
(2020) 01 P&H CK 0203

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 20472 Of 2018

Sheela Sehgal

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 10-01-2020

Acts Referred:

Haryana Municipal Act, 1973 — Section 21

Haryana Municipal Election Rules, 1978 — Rule 72A

Citation : (2020) 01 P&H CK 0203

Hon'ble Judges : Daya Chaudhary, J; Meenakshi I. Mehta, J

Bench : Division Bench

Advocate : Chanchal K. Singla, S. S. Pannu, Vishal Garg, Balraj S. Rathee, Gaurav Aggarwal

Final Decision : Dismissed

Judgement

Daya Chaudhary, J

Petitioner has approached this Court with the prayer for quashing of proceedings dated 01.08.2018 (Annexure P-5) whereby 'No Confidence Motion' dated 19.06.2018 has been moved against the petitioner by some of the Councillors.

Petitioner was elected as Councillor from Ward No.16, Sirsa and thereafter he was elected as President. 'No Confidence Motion' was moved by some of the Councillors from different wards. There were total 31 elected Councillors and 'No Confidence Motion' was moved by some of the Councillors by putting their signatures showing themselves to be 2/3rd of the total. Respondent No.3 - Sub Divisional Officer, Sirsa (Civil) convened a meeting by circulating a letter dated 26.06.2018 by annexing the list of the Councillors who had signed 'No Confidence Motion'. The meeting could not be convened on 12.07.2018 due to non-availability of the SDO (Civil), Sirsa and thereafter it was convened on 01.08.2018. As per the case of the petitioner, 'No Confidence Motion' was moved by 20 Members, which was clear from the signatures of the Councillors. For moving 'No Confidence Motion', 2/3rd Councillors were required. For showing

2/3rd majority of the total number of Councillors, one Councillor from Ward No.30 had been shown to have signed the document at two places. Petitioner filed CWP No.16656 of 2018, however, that petition was dismissed vide order dated 11.07.2018 by this Court being premature. Thereafter, the present petition was filed to challenge proceedings dated 01.08.2018 (Annexure P-5), whereby 'No Confidence Motion' was passed against the petitioner.

Learned counsel for the petitioner submits that conduct of the official authorities was not only unlawful and illegal but mala fide also just to remove the petitioner from the office of the President. One Councillor namely Renu Bala had signed at two different places. It was done just to make the number of Councillors to be 2/3rd of the total strength. Learned counsel also submits that said Renu Bala Councillor had put her signature against Ward No.30 twice i.e. once by putting her proper stamp and thereafter by rotating her stamp, to show as if she was the Councillor from Ward No.03. It was done just to show the strength of the Councillors to be 2/3rd. Learned counsel also submits that respondent No.3 (Sub Divisional Officer (Civil), Sirsa) called the meeting, which was totally illegal and contrary to the provisions as required for calling the meeting of 'No Confidence Motion'. Learned counsel also submits that the impugned letter Annexure P-1 is totally violative of Section 21 of the Haryana Municipal Act, 1973. As per the requirement of the law, the 'No Confidence Motion' can be carried out by minimum of 2/3rd of total strength of the Councillors. The objections were filed by the petitioner but those objections were not considered. All this exercise has been done just to remove the petitioner from the office of President of the Municipal Council. Learned counsel further submits that notice of calling meeting of 'No Confidence Motion', should have been sent to all the Members of the Municipal Council and for calling the second meeting of 'No Confidence Motion', a period of six months was required, whereas the period of six months was not there between the first and the second meeting. In support of his arguments, learned counsel for the petitioner has placed reliance upon the judgments of this Court rendered in cases Sanjeev Kumar Verma Vs. Director, Urban Local Bodies, Chandigarh and others, 2015(1) R.C.R. (Civil) 991, Sukhbir Singh Vs. State of Haryana 1996(3) R.C.R. (Civil) 103, Budho Devi Vs. Deputy Commissioner, Gurgaon 1998(4) R.C.R. (Civil) 80 and Ranbir Singh Vs. State of Haryana and others 2011(1) R.C.R. (Civil) 681.

Learned counsel for respondents No.1 to 3 has opposed the submissions made by learned counsel for the petitioner. He submits that 'No Confidence Motion' was signed by 20 Councillors. A wrong impression has been taken because of the reason of signing by a Councillor namely Renu Bala and two Councillors with the same name Renu Bala are there. A specific affidavit was filed by each Member and on getting their affidavits, it cannot be said that the 'No Confidence Motion' was not signed by 1/3rd of the total strength. Initially the meeting was called on 12.07.2018 but the same could not take place as the Presiding Officer i.e. SDO (Civil), Sirsa was not available on that day. Thereafter, it was called on 01.08.2018. The 'No Confidence Motion' was carried out with 2/3rd majority as

total 22 votes were in support of the 'No Confidence Motion'.

Learned counsel for respondent No.4 has also opposed the submissions made by learned counsel for the petitioner. He submits that for moving motion for no confidence against the President or Vice President, the number of Councillors should be 1/3rd of the total Members of the Council and for passing 'No Confidence Motion', 2/3rd strength of the total Members of the Council is required. The proceedings were taken as per provisions of the relevant Act and Rules and videography was also conducted.

Heard arguments of learned counsel for the parties. We have also perused proceedings dated 01.08.2018 (Annexure P-5) and other documents on the file.

Facts relating to number of Councillors, moving 'No Confidence Motion' convening the meeting by respondent No.4 are not disputed. Section 21 of the Haryana Municipal Act, 1973 and Rule 72-A of the Haryana Municipal Election Rules, 1978 are relevant for the controversy in hand, which are reproduced as under : -

"Section 21. Motion of no confidence against President or Vice- President. -

(1) 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 authorised, 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."

"Rule 72-A. No confidence motion against President or Vice-President.-

(1) A motion of no confidence against the President or Vice-President of a Committee may be made through a requisition given in writing addressed to the Deputy Commissioner, signed by not less than one third of the total number of the members of Committee:

Provided that the members who have made such a motion may withdraw the

same before the meeting is convened for the purpose.

(2) The Deputy Commissioner or such other officer not below the rank of an Extra Assistant Commissioner, as the Deputy Commissioner may authorise, shall circulate to each member a copy of the requisition for the use of the members.

(3) The Deputy Commissioner or such other not below the rank of Extra Assistant Commissioner, as the Deputy Commissioner may authorise, shall convene a special meeting by giving a notice of not less than fifteen days for the consideration of the motion referred to in sub-rule (1), and shall preside over at such meeting.

Provided that no such meeting for the purpose shall be convened unless a period of six months has elapsed since the date of last meeting convened for this purpose.

(4) If the motion is carried out with the support of not less than two-third of the members of the committee, the President or Vice-President, as the case may be, shall be deemed to have vacated his office."

As per provisions of Act 1973, 2/3rd of the elected Members of the Municipal Council, which comes to be 21 out of total 31 was required for passing 'No Confidence Motion'. The confusion was there because two Councillors were there with the same name of Renu Bala. It might be an inadvertent mistake that one Renu Bala Councillor has signed by seeing her name at two different places but when all the Councillors have filed their specific affidavits in support of 'No Confidence Motion', it cannot be said that 2/3rd strength of total Members of Municipal committee were not in favour of 'No Confidence Motion'. As per provisions of Rule 72-A, the 'No Confidence Motion' against the President or Vice President can be made through a written request given to the Deputy Commissioner by not less than 1/3rd Members. In the present case, the motion was moved by 21 Councillors vide letter dated 19.06.2018 before the Deputy Commissioner,

Sirsa. The Executive Officer of Municipal Council, Sirsa was directed by the Sub Divisional Officer (Civil) (respondent No.3) to ensure about the attending of meeting dated 01.08.2018 after due identification. Thereafter, a letter was stated to be sent to make arrangement by deputing a videographer, polling compartment and other material for polling of the votes along with computer as mentioned in the written statement filed by respondent No.4.

It cannot be said that the motion was not signed by 2/3rd of the total strength. The confusion, which has been created was due to putting signatures by one Councillor namely Renu Bala at two different places as is clear from the affidavits filed by 21 Councillors. Moreover, two Councillors with the name of Renu Bala were from different Wards, one is from Ward No.18 and other is from Ward No.30. Moreover, 'No Confidence Motion' was passed by 2/3rd Members of the Municipal Council. It is apparent that for removal of President from his/her office

by carrying out of 'No Confidence Motion', 1/3rd of the total strength of the Members is required for initiating 'No Confidence Motion' and for passing 'No Confidence Motion', 2/3rd of the total strength is required. It is cleared that the procedure for conducting of business, for convening special meeting or for removal of President, the requirement is 2/3rd of the total Members. The President of the Municipal Council can be removed from the Office by passing a resolution of no confidence by 2/3rd Members of the total strength. The arguments raised by learned counsel for the petitioner that for calling the second meeting of 'No Confidence Motion', a period of six months is required, whereas the period of six months was not there between the first and the second meeting, does not carry any weight as it cannot be said to be the second meeting as the first meeting was adjourned as the Presiding Officer was not available. The judgment relied by learned counsel for the petitioner are not applicable to the facts and circumstances of the case. The dispute with the identity of one of the Councillor, who signed at two different places, is not required to be determined as strength was much more than 1/3rd.

In view of the facts as mentioned above and the legal position, we do not find any merit in the contentions raised by learned counsel for the petitioner and the present petition, being devoid of any merit, is hereby dismissed.