
(2012) 09 P&H CK 0112
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 19279 of 2012

Smt. Darshna Devi

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 26-09-2012

Acts Referred:

Punjab Municipal Act, 1911 — Section 22

Citation : (2013) 169 PLR 134 : (2013) 2 RCR(Civil) 821

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Advocate : P.S. Khurana, for the Appellant;

Final Decision : Dismissed

Judgement

Ranjit Singh, J.—Being aggrieved against his removal upon passing a No Confidence Motion, the petitioner, President of Municipal Council, Bhuchho Mandi, District Bhatinda, has filed this writ petition to impugn the said order. As averred in the petition, the Municipal Council, Bhuchho Mandi, consists of 13 Members. In the meeting of the House held on 20.7.2012, 11 Members, including the petitioner, successfully conducted the business of the Council and there was no difference of opinion amongst them. Merely 4 days thereafter, as per the petitioner, the things drastically changed, which he would attribute to some manipulation on the part of respondent No. 6. On 24.7.2012, a notice for No Confidence Motion was served, on receipt of which the petitioner fixed the meeting to consider this motion on 1.8.2012. This was also circulated by the Executive Officer. The petitioner, however, would blame respondent No. 6 for convening and presiding over a meeting on the same day i.e. 24.7.2012 and has recorded that "No Confidence Motion" was carried against the petitioner. Thereafter, respondent No. 6 got himself elected as President. This, according to the petitioner, was in contravention of the Rules.

2. Respondent No. 6 has started functioning and showing himself to be as the President. The petitioner accordingly had approached this Court by way of Civil

Writ Petition No. 14575 of 2012, in which notice of motion was issued. Thereafter, the petitioner moved a miscellaneous application withdrawing the said writ petition with liberty to file a fresh one, which was granted on 13.8.2012.

3. On 27.8.2012, the petitioner submitted a detailed reply before respondent No. 1 as show cause was issued to him for removal. A notification dated 17.9.2012 was then issued, de-notifying the name of the petitioner from the post of President of the Council. The petitioner has now impugned this order. The petitioner terms this order to be non-speaking, laconic in nature, giving no reasons for his removal.

4. The petitioner has primarily raised two grounds to impugn his removal. He would first contend that notice issued for No Confidence Motion was considered on the same day and as such, time was not given to the petitioner to respond to the same. As per the counsel, it is mandatory to record reasons for removal of the President, which the impugned order and notification do not contain. The plea is that this has been done only to complete the formalities.

5. The counsel could not point out to any provision whereby any period is provided in the Act for fixing a date for considering the No Confidence Motion. The counsel concedes this position during the course of his arguments. The counsel for the petitioner thereafter pressed his submission that the order does not contain any reasons and that such a punitive order can not be sustained as it may leave stigma and a serious civil consequences to bear.

6. I have perused the show cause notice and the reply given by the petitioner, which is in detail. The reply of the petitioner would clearly show that he was fully aware and conscious of the reasons for which the notice was issued to him for his removal and that was the passing of "No Confidence Motion" against him. The petitioner fully responded to this aspect in his reply, which is quite elaborate. It is, thus, clear that the petitioner was fully aware of the reasons behind his removal and had effectively presented his side in his reply.

7. Even if it is assumed for the sake of arguments that the reasons about the removal of the petitioner are not fully reflected in the show cause notice, it would not, in my view, make a substantial difference as the petitioner possibly has no reasonable plea to contest the passing of "No Confidence Motion" and if he has one, he could advance the same before this Court. What possible explanation the petitioner can have against his removal, when it is based on a valid "No Confidence Motion" passed against him?

8. Counsel for the petitioner seeks support from the ratio of law laid down in Tarlochan Dev Sharma Vs. State of Punjab and Others, No doubt, in this case the Court has held that proviso to Section 22 of the Punjab Municipal Act, 1911 (for short, "the Act"), requires that reasons for the proposed removal shall be communicated to the person concerned and he shall be given 21 days for explanation in writing. The Hon"ble Supreme Court has made such observations in the background that order of removal was being passed as a punitive measure

and not in such like situation where the removal was consequent to passing of a "No Confidence Motion".

9. Section 22 of the Act makes an enabling provision for removal of a President and Vice President by way of different methods. The removal will result, whenever a President or Vice President vacates his seat or tenders in writing to the Committee his resignation of his office. In that event also, he shall vacate his office. A further provision for removal of a President and Vice President from office can be by the State Government on the ground of abuse of his powers or of habitual failure to perform his duties or in pursuance of a resolution requesting his removal passed by 2/3rd of the Members of the Committee. Thus, there are more than one modes for removing a President or Vice President. There are two provisos under the Section, one of which is regarding the removal when it results on account of passing of a "No Confidence Motion". To understand this provision and how it will operate in different fields, when issue of removal is to be considered, it will be of benefit to notice the provisions of the said Section, which are:-

22. Resignation or removal of President and Vice-President - Wherever 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 abuse of his powers or of 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 two thirds 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 dispatch of the said registered letter, the [State] Government may proceed to notify his removal.]

10. The first proviso would relate to a situation, where there is a resolution for requesting the removal of a President or Vice President, which is passed by 2/3rd Members of the Committee. In that event, the President or Vice President shall be deemed to be under suspension immediately after such resolution is passed. The second proviso apparently would be relevant, when the removal is to take place, consequent to the other modes provided under the Section. This proviso makes a provision, requiring of the State Government to communicate to the President or Vice President sought to be removed by means of a registered letter,

the reasons for his proposed removal before such removal is notified, calling upon him to tender within 21 days an explanation in writing and if no such explanation is received within this period, then the Government may proceed to notify his removal. In a case, where removal is to take place on account of passing of No Confidence Motion, the reasons are very well obvious and would always be in the knowledge and notice of the persons sought to be removed. That is how the petitioner was well aware about the cause of his proposed removal on account of "No Confidence Motion" having been passed against him by 2/3rd of the Members, to which he has given his explanation on whatever grounds he thought appropriate. Thereafter his removal was notified. In this case, the petitioner may not be able to justify that he has been caught by surprise in any manner and, thus, can not plead that he was not aware of the reasons for which he was issued show cause notice for his removal. There may be a reason to issue show cause notice containing detailed reasons for removal when such removal is sought to be ordered on the ground of abuse of his powers or habitual failure to perform duties so as to enable the effected persons to effectively respond. In the case of Tarlochan Dev Sharma (Supra), the Hon'ble Supreme Court was dealing with the situation where removal was on those grounds and went on to observe that term "abuse of power" in the context and setting as is used in Section 22 of the Act is a stigma having effect of disqualifying a person from contesting the office of Councillor. The order of removal was also based on subsequent events and so it is held that the petitioner was deprived of giving his explanation to the charge proved against him and so the order of removal in the said case was held liable to be quashed being violative of principles of natural justice. The ratio of law as laid down in this case would not strictly apply to the facts of the present case. There is a valid No Confidence Motion passed against the petitioner. Such stigma may not be in case of removal by "No Confidence Motion". The petitioner continues as Councillor. He has been removed as President. The petitioner has not been able to show any prejudice, which may have been caused to him. I am, therefore, not inclined to invoke my jurisdiction to interfere in the impugned order passed, removing the petitioner from the post of President.

The writ petition is accordingly dismissed.