compliance of the above-said order passed by this Court, a joint written statement dated 5.12.2012 on behalf of respondents Nos. 1 to 4 was filed and a separate written statement dated 30.9.2012 was filed on behalf of respondent No. 5. However, a detailed written statement dated 6.12.2012 was again filed on behalf of respondent No. 5. Since filling up the post of President of Municipal Committee, Naraingarh, was stayed by this Court vide the above-said order dated 8.8.2012, the charge was given to the Vice President of the Municipal Committee. Challenging this action at the hands of respondent authorities, petitioner filed another CWP No. 19532 of 2012, wherein notice of motion was issued and it was ordered to be heard with this Writ Petition No. 15125 of 2012. Written statement has been filed on behalf of respondent No. 3-Municipal Committee in CWP No. 19532 of 2012 also. That is how, this Court is seized of the matter and both these petitions are being decided together.

6. Learned counsel for the petitioner submits that 2/3rd majority of the members was not available in the present case to pass the "No Confidence Motion". He further submits that for the purpose of carrying "No Confidence Motion" against the petitioner, the total number of members were 15 including the Member of Parliament and Member of Legislative Assembly. For the purpose of constituting 2/3rd majority, ten members were required, whereas the impugned resolution (Annexure P-4) has been passed only by nine members, treating them to be constituting 2/3rd majority of the 13 elected members only. He next contended that the writ petition deserves to be allowed as the case of the petitioner was squarely covered by the two Full Bench judgments of this Court in Raj Pal Chhabra Vs. State of Haryana and Others, and Krishan Kumar Singla Vs. The State of Haryana and Others, .

7. Per contra, learned counsel for the State submits that the writ petition was

wholly misconceived and was liable to be dismissed. He further submits that for the purpose of passing "No Confidence Motion" against the President or Vice President of the Municipal Committee, 2/3rd majority was required only of the elected members. The Member of Parliament and Member of Legislative Assembly, being admittedly the nominated members, have to be excluded from the total members of the Municipal Committee for the purpose of "No Confidence Motion". Referring to the legislative intent, he next contended that there was not even a passing reference of Section 13B of the Act, which came to be inserted vide Haryana Municipal Act No. 13 of 1997 in either of the Full Bench judgments. Learned counsel for the State also submits that when the provisions of Section 9(1) and (3), Section 13B and Section 21(3) of the Act are read together with the judgment of the Hon"ble Supreme Court in Ramesh Mehta Vs. Sanwal Chand Singhvi and Others, , it becomes clear that it would be only the elected members whose number would be counted. In the present case, for the purpose of considering "No Confidence Motion" the total number of elected members was 13 only. M.P. and M.L.A., who were admittedly nominated members, will not be added to the 13 elected members for the purpose of considering "No Confidence Motion". The resolution (Annexure P-4) has been passed by nine members, who constituted 2/3rd majority of 13 elected members, which was the requirement of law. He concluded by submitting that since there is no challenge to the constitutional validity of the amended and newly inserted provisions of law, the writ petition was liable to be dismissed.

8. Learned counsel for respondent No. 5 as well as learned counsel for respondents Nos. 6 to 14, while supporting the contentions raised by the learned counsel for the State, submit that petitioner, as a matter of fact, lost the confidence of the 2/3rd elected members of the Municipal Committee. "No Confidence Motion" was rightly carried out against the petitioner, strictly in accordance with law. Finally, they pray for dismissal of the writ petition.

9. Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that the present one is not a case warranting interference at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India. To say so, reasons are more than one, which are being recorded hereinafter.

10. It is the conceded position that the constitutional validity of either the amended or newly added provisions of the Act, is not under challenge in either of these two writ petitions. In view of the above narration of facts, twin questions of law that fall for consideration of this Court are, (i) whether 2/3rd majority for the purpose of carrying a "No Confidence Motion", u/s 21 of the Act would be 2/3rd majority of only the elected members? (ii) whether nine members would constitute 2/3rd majority of 13 elected members and the resolution (Annexure P-4) would be valid or the number of members was required as 10 to constitute

2/3rd majority of 15 members, including therein 13 elected members plus 2 members nominated u/s 9(3)(ii) of the Act.

11. Since the controversy involved herein revolves around Section 9, 13B and 21 of the Act, it would be appropriate to reproduce these Sections for ready reference and the same read as under:-

Section 9 - Composition of Municipalities--[(1) The municipalities constituted u/s 2A shall consist of such number of elected members not less than eleven as may be prescribed by rules.

(2) Save as provided in sub-section (3), 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, the State Government shall, by notification in the Official Gazette, nominate the following categories of persons as members of a municipality:-

{(i) not more than three persons in case of Municipal Council and not more than two persons in case of Municipal Committee 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 comprise 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 right to vote in the meetings of the municipalities and the persons referred to in clauses (ii) and (iii) shall not have any right to contest for the election of president or {vice-president}:}

Provided further that the Executive Officer in the case of a Municipal Council and the Secretary in the case of a 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.]

Section 13B - Restriction on simultaneous or double Membership [(1) No person shall be an elected member of Committee, member of Legislative Assembly of the State or member of Parliament simultaneously.

(2) 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.]

Section 21 - Motion of no-confidence 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 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.

(3) If the motion is carried with the support of [not less than two-thirds of the elected 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 no-confidence 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 of a president is notified or a vice-president is elected.

(5) A meeting referred to in sub-section (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.

12. It is the admitted position on record that in the present case, elected members were 13 as per notification dated 22.5.2010 (Annexure P-1) and petitioner was one of them. Two members came to be nominated u/s 9(1)(ii), who were the members of House of People and the Legislative Assembly of the State representing the constituencies, which comprise wholly or partly the municipal area of Naraingarh. If the total number of members for the purpose of carrying out "No Confidence Motion" is to be inclusive of the two nominated members u/s 9(1)(ii), then the total number of the members would be 15 and 10 members would constitute 2/3rd majority.

13. Thus, the crucial issue is whether, as per the requirement of law, it is only the elected members whose 2/3rd majority would be required. The number of elected members was admittedly 13 and the impugned resolution has been passed by 9 members, who constituted 2/3rd majority of the elected members. During the course of arguments, it has been conceded at the bar that Section 13B, which came to be inserted in the Act vide Haryana Act No. 13 of 1997 was not the subject matter of consideration before either of the Full Bench judgments of this Court in Raj Pal Chhabra's case (supra) or Krishan Kumar Singla's case (supra).

14. Further, learned counsel for the petitioner did not lay much stress either on the impugned agenda dated 17.7.2012 (Annexure P-3) or Rule 72 A of the Haryana Municipal Election Rules, 1978, and rightly so because the case ultimately hinges on the interpretation of Rule, 9, 13-B and 21 of the Act, put together, coupled with the above-said two Full Bench judgments of this Court and

the judgment of the Hon''ble Supreme Court in Ramesh Mehta's case (supra).

15. Taking the first question first, the Hon''ble Supreme Court in Ramesh Mehta's case (supra) has drawn a clear distinction between an elected member and nominated member. The issue involved before the Hon''ble Supreme Court in Ramesh Mehta's case (supra) was also exactly the same as involved in the present case. "No Confidence Motion" was carried out as the total number of members of the Board, excluding the nominated members, was 21 and 2/3rd thereof was 14, against which 15 members voted for motion. According to appellant Ramesh Mehta, the decision of SDO was erroneous. The total members of the Board were 23 including the Member of Parliament and Member of Legislative Assembly and 15 members would not constitute 2/3rd majority for carrying out the "No Confidence Motion" against him.

16. The Division Bench of Rajasthan High Court took the view that expression whole number of members used in Rule 3(9) of the Rajasthan Municipalities (Motion of No-Confidence Against Chairman or Vice-Chairman) Rules 1974 excluded nominated members. Thus, feeling aggrieved Ramesh Mehta approached the Hon''ble Supreme Court. The Hon''ble Supreme Court in para 5 of the judgment compared the amended and unamended provisions of law, which were analogous to the provisions of the Act, relevant in the present case. Further, the ratio of judgment of the Hon''ble Supreme Court in Ramesh Mehta's case (supra) squarely covers the issue in hand.

17. The whole thrust of the learned counsel for the petitioner was on the law enunciated by the two Full Bench judgments of this Court in Raj Pal Chhabra's case (supra) and Krishan Kumar Singla's case (supra). He emphasised on the conclusion arrived at by the Full Bench in Krishan Kumar Singla's reiterating its earlier views in Raj Pal Chhabra's case (supra) The Full Bench included two members nominated u/s 9(1)(ii) of the Act in total number of members for the purpose of carrying out "No Confidence Motion" and concluded in paras 27 to 29 of its judgment in Krishan Kumar Singla's case (supra), as under:-

27. Having answering the question of law as afore-stated, we would apply the principles of Raj Pal Chhabra's case and the principles enunciated above, to the facts of the case in hand.

28. As far as the case of Krishan Kumar Singla is concerned, there are admittedly 31 elected members, 3 nominated members and 2 ex-officio members, as indicated in the order of reference. The "no confidence motion" against the petitioner was passed on 5.5.1997 under the chairmanship of the City Magistrate, Hisar. Out of the 31 elected members, 21 members voted in favour of the motion. Resultantly, it was declared that the motion is carried and the petitioner was, thus, removed from his office by virtue of no confidence motion against him having been passed. Obvious contentions, according to the petitioner, are that the resolution had not been passed by 2/3rd majority of the elected members while according to the respondents the motion has been carried

by requisite majority and, therefore, is a valid and effective resolution.

29. We have already held that the amendments made in the Act from time to time are prospective and would operate during the tenure for which such President or Vice-President remain elected. There were 31 elected members and 2 so called ex-officio members, who in fact are the elected members to a much larger constituency. They are entitled to and have the right to vote in such a meeting as per the principles enunciated above and in Raj Pal Chhabra's case. The total members being 33, 2/3rd of the same is 22. The resolution was passed by 21 members. As such the resolution dated 5.5.1997 has not been passed by the requisite majority within the meaning and scope of Section 21(3) of the Act. Consequently, C.W.P. No. 6404 of 1997 is allowed and the resolution dated 5.5.1997 is hereby quashed.

18. However, when the similar issue came up before the Hon''ble Supreme Court in Ramesh Mehta's case (supra), Hon''ble the Supreme Court in paras 8 and 9 of the judgment observed as under:-

The question involved in the present civil appeals is whether nominated members in a municipal board are to be counted for calculating the majority required for carrying a no confidence motion against a chairman/vice-chairman of the board.

At the outset, we may notice the legal position prior to 1994. Section 3, which is a definition section, begins with the words "unless the context otherwise requires". Section 3(36) defines the expression "whole number" or "total number" to mean total number of members holding the office at the time. u/s 72 read with section 274 of the said Act, the State Government enacted the 1974 Rules, which have remained unchanged till date. Rule 3 prescribes procedure for passing no-confidence motion. Rule 3(5) states that no meeting for consideration of no-confidence motion shall be held unless the quorum of 1/3rd of the whole number of members is present. Rule 3(8) states that if the motion is not carried by 2/3rd majority of the whole number of members or if any meeting cannot be held for want of quorum, the motion of no confidence against the chairman/vice-chairman shall be deemed to have been lost. Rule 3(9) states that if the motion is carried by a majority of 2/3rd of the whole number of members, the motion shall be deemed to have been passed. Section 9(4) dealt with co-option of two members. Under clause (ii) of Sub-section (5) of section 9, the co-opted members had a right to vote on all motions and accordingly they were put on par with elected members. u/s 65(9) of the Act, the office of the chairman/vice-chairman stood vacated as and when no confidence motion was passed by a majority of "the whole number of members" and conversely if the motion was not carried by a majority, such motion would fail. Reading the above provisions of the un-amended Act and the 1974 Rules, it is clear that even prior to 1994 the legislative intent was that the chairman/vice-chairman had to vacate his office on passing of no-confidence motion by requisite majority of members who had the right to vote, which included the co-opted members. In Law and Practice of Meetings by Shackleton [8th Edition Page-66] while explaining the word

"Majority" the learned author states that in legislative assemblies it is usual to decide the questions by a majority of those who have voting rights. The learned author, further states, that in cases where a motion is to be determined by a majority consisting of 2/3rd of the votes, the word "majority" would mean majority of persons entitled to vote on the proposal and once the motion is voted upon by the requisite majority, it becomes resolution of the meeting. Therefore, the word "majority" would mean majority of persons entitled to vote. In the present case, the word "majority" finds place in sections 65(9) and 72(9) of the Act prior to amendment. Therefore, even prior to 1994 amendment of the Act, the legislature intended that the chairman/Vice-Chairman of the municipal board shall be removed only by a requisite majority of members having right to vote on the motion. We are, therefore of the view that even prior to 1994, the words "whole number of members" under rule 3 of the 1974 Rules meant total number of members who have voting rights.

19. After the elaborate discussion on the issue, the Hon'ble Supreme court held in para 11 of the judgment, as under:-

11. In the present case, on facts, we are concerned with post 1994 position. Article 243-R brought about a drastic change in the matter of composition of municipalities. It lays down guidelines with regard to the constitution, composition, election and rights of the members of a municipality. Under the said Act, members of a municipality are persons chosen by direct election by the residents of a municipal area (ward). Article 243R(2)(a)(i) allows the legislature of a State to appoint any person as a member of the board who has special knowledge in the field of municipal administration, however, the proviso appended to the said Article precludes persons nominated under sub-clause (i) from having a right to vote in the meetings of the municipality. The Constitution, therefore, makes a distinction between elected members and nominated members who play essentially an advisory role. Pursuant to the 74th Constitutional amendment of 1994, sections 9, 65 and 72 of the Act were amended. Prior to the amendment the co-opted members were at par with the elected members, however, after 1994 only elected members and members of the legislative assembly have a right to vote u/s 9(1) of the Act. Under sub-section (2) of section 65, as amended, the Chairman has to be elected by "elected members of the board". This change is very important. Prior to 1994, the Chairman was to be elected by the "members of the board", which is the phrase used in the unamended section 65(2), as the co-opted members had a right to vote. However, in 1994, section 65(2) of the Act was amended and the expression "members of the board" in the old section is substituted by the expression "elected members of the board". In fact, the expression "whole number of members" earlier appearing in sections 65 and 72 of the Act have been deleted because in section 65(2) it is expressly provided that the Chairman shall be elected only by elected members of the board from amongst themselves. Therefore, the scheme of post 1994 Act is that the chairman/vice-chairman shall be elected by the elected members of the boards and their office shall stand

vacated on passing of no confidence motion by the elected members of the board. The position which, therefore, emerges is that both before and after 1994, the no-confidence motion had to be voted upon by members who were entitled to vote. As stated above, section 3 of the Act begins with the words "unless the context otherwise requires". Section 3(36) defines the expression "whole number"/"total number" to mean total number of members holding the office at the given time. The said expression "whole number of members" finds place in rule 3(5), (8) and (9). Hence, we have to read rule 3(5), (8) and (9) in the context of the provisions of the said Act. As stated above, the basic scheme of the Act prior to 1994 and post 1994 has remained unchanged. In both cases, the legislative intent has been that the office of the chairman/vice-chairman shall stand vacated on passing of no-confidence motion by the members of the board who are entitled to vote. Hence, in our view, the expression "whole number" or "total number" connotes the "total number of elected members."

20. A combined reading of the two Full Bench judgments of this Court in Raj Pal Chhabra's case (supra) as well as Krishan Kumar Singla's case (supra) and the judgment of the Hon'ble Supreme Court in Ramesh Mehta's case (supra), leaves no manner of doubt that the answer to the first question posed above has to be an emphatic yes. Having said that this Court feels no hesitation to hold that for the purpose of carrying out "No Confidence Motion", 2/3rd majority would be required of only the elected members, as envisaged u/s 21(3) of the Act. Consequently, the answer to second question posed above is that the impugned resolution (Annexure P-4) was valid having been passed by nine members, who constituted 2/3rd majority of the 13 elected members.

21. Considering the provisions of Section 9, 13B and 21 of the Act together, coupled with the judgment of the Hon'ble Supreme Court in Ramesh Mehta's case (supra), it is unhesitatingly held that the only purposeful and harmonious construction of the provisions is that the members nominated u/s 9(1)(ii) will not be counted towards total number of elected members.

22. Respectfully following the law laid down by the Hon'ble Supreme Court and also giving due regard to the legislative intent, this Court is of the considered view that "No Confidence Motion" has been carried out against the petitioner, as per the requirement of law. The judgment of the Hon'ble Supreme Court squarely covers the issue involved in the present case.

23. It is equally important to note that constitutional validity of the provisions of Section 9, 13-B and 21 is not under challenge in these writ petitions. Section 13-B was not the subject matter of consideration before either of the Full Benches of this Court in Raj Pal Chhabra's case (supra) and Krishan Kumar Singla's case (supra). If the legislature was making its intention crystal clear, while repeatedly emphasising on the words "elected member", it would not be appropriate to exclude the legislative intent holding it to the contrary. Thus, to include the members nominated u/s 9(1)(ii) of the Act, in the category of elected members for the purpose of counting total number of members for considering "No

Confidence Motion" will run counter to the true spirit of legislative intent in framing these relevant provisions of law. In this view of the matter, the impugned resolution (Annexure P-4) has not been found to be suffering from any illegality.

24. No other argument was raised.

25. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered opinion that both these writ petitions are misconceived, bereft of any merit and without any substance, thus, these must fail. No case for interference has been made out. Resultantly, both the writ petitions are ordered to be dismissed, however, with no order as to costs.