

(1996) 05 P&H CK 0160
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4590 of 1996

Sukhbir Singh

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 17-05-1996

Acts Referred:

Haryana Municipal Act, 1973 — Section 21(3)

Citation : (1996) 114 PLR 169 : (1996) 3 RCR(Civil) 103

Hon'ble Judges : S.S. Sudhalkar, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : S.K. Mittal, for the Appellant; R.N. Raina, Dy. A.G., for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—A short but important point which arises for determination in this case is whether the expression "the members of the Committee" used in Section 21 of the Haryana Municipal Act, 1973 (hereinafter referred to as the Act) would include the members nominated by the Government u/s 9(3) of the Act. An ancillary question which would need determination relates to the effect of amendment made in Section 9(3) by the Haryana Municipal (Amendment) Ordinance, 1995 and the Haryana Municipal (Amendment) Act, 1995.

2. Before we deal with the above mentioned questions, it would be useful to refer to the facts on which the parties are not in serious dispute. Petitioner, Sukhbir Singh, was elected as Municipal Commissioner of Municipal Committee, Gharaunda, in December, 1994. He was elected as Vice President of the Municipal Committee, Gharaunda, on 24.2.1995. On a requisition given by some of the members of the Municipal Committee,, Gharaunda, to the Deputy Commissioner, Karnal, u/s 21 of the act read with Rule 72-A of the Haryana Municipal Election Rules, 1978 (hereinafter referred to as the Rules), the Deputy Commissioner appointed the Sub-Divisional Officer (Civil), Karnal, as the Presiding Officer for the meeting to be convened for consideration of "No

Confidence Motion". The Sub Divisional Office (Civil) issued notices to all the 20 members of the Municipal Committee for the meeting to be held on 7.3.1996 at 3.00 P.M. On the appointed day, 18 out of the 20 members of the Committee attended the meeting. These included 15 elected members and 3 nominated members. Ten members voted in favour of the "no- confidence motion" and 5 voted against it. Three nominated members did not cast their vote. The Sub-Divisional Officer (Civil), Karnal, made a declaration at the end of the meeting that the "no-confidence motion" stands passed against the petitioner. He accordingly recorded the proceedings of the meeting held on 7.3.1996. The petitioner has challenged the declaration made by the Sub-Divisional Officer (Civil) on the ground that atleast 2/3rd of the members of the Committee are required to support the "no-confidence motion" before it can be treated as carried out and as only 10 members out of a total of 20 supported the motion of non-confidence, the same cannot be deemed to have been legally carried out.

3. In reply, the respondent Nos. 1 to 4 have placed reliance on the Haryana Municipal (Amendment) Ordinance, 1995, by which a Proviso has been added to Section 9(3) of the Act. The respondents have pleaded that the nominated members are not entitled to vote in the election or removal of President or Vice President of Municipal Committee/Municipal Council and, therefore, these members cannot be counted for the purpose of determination of the 2/3rd majority for the purpose of passing of "non-confidence motion." The respondents have pleaded that the nominated members do-not have locus standi to participate in the process of election or removal of the President or the Vice President and, therefore, the members belonging to this category have to be excluded while counting the total number of members of the Committee and if that is done, the "no-confidence motion" passed by 10 out of total 15 members, who are eligible to cast their vote, constituted 2/3rd majority and the "no-confidence motion" has rightly been declared to have been passed by the requisite majority.

4. The Act of 1973 has been amended by the Haryana Legislature from time to time in order to bring it in tune with the 74th Constitution amendment. Section 2(6) of the Act defines the "Committee" to mean a Municipal Committee or Municipal Council constituted or deemed to have been constituted by or under the Act. Section 2(15-a) defines the term "Municipality". It means an institution of self-government constituted u/s 2-A, which may be a Municipal Committee or a Municipal Council or a Municipal Corporation. Section 3 empowers the Government to declare any local area to be Municipality under the Act. Section 9 of the Act relates to composition of Municipalities. Section 21 deals with the "no-confidence motion" against President or Vice President. Clause (1) of Section 21 lays down that a Motion of no-confidence against President or Vice-President can be brought in accordance with the procedure laid down in the Rule. Clause {3} contains a deeming clause, namely, that the President or the Vice-President shall be deemed to have vacated his office in case "no-confidence motion" is carried out by two-thirds of the member of the Committee. Section 25 prescribes the

time for holding meetings of every Committee. Section 26(1) declares that every meeting of the Committee shall be either ordinary or special. Clauses (2) and (3) of Section 26 specify the business which can be transacted at an ordinary meeting or at a special meeting. Section 27 prescribes the quorum necessary for the transaction of business at special meeting and at any ordinary meeting. The Rules to which reference has been made in Clause (1) of Section 21 are the Haryana Municipal Election Rules, 1978 (for short, the Rules). Rule 72-A has been added to the Rules by the Governor of Haryana vide notification dated 13.9.1995 issued u/s 257(1), (2) and (4) read with Section 276 of the Act. Sections 9, 21(1); (2) (3), and 27 of the Act and Rule 72-A of the Rules are quoted below:-

"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 (2), 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, that 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 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;

(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 the right to vote in the meetings of municipality:

Provided further that the persons referred to in Clauses (ii) and (iii) above shall neither have right to contest nor right to vote in the election or removal of President or Vice-President of municipal Committee or Municipal Council, as the case may be :

Provided further that the Executive Officer in the case of a Municipal Council and the Secretary in the case of Municipal Committee, shall have the right to attend all the meetings of the municipality and to take part in discussion but shall not have the right to vote therein.

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 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 members of the committee, the President or Vice-President, as the case may be, shall be deemed to have vacated his office.

27. Quorum :

(1) The quorum necessary for the transaction of business at a special meeting of a committee shall be one-half of the number of the members of the committee actually serving at the time, but shall not be less than three.

(2) The quorum necessary for the transaction of business at any ordinary meeting of a committee shall be such number or proportion of the members of the committee as may, from time to time, be fixed by the bye-laws, but shall not be less than three :

Provided that, if at any ordinary or special meeting of a committee a quorum is not present, the chairman shall adjourn the meeting to such other day as he may think fit, and the business which would have been brought before the original meeting if there had been a quorum present shall be brought before, and transacted at, the adjourned meeting, whether there be a quorum present there or not.

"Rule 72A. 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.

Explanation :- Any fraction under this rule shall be taken as a whole.

(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 officer not below the rank of an 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 meetings. 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 deemed to have vacated this office."

5. In terms of Rule 72A, a motion of no-confidence against the President or Vice-President of a Committee can be made through a requisition signed by not less than one-third of the total number of the members. Section 21(3) provides that a motion of no-confidence can be said to have been carried if it is supported by not less than two-thirds of the members of the Committee. On a conjoint reading of Section 21(3) of the Act and Rule 72A of the Rules, it is revealed that no-confidence motion can be brought by one-third of the total number of the members of the committee and it can be carried only if it has the support of two-thirds of the members of the Committee. The crucial question is whether the expression "member of the Committee" used in Section 21(3) and the expression "the total number of the members of the Committee" include the nominated members. While the learned Deputy Advocate General argued that the nominated members cannot take any part in the process of election or removal of the President or Vice-President of Municipal Committee or Municipal Council and they have no right to participate in the meeting of no-confidence motion and, therefore, for the purpose of determination of one-third of the members of the Committee or two-thirds of the members of the Committee for the purpose of moving the no-confidence motion and for the purpose of carrying it out their number cannot be counted. The learned counsel for the petitioner argued that there is no such restriction in Section 21(3) or Rule 72A and, therefore, prohibition against the casting of vote contained in Second Proviso to Section 9(3) of the Act should not be stretched so as to be read as a part of Section 21(3) or Rule 72-A.

6. A careful reading of Section 9(3) shows that apart from elected members, a duty has been cast on the State Government to nominate different persons as members of the Municipality. Persons having special knowledge or experience in Municipal administration are to be nominated up to a maximum of three. Members of the House of People and the Legislative Assembly representing the constituency which comprises wholly or partly the municipal area and the members of the Council of the State, who are registered as electors within the municipal area are also to be nominated as members of the Municipal Committee. However, by virtue of the First and Second Provisos, these nominated members have been denied the right to vote in the meeting of the Municipality. First proviso imposes a ban against the persons who are nominated u/s 9(3) (i). This category of members do not have a right to vote in the meeting of the Municipality. Second Proviso lays down that members of the House of People, the Legislative Assembly of the State and the Council of the State who become members of the Municipality by virtue of their office are not entitled to contest or to vote in the election or removal of the President or Vice-President.

The object behind incorporation of this restriction is to keep the nominated members away from contest in the process of election. It is intended that the nominated members of the first category will provide assistance in the proper administration of the Municipality through their knowledge, experience and expertise and, therefore, they will not be voters in the meeting of the Municipality. Similarly, the other two categories of the nominated members are expected to remain impartial while participating in the municipal administration. Another reason for not allowing them to contest election or to cast vote for election or removal of President or Vice-president is that they should not hold two elected offices at the same time and do not become active participants in the process of election or removal of President etc. However, there is nothing in the plain language of Section 9 which shows that the nominated members are not to be counted for the purpose of calculation of one-third of total number of the members of the Committee or two-thirds of the members of the Committee as contemplated in Rule 72A and Section 21(3). The Legislature and the rule-making authority in their wisdom did not incorporate the words "excluding nominated members" between the words "members" and "of of Section 21(3) and Rule 72A. If the Legislature and the rule-making authority had in their mind to exclude nominated members altogether even for the purpose of calculation of one-third and two-thirds number of members, nothing prevented them from incorporating such a provision in Section 21(3) and Rule 72A. This omission on the part of the Legislature and the rule-making authority cannot be supplied by the Court by the process of interpretation. It would amount to legislation, a function which is required to be resorted to by the Court only in the rarest of rare case. It is one of the well recognised rules of interpretation that plain words of the statute must be given their natural meaning and the Court should not attempt to find out ambiguities and then add or omit words in a legislative instrument. The use of word "total" in Rule 72A completely negates the argument of the learned Deputy Advocate General that the nominated members are altogether excluded from the process of removal of the President or the Vice-President of the Committee. Rather the use of word "total" conveys the intention of the rule-making authority that all the members of the Committee including nominated members, will have to be counted for the purpose of determining one-third. There also does not appear to be any reasons why the nominated members cannot move the no-confidence motion because they are not having a right to vote in the meeting held for consideration of no- confidence motion. What is excluded is the right to vote and not the right to participate in the deliberation in the meeting convened for consideration of no-confidence motion. In fact the members belonging to the categories enumerated in Section 9(3) (i) and (ii) can provide good guidance to other members by their valuable experience as members of the House of People, Legislative Assembly or Council of the State. We, therefore, hold that the expression "the members of the committee" used in Section 21(3) includes the members referred to in Section 9(3) of the Act and their number will have to be taken into consideration for computation of one-third and two-thirds for the purpose of Rule 72A and Section

21(3), respectively.

7. A similar issue arose before a Division Bench of this Court in *Ranjit Singh v. State of Punjab* (1964) 66 P.L.R. 631. The expression "total number of members" used in Section 18(1) of the Punjab Panchayat Samiti and Zila Parishad Act, 1961, came up for interpretation before the Division Bench. The Division Bench held:-

"The expression "total number of members" as used in Section 18(1) of the Punjab Panchayat Samiti and Zila Parishad Act, 1961 refers to all the members of the Samiti, including the associate members and ex-officio members are not entitled to vote at the meeting, they have to be taken into account for determining the two-third strength necessary to pass a resolution removing a member."

8. The Division Bench also referred to well recognised rule of interpretation and observed :-

"It is not the task of the Courts to re-write the provisions of an enactment in accordance with its own sense, reason or rightness in a particular matter. It would have been a matter of difficulty for the draftsman to convey the intention of the legislature if two-thirds of the total strength of the voting members was in fact required to form the requisite majority. If such were the intention, instead of the words "not less than two-thirds of the total number of its members" the draftsman could have said "not less than two-thirds of the voting strength-of its members."

9. In *Grandhi Raghurama Gupta, Markapur Vs. Revenue Divisional Officer, Markapur and Others*, , a Division Bench of the Andhra Pradesh High Court was concerned with a case involving interpretation of Section 46 of the Andhra Pradesh Municipalities Act, 1965. It held that all the members of the Municipality were entitled to notice of meeting for no-confidence motion and they were entitled to participate in such meeting.

10. In *S. Shivashankarappa and Others Vs. The Davangere City Municipality, Davangere and Others*, , a learned Single Judge of the High Court interpreted Section 42(9) of the Karnataka Municipalities Act, 1964 which contained the expression "total number of councillors". Section 42(9) of the Karnataka Municipalities Act related to no-confidence motion. The Section contained a deeming clause regarding vacation of office by the President and the Vice-President of the Municipal Council on passing of no-confidence motion by a majority of two-thirds of a total number of Councillors" at a special general meeting convened for the purpose. It was argued that the expression "total number of Councillors" means the existing number of Councillors physically present. While rejecting the argument, the learned Single Judge held :-

"I am unable to agree with the contention submitted on behalf of the petitioners that the definition of the word "councillor" given in S. 2(6) of the Act makes any

difference. The said definition only states a "councillor" means any person who is legally a member of a Municipal Council and this is so unless the context otherwise requires. In the context of S. 42(9) of the Act, which prescribed that two-thirds of "the total number of councillors", is the requisite majority for passing a resolution expressing want of confidence against a President or a Vice-President as the case may be, the words "total number of councillors" can be understood only with reference to S. 11 of the Act which prescribes the total number of councillors for Municipal Councils and when so understood, it becomes clear that calculation must be made with reference to the total number of councillors prescribed for any Municipal Council under the said Section, and not with reference to the actual number of councillors in office on the day when resolution expressing want of confidence in a President or Vice-President is moved."

11. We may also refer to a decision of the Bombay High Court in Shivdas Govind Lanjewar Vs. Municipal Council and Others, , which involved interpretation of Section 55 of the Maharashtra Municipalities Act, 1965. Section 55 (1) of the Maharashtra Act lays down that a President shall cease to be President, if the council; by a resolution passed by a majority of not less than two-thirds of the total number of councillors (excluding the co-opted councillors) at a special meeting so decides. The expression "two-thirds of the total number of councillors" was interpreted to mean two-thirds of the councillors who are entitled to sit and vote and not the total strength which can include vacant seats. A learned Single Judge referred to the definition of expression "total number of councillors" which included co-opted and nominated councillors but observed that use of expression "excluding the co-opted councillors" in Section 55(1) makes it clear that the co-opted councillors are not to be counted for the purpose of determination of two-thirds of the total number of councillors.

12. The last decision has been referred to by us in order to form our view that if the Legislature intended to exclude the nominated members from the expression "total number of the members of the committee" used in Rule 72A or the expression "members of the Committee" used in Section 21(3), it would have made a specific provision to that effect.

13. From the above discussion, it is clear that a motion expressing no-confidence in the President and Vice-President can be made by one third of the total number of members of the Committee which may include members referred to in Section 9(3). On receipt of notice of no-confidence motion, the Deputy Commissioner has to appoint an officer to preside over the meeting. Notice of such meeting is to be given to all the members, including the members, referred to in Section 9(3). The meeting to be held for consideration of no-confidence motion is to be treated as a special meeting. At such meeting all the members have a right to participated. The motion of no-confidence can be treated as carried if not less than two-thirds members of the Committee vote for if, the whole number of the members of the Committee has to be counted and, there is no reason to exclude

the nominated members for the purpose of counting of one-third number and two-thirds number of for the purpose of Rule 72A and Section 21(3).

14. In the present case, total number of members of the Committee is 20. All these members were given notice of the meeting but only 18 attended the meeting. Although only 15 could exercise their vote. 10 members voted in favour of the motion while 5 voted against it. The motion could be treated to have been passed only if 13 members had voted in its favour and as only 10 members supported the motion, it cannot be treated as carried out. We, therefore, hold that the Sub-Divisional Officer (Civil), Karnal, committed an illegality in declaring that the motion of no-confidence has been passed.

15. For the reasons mentioned above, the writ petition is allowed and Annexure P-2 is quashed. The parties are left to bear their own costs.