
(2015) 04 P&H CK 0175
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2849 of 2015

Sunita and Others	Vs	APPELLANT
Deputy Commissioner and Others		RESPONDENT

Date of Decision : 20-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 179 PLR 183 : (2015) 4 RCR(Civil) 62

Hon'ble Judges : Jaswant Singh, J

Bench : Single Bench

Advocate : Bhoop Singh, for the Appellant; Shivendra Swaroop, Assistant Advocate General, Advocates for the Respondent

Final Decision : Allowed

Judgement

Jaswant Singh, J.—The President (since removed), Municipal Committee, Indri (Petitioner No. 1) along with two elected Municipal Councilors (Petitioner Nos. 2 and 3) of the said Committee have invoked the jurisdiction of this Court under Article 226 of the Constitution seeking the quashing of the proceedings dated 12.02.2015 (Annexure P-3), whereby No Confidence Motion against the President/petitioner No. 1 has been passed and she has been removed from the Office of President, Municipal Committee, Indri (for short "the Committee").

2. It is averred that there are 13 elected Members and 2 nominated Members i.e. Member of Parliament and Member of Legislative Assembly, totaling 15 Members of the Municipal Committee, Indri since elections conducted in February, 2013. Petitioner No. 1-Smt. Sunita was elected as the President of the Committee by the Councilors in May/June, 2013.

3. A Notice dated 23.01.2015 (Annexure P-1) was issued by the Sub Divisional Officer (Civil), Indri/respondent No. 2 regarding Special Meeting of "No Confidence Motion" against petitioner No. 1-Smt. Sunita, President of the Committee requesting Members to participate on 12.02.2015 at 3:00 PM in the

Office of the Committee. The Proceedings (Annexure P-3) of the Special Meeting held on 12.02.2015 reveals that a "No Confidence Motion" was passed by 10 votes in favour of removal of the President/petitioner No. 1 and 3 votes against the same, on the basis of the affidavits submitted by 10 Councilors in favour of removal.

4. The grievance of the petitioner is that inspite of 3 Members/Petitioners (herein) having demanded a secret Ballot for passing of the Resolution, the Resolution was passed simply on the basis of the affidavits.

5. Upon notice, respondent Nos. 1 and 2 have filed their reply and the State Minister/respondent No. 3 has chosen not to file any reply.

In the reply filed by the official respondents, it is stated that 10 elected Councilors had presented their affidavits before the Deputy Commissioner, Karnal/respondent No. 1 on 16.01.2015 for removal of Smt. Sunita/petitioner No. 1 from the post of President, Municipal Committee, Indri. Deputy Commissioner, Karnal issued a letter dated 19.01.2015 directing the answering respondent No. 2 to convene a Special Meeting and as per Rule, 72-A of Haryana Municipal Election Rules, 1978 (for short "1978 Election Rules"). Accordingly, the Notice (P-1) was issued for convening the Meeting on 12.02.2015 wherein all the stated 10 Members except 3 petitioners supported the removal of the President. The Meeting was also attended by respondent No. 3/State Minister. It is admitted that 3 Councilors/petitioners had demanded a vote by a secret ballot, and since the majority did not want the voting on No Confidence Motion by secret ballot, the said recourse was not adopted. Reliance has also been placed on Bye Law 12 of the Haryana Municipal Business Bye Laws, 1981 (for short "Bye Laws 1981) to support the stand that the poll can be taken by show of hands, as done in the present case. It is also submitted that the necessary parties i.e. Municipal Committee, Indri and the Councilors have not been impleaded.

6. Learned Counsel for the petitioners submits that Sub Rule 4 of Rule 72-A of 1978 Election Rules provides that No Confidence Motion is to be carried with the support of not less than 2/3rd Members of the Committee, however, does not lay down the manner of assessing that support. He further submits that keeping in view the fundamental principle of maintaining purity of election processes by adopting the secrecy of ballot, the Presiding Officer, in the light of the demand for secret ballots by the 3 Councilors, was required to consider the No Confidence Motion by conduct of secret ballots. In support, he cites a Division Bench judgment of this Court reported as *Kitab Singh Vs. Deputy Commissioner and Others*, AIR 2008 P&H 133 : (2008) 152 PLR 361 . He thus submits that the Proceedings (P-3) are liable to be set aside.

On the other hand, learned State Counsel submits that the business of the Committee, in the light of Bye Law 12 of Bye Laws 1981 could be conducted by show of hands and, therefore, in the absence of any mandate for a secret ballot in Sub Rule 4 of Rule 72-A of 1978 Election Rules, the action cannot be held to

be illegal. He further has taken the plea of non-impleadment of the necessary parties i.e. Municipal Committee, Indri and the other Councilors.

7. Learned Counsel for the parties heard at length and with their able assistance, perused the pleadings.

8. Before proceeding to deal with the rival contentions, it would be appropriate to reproduce Rule 72-A of 1978 Election Rules as also Bye Law 12 of Bye Laws 1981, which read as under:-

"72-A. - No Confidence motion against president or vice-president. - (1) A motion of no confidence against the 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.

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

(2) The Deputy Commissioner or such other officer not below the rank of extra Assistant Commissioner, as the Deputy Commissioner may authorize, 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 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 be deemed to have vacated his office. "

"Bye Law 12. Demand of poll [Section 31(d)]- Unless poll is demanded by any member present at the meeting, a declaration made at the meeting by the Chairman that a motion or resolution or an amendment thereto has been carried out or lost, shall be sufficient warrant for making an entry to that effect in the minutes. If a poll is demanded by any member present, it shall be taken by a show of hands and the result of such poll as declared by the Chairman, shall be deemed to be the resolution of the Committee."

A bare perusal of the aforesaid Rule 72-A reveals that the manner of moving a motion of No Confidence Motion against the president through a requisition in writing signed by not less than 1/3rd of the total number of the Members of the

Committee is provided in sub rule (1). The motion is required to be circulated to all the Members according to sub rule (2), the Special Meeting is to be convened by giving a Notice of not less than fifteen days in accordance with sub rule(3), finally the motion for removal of the President is to be carried with the support of not less than 2/3rd Members of the Committee is provided under sub rule (4). The manner of assessing that 2/3rd support i.e. whether by secret ballot or by show of hands has not been not spelt out.

A reading of Bye Law 12 of the Bye Laws 1981, makes it explicit that the same relates to conduct of business in a meeting, where the Chairman if makes a declaration that a motion or resolution or amendment has been carried out, is to be treated sufficient unless a poll is demanded by any member present in the meeting and the same if demanded shall be carried out by show of hands and the result of such poll is deemed to be the resolution of the committee. It is thus evident that this Bye Law 12 of the Bye Laws is not applicable for convening the Special Meeting for passing of the No Confidence Motion against the President under Rule 72-A of 1978 Election Rules.

9. Now reverting to the contentions, there is no doubt from the reading of sub rule (4) of Rule 72-A that there is no specific manner prescribed for assessing the 2/3rd majority for carrying out the No Confidence Motion for removal of the President. The reliance by the respondents on the Bye Law 12 of the Bye Laws 1981, is also misplaced as aforesaid stated. Even at the time of arguments, learned State Counsel was unable to show the relevance of Bye Law 12 for the conduct of the Special Meeting under Rule 72-A of 1978 Election Rules.

On the other hand, the contention of the petitioner that the issue is no longer res integra is liable to be accepted. A Division Bench of this Court, in a identical case involving interpretation of Rule 72-A of 1978 Election Rules, has already categorically held that in case there is a demand for a secret ballot, then the Presiding Officer is duty bound to conduct a secret ballot for passing of the No Confidence Motion. The relevant Para 11 of Kitab Singh's case (supra) reads as under:-

"In the proceedings there is no mention what-so-ever that the petitioner had demanded a secret ballot. Had the petitioner done so the Presiding Officer would have been duty bound to conduct the voting by secret ballot. This was not an election where there were so many voters that time consuming preparation was needed for preparing ballot papers. A ballot is a piece of paper on which a voter is to put a mark, the paper is then put in a box. After the voting process is over, the box is opened and the ballot papers are counted. In the present case there were 22 members present, 22 pieces of paper could have been easily distributed, one each to every member, and they could have been asked to write "yes" or "no" on the paper, put them in a box and to be counted later. The whole process would not have taken more than five minutes. But the Presiding Officer did not find this to be at all necessary as 19 members stood up and raised their hands in favour of the motion. There was no demand for a secret ballot. Therefore, we are

of the view that the meeting had been validly conducted and the motion had been validly passed by show of hands. The decision in Dharam Singh's case has no application to a case under the Municipal Election rules. The decision of the court in Sarwan Singh's case (supra) supports our view that a no confidence motion can be passed by show of hands. "

(emphasis supplied)

In the present case, admittedly, there was a demand by the 3 Councilors/petitioners for a secret ballot and, therefore, in the opinion of this Court, the Presiding Officer was duty bound to conduct the No Confidence Motion by secret ballots in view of the settled law by this Court. Hence, the Proceedings (P-3) removing the petitioner from the post of President of the Committee being in violation of the settled law are hereby set aside.

To be fair to the State Counsel, the objection regarding impleadment of Municipal Committee, Indri or the Councilors is liable to be rejected as the petitioner is only aggrieved by the action of the Authority concerned by illegal exercise of its power under the provisions of the Rules. Therefore, the necessary relief is directed only against such Authorities concerned. As regards, the consequence, this Court while issuing notice of motion on 19.02.2015 has already directed that " Any fresh election of President will be subject to decision of this writ petition " therefore, whatever be the consequences of quashing of the Proceedings (P-3), they are covered by the aforesaid interim directions. If any party was affected or had felt aggrieved against passing of such interim orders, it was free to come and join the proceedings before this Court. Nothing of that sort was done, therefore, the objections of the learned State Counsel are rejected.

In view of the aforesaid discussion, the present writ petition is allowed and the proceedings (P-3) removing the petitioner from the Office of President of the Municipal Committee, Indri is set aside. The Officer concerned is directed to convene a fresh meeting for passing of the "No Confidence Motion" submitted on 12.02.2015 (P-3) by following the procedure afresh under Rule 72-A of 1978 Election Rules in the light of the aforesaid observations. No costs.