
(2019) 05 P&H CK 0161

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 2933 Of 2018 (O&M)

Surinder Singh And Others

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 20-05-2019

Acts Referred:

Cantonment Act, 2006 — Section 20, 20(3)

Citation : (2019) 05 P&H CK 0161

Hon'ble Judges : Daya Chaudhary, J;Sudhir Mittal, J

Bench : Division Bench

Advocate : Dushyant Sarvesh, O.P. Dabla, Diwakar Jaiswal

Final Decision : Dismissed

Judgement

This writ petition has been filed for quashing of Order/Resolution dated 1.2.2018 (Annexure P3), vide which a No Confidence Motion has been passed against petitioner No.1 and the interested elected members have been given the option of filing nominations for election as Vice President of the Cantonment Board, Ferozepur.

It is alleged that petitioner No.1 was unanimously elected as Vice President of the Cantonment Board, Ferozepur, in the election held in the year 2015. He belongs to Shiromani Akali Dal. The Congress Party came to power in the Legislative Assembly Elections held in February, 2017 and soon after coming to power, it started exerting pressure upon elected members to remove petitioner No.1 from office. Thus, 05 elected members, vide representation dated 20.1.2018, requisitioned a special Board meeting, for removal of the Vice President. The special Board meeting was convened on 1.2.2018 at 1600 hours, in which only 05 out of the 08 elected members, came present. These 05 members passed a "No Confidence Motion" against petitioner No.1, but the same is illegal as it is violative of section 20 (3) of the Cantonment Act, 2006 (for short 'the Act'), which requires a resolution of no confidence to be passed by a majority not less than 2/3rd of the total elected members.

Replies have been filed on behalf of respondents No.1 to 3 and the private respondents. In reply filed on behalf of respondents No.1 to 3, it has been stated that 'No Confidence Motion' has been passed in accordance with the provisions of the Act and there is no illegality therein. Section 20 (3) of the Act provides a twin requirement; (a) requisition for convening a special meeting, should be made by not less than one-half of the elected members and (b) the Motion of 'No Confidence' should be passed by a majority of not less than 2/3rd of the total elected members holding office and attending the meeting. Both the requirements have been met in this case and thus, there is no illegality in the removal of petitioner No.1 from the office of Vice President. The other allegations made by the petitioners, have been denied.

Section 20 of the Act is reproduced below:-

"20. Term of office of Vice President- (1) The term of office of a Vice President shall be five years or his residual term of office as a member, whichever is less.

(2) A Vice President may resign his office by notice in writing to the President and, on the resignation being accepted by the Board, the office shall become vacant.

(3) A Vice President may be removed from his office, at a special meeting convened for the purpose on a requisition for the same by not less than one-half of the elected members of the Board holding office, by a resolution passed by a majority of not less than two thirds of the total number of elected members then holding office and attending and no member, other than an elected member, shall have the right to vote on the resolution:

Provided that in case of Category IV Cantonments, the Vice President may be removed if a resolution to this effect is passed by the Board and the other elected member shall become the Vice President."

Sub section 3 is the relevant provision. It provides for removal of a Vice President from office at a special meeting, which can be convened on a requisition moved by not less than one-half of the elected members. In this case, it is not disputed that the requisition was made by 05 of the total 08 elected members and thus, the special meeting was properly convened. The next requirement is that the Motion of No Confidence should be passed by not less than 2/3rd of elected members holding office and attending. Thus, the resolution should be passed by not less than a 2/3rd majority of the elected members holding office and present. In this case, the 05 elected members, who requisitioned the special meeting were present and they unanimously passed the no confidence motion and this fulfils the requirement of law. Petitioner No.1 is mis-construing the provision to mean 2/3rd majority of the total number of elected members. The plain meaning of sub-section 3 of section 20 of the Act, is that a 2/3rd majority is required of the total number of elected members present and voting. The word 'and' is used between expression 'holding office' and the word 'attending' which makes it plain and clear that the 2/3rd majority should be

of the elected members holding office and also attending the meeting.

Learned counsel for the petitioners has placed reliance upon a Division Bench judgment in 'Samiruddin Ahmed Vs. SDO Mangaldoi and others, 1971 AIR (Assam) 163', but the said judgment is not applicable in the facts and circumstances of this case because the provision of the Assam Panchayat Act, 1959, interpreted in the said judgment is not in the same terms as section 20 (3) of the Act.

Thus, the writ petition has no merit and is dismissed.