
(2006) 04 P&H CK 0056
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2558 of 2006

Tarun Bhandari

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 21-04-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Haryana Municipal Act, 1973 — Section 21, 21(1), 21(2), 21(3), 21(4)
Haryana Municipal Election Rules, 1978 — Rule 72A, 72A(1), 72A(3)

Citation : (2006) 143 PLR 719 : (2006) 2 RCR(Civil) 817

Hon'ble Judges : H.S. Bedi, Acting C.J.;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Ashok Aggarwal, J.S. Sidhu and Amit Aggarwal, for the Appellant;
Anmol Rattan Sidhu, A.A.G. for Respondent Nos. 1 and 3, D.S. Patwalia, for
Respondent No. 4, Satya Pal Jain and Dheeraj Jain, for Respondent Nos. 6 to 33
and Akshay Bhan, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kumar Mittal, J.—The challenge in this petition filed under Articles 226/227 of the Constitution of India is to "no confidence motion" moved against the petitioner by the Municipal Councillors of Municipal Council, Panchkula.

2. Undisputedly, the petitioner was duly elected as President of the Municipal Council, Panchkula. As per averments made in the petition, the Municipal Council, Panchkula consists of 33 members. A no-confidence motion was moved against the petitioner. A meeting was held on 19.10.2005 which was presided over by the Additional Deputy Commissioner, Panchkula for consideration of no-confidence motion and which, accordance to the petitioner, was attended by 17 councillors. Out of them, 13 councillors who were also amongst those moving the no-confidence motion, expressed their desire in writing to the Additional Deputy Commissioner, Panchkula to withdraw the no-confidence motion. Accordingly the minutes of the meeting, a copy where of has been attached as Annexure P-1, were reduced into writing by the Presiding Officer.

3. On receipt of representations from certain councillors regarding annulment of proceedings recorded in the meeting dated 19.10.2005, the Director, Urban Development Haryana, Chandigarh, (respondent No. 2), however, in exercise of his powers u/s 252(2) of the Haryana Municipal Act, 1973 (for short "the Act") vide order dated 30.12.2005 copy Annexure P-2 ordered as under:

in this connection, I am directed to inform you that after examining the matter, it has been decided to declare the meeting held on 19.10.2005 convened for the purpose of "No-Confidence Motion" against Sh. Tarun Bhandari, President, M.C. Panchkula as Null and void u/s 252(2) of the Haryana Municipal Act, 1973. You are, therefore, requested to take action in the matter accordingly.

4. It is further the case of the petitioner that with a view to succeed in their evil designs, the councillors who had failed earlier, submitted a fresh no-confidence motion before the Deputy Commissioner, Panchkula on 25.1.2006 and acting thereon, an intimation (Annexure P-3) dated 25.1.2006 was sent to the petitioner and other councillors conveying that a meeting in that regard would be convened on 15.2.2006. However, according to the petitioner, no copy of the requisition was sent to him. Faced with these circumstances, the petitioner filed Civil Writ Petition No. 1427 of 2006 challenging the orders Annexure P-2 and P-3. During the pendency of the said writ petition, the respondents held the meeting on the scheduled date i.e. on 15.2.2006 whereby as per their claim, the no-confidence motion had been passed against the petitioner.

5. It is in the above backdrop that the petitioner has filed the present writ petition seeking to quash the order dated 30.12.2005 (Annexure P-2) passed by respondent No. 2, the order dated 25.1.2006 (Annexure P-3) passed by the Sub Divisional Officer (Civil), Panchkula whereby he ordered convening of meeting on 15.2.2006 to consider the no-confidence motion against the petitioner, and the proceedings dated 15.2.2006 (Annexure P-4) whereby no-confidence motion had been passed against him.

6. The matter has been hotly contested by the respondents. Four sets of written statements have been filed i.e. by respondents Nos.1 and 2, respondent No. 4, respondent No. 23 and respondents Nos. 6.to 33 respectively. All of them took a preliminary objection that the present writ petition was not maintainable as the petitioner had an alternative remedy u/s 253 of the Act and he has approached this Court without availing the said remedy. In the written statement filed by respondents 1 and 2, it has been stated that on a representation being made by certain councillors requesting for declaring the meeting held on 19.10.2005 as invalid and treating the motion of no-confidence as withdrawn and after seeking the comments of the Deputy Commissioner, Panchkula and examining the matter thoroughly, the meeting dated 19.10.2005 was declared as not valid in the eyes of law as the requisite quorum for the meeting was not present. It was further stated that for consideration of no-confidence motion against the petitioner, a special meeting was required to be held and since the meeting held on 19.10.2005 in that regard was attended by only four members, the same was

not a valid meeting in the absence of the requisite quorum. It was further stated that the perusal of proceedings of the special meeting held on 19.10.2005 would show that the Presiding Officer did not pass any order rejecting the letter given by Shri Rajinder Kumar Kakkar and others withdrawing the no-confidence motion. It was clearly explained further that since it has been recorded in the proceedings that "no voting could take place", therefore, the observations recorded in the proceedings in the end that "no-confidence motion had failed" was contrary to the facts. The order dated 30.12.2005 nullifying the proceedings held in the meeting on 19.10.2005 had, therefore, been passed as per law and the rules. Lastly, it was stated that on the requisition given in writing by more than on-third members of the Municipal Council, Panchkula against the petitioner, a special meeting was convened on 15.2.2006 with regard to no-confidence motion against the petitioner in accordance with law. In the written statement filed by respondent No. 4 it is stated that on 19.10.2005, (Annexure R-4/1). Even out of the four councillors who came present in the meeting, two immediately left the office after putting their signatures on the proceedings and as no meeting could take place, the councillors gave in writing to the Additional Deputy Commissioner to withdraw the same even before the start of the meeting and the Presiding Officer allowed those councillors to withdraw the non-confidence motion under proviso to Sub-rule (1) of Rule 72-A of the Haryana Municipal Election Rules, 1978 (for short "the 1978 Rules"). It was thus specifically asserted that no meeting had taken place on 19.10.2005 to consider the no-confidence motion moved against the petitioner as the quorum was not complete and even otherwise, the no-confidence motion had been withdrawn by certain councillors well before the meeting could start. It was categorically stated that in the proceedings book it was recorded by the Presiding Officer, "therefore, no-confidence motion could not be passed, the no-confidence motion thus failed." This finding gives an impression that the meeting was held and after holding of the meeting, no-confidence motion failed. In order to get this anomaly removed, respondent No. 2 on a representation of some of the councillors declared the proceedings held on 19.10.2005 as null and void. In the written statement filed on behalf of respondents 6 to 33, the petitioner has been blamed of concealment of material facts from the court. It is stated that the Annexure P-1 attached with the petition is not the true translation of the original proceedings which are in Hindi. In the meeting held on 15.2.2006, the no-confidence motion was passed with 29 out of 33 members voting against the petitioner and not even a single member voted in his favour. It is further stated that as per Rule 72-A of the Rules, a special meeting was to be held for considering the no-confidence motion, but as the quorum required for convening the special meeting was not complete, the meeting held on 19.10.2005 was not a valid meeting and that being so, the question of moving the motion of no-confidence and consideration thereof did not arise at all. It was, however, admitted that 13 councillors who had made the requisition for convening special meeting had given in writing to the Additional Deputy Commissioner on 19.10.2005 expressing their desire to withdraw the requisition. It was lastly

stated that since the requisition calling for a no-confidence motion had been withdrawn by the councillors before the start of the meeting dated 19.10.2005 and the required quorum for the special meeting was never present on that day, the so-called meeting held on 19.10.2005 was not a valid meeting in the eyes of law and, therefore, there was no legal impediment against holding a meeting on 15.2.2006 to consider the no-confidence motion against the petitioner which was held in conformity with law and the rules. Respondent No. 23 in his separate written statement took almost the same pleas as raised, by other respondents and noticed hereinabove. Additionally, all that has been stated by him is that as per the provisions of law, the petitioner was not entitled to either any notice or an opportunity of hearing before passing the order dated 30.12.2005, which had been passed in full conformity with law on the representations made by certain councillors stating that because of lack of sufficient quorum, the meeting dated 19.10.2005 was not a valid meeting in the eyes of law. It was thus vehemently prayed that the writ petition merits dismissal.

7. Mr. Ashok Aggarwal, learned senior counsel for the petitioner referred to Section 21 of the Act and also to proviso to Rule 72A(3) to contend that once a "no-confidence motion" had failed on 19.10.2005, the respondents could not have convened another meeting before the expiry of six months from the date and accordingly, "no-confidence motion" held on 15.2.2006 was without jurisdiction. He further submitted that order dated 30.12.2005 whereby meeting of 19.10.2005 was annulled in exercise of powers u/s 252(2) of the Act is unsustainable as the said order gives no reasons for doing so and the same was also in violation of principles of natural justice.

8. Mr. Satya Pal Jain, learned senior counsel for the private respondents raised a preliminary objection that the petitioner has an alternative remedy u/s 253 of the Act for getting the order dated 30.12.2005 set aside. Learned counsel relied upon *Kiran Cinema Patti v. The Sub Divisional Officer (Civil) Patti and Ors.* 1981 P.L.J. 485 in support of this submission. Arguing on merits of the controversy, he submitted that unless a "no-confidence motion" is specifically accepted or rejected and a proper meeting is convened, the period of six months provided in proviso to Rule 72A(3) is not attracted. According to the learned Counsel as there was no quorum, the meeting on 19.10.2005 was never convened and, therefore, the action of the respondents in convening the meeting on 15.2.2006 and passing "no-confidence motion" on that date was fully justified. Learned counsel placed reliance on judgments reported in *Baldev Minor Khullar and Ors. v. State of Punjab and Ors.* 1984 P.L.J. 264 *Raghubar Dass v. The State of Punjab* 1984 P.L.J. 322 and *Kangiam Jadhob Singh and Ors. v. Chongtham Pishak Singh and Ors.* AIR 1969 GAU 13 to buttress his submissions.

9. Alternatively, he raised a plea that the order, Annexure P-2 dated 30.12.2005 which nullified the proceedings of 19.10.2005 and received by the Municipal Council on 3.1.2006 and the meeting was held on 12.1.2006 in which this was not brought to the notice of the Municipal Council. It was only the Municipal

Council which alone was aggrieved by the said action and as such it could be challenged by the Municipal Council and the petitioner had no locus standi. He placed reliance on Subhas Chandra and Others Vs. Municipal Corporation of Delhi and Another, , Baldev Raj Sharma v. State of Punjab and Anr. (1972) 74 P.L.R. 144, Jiwan Lata v. Shri Krishan Kumar (1979)81 P.L.R. 426.

10. Learned counsel for the other respondents also made similar submissions and supported the action of annulling the "no-confidence motion", by order Annexure P-2.

11. Mr. Ashok Aggarwal while rebutting the arguments of the respondents, reiterated the submissions already made and laid emphasis on the argument that in fact, no quorum was required for holding of "no-confidence motion" but otherwise on facts, the quorum was present on 19.10.2005 when a meeting for "no-confidence motion" was held. He relied upon the judgments of this Court in Babu Lal Aggarwal Vs. The Commissioner and Secretary to Govt. of Haryana, Local Bodies Department and Others, Kapil Garg, President of Municipal Committee Vs. The State of Haryana and others, and Calcutta High Court in Dwarka Nath Dutta v. Chandra Mohun Roy and Ors. AIR 1926 Cal 665 in support of his submissions.

12. We have heard the learned Counsel for the parties at length and have thoroughly examined the record with their assistance.

13. The marathon submissions made by the learned Counsel for the parties center around the sole controversy regarding the validity of the proceedings held on 19.10.2005 to consider the "no-confidence motion" moved against the petitioner when read in conformity with the relevant provisions of law. We may examine the relevant provisions in the light of which the decision regarding the status of meeting held on 19.10.2005 is to be determined and also whether the action annulling the same vide order Annexure P-2, dated 30.12.2005 is justified. Section 21 of the Act deals with "no-confidence motion" against President and Vice-President and reads thus:

21. Motion of no-confidence against President or Vice-President.- 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 authorize, shall convene a meeting for 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 authorized 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 authorized by him, but neither he nor such officer shall have the right to vote at such meeting.

14. Section 252 of the Act provides for power of State Government and its officers over committee and Section 253 defines general powers of State Government over officers. The aforesaid provisions read as under:

252. Power of State government and its officers over committee- (1) The State Government and Deputy Commissioners, acting under the orders of the State Government, shall be bound to require the proceedings of committees shall be in conformity with law and with the rules in force under any enactment for the time being applicable to Haryana generally or the areas over which the committees have authority.

(2) The State Government may exercise all powers necessary for the performance of this duty, and may among other things, by order in writing, annul or modify any proceeding which it may consider not to be in conformity with law or with such rules as aforesaid, or for the reasons which would in its opinion justify an order by the Deputy Commissioner u/s 246.

(3) The Deputy Commissioner may, within his jurisdiction for the same purpose, exercise such powers as may be conferred upon him by rule made in this behalf by the State Government.

253. General powers of State Government over officers.- Notwithstanding anything in this Act, the State Government shall have the power of reversing or modifying any order of any officer of the State government passed or purporting to have been passed under this Act, if it considers it to be not in accordance with the said Act or the rules or to be for any reason inexpedient, and generally for carrying out the purposes of this Act the State Government shall exercise over its officers all powers of superintendence, direction and control:

Provided that the power of reversing or modifying any order of any officer of the State Government shall not apply to the orders passed by the Tribunal or the District Judge in an election petition.

15. The Haryana Government vide Haryana Government notification dated 30.6.1978 promulgated the Haryana Municipal Election Rules, 1978. Rule 72A of the 1978 Rules which deals with no-confidence motion against President or Vice President was inserted by Haryana Government Notification dated 13.9.1995. It reads thus:

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 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 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 authorize, 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.

16. Firstly adverting to the preliminary objection raised by the respondents, it needs to be emphasised that u/s 253 of the Act, the State Government has been empowered to reverse or modify any order of any officer of the State Government which has been passed or has purportedly been passed under the Act, if it is considered to be not in accordance with the Act or Rules. Section 252(2) of the Act bestows powers on the State Government which may be necessary for the performance of the duty and may annul or modify and proceeding which it may consider not to be in conformity with law and rules or which in its opinion may justify an order by the Deputy Commissioner u/s 246 of the Act.

17. The power exercisable u/s 252(2) of the Act is that the State Government and is, therefore, not amenable to power of superintendence, direction and control of the State Government u/s 253 of the Act. Kiran Cinema Patti "s case (supra) related to a case where the order which was sought to be reversed or modified by the State Government was an order which was passed by an officer of the State Government in exercise of powers vested in him under the Act. In the present case, the Director-respondent No. 2 had in exercise of powers of the State Government u/s 252(2) of the Act had annulled the "no-confidence motion" dated 19.10.2005. Therefore, the same shall be amenable to the power of superintendence, direction and control of the State Government u/s 253 of the Act. The preliminary objection is, thus, rejected.

18. The alternative plea of the respondents that the petitioner was not an aggrieved party and, therefore, has no locus standi to file the present writ petition is without any substance. It was submitted that the Municipal Council alone was the affected party and the order dated 30.17.2005 (Annexure P-2) could have been challenged by the Municipal Council alone. We are not impressed with this argument of the learned Counsel for the respondents as well.

19. The principle of law enunciated in Subhash Chandra's case (supra), Baldev Raj Sharma's case (supra) and Smt. Jiwan Lata's case (supra) is well recognised but the same is not applicable to the facts of the present case. The action of the respondent-State in annulling the "no-confidence motion" dated 19.10.2005 and of 29 councillors in moving fresh "no-confidence motion" against the petitioner certainly affects the rights of the petitioner and gives a cause of action to him to challenge the same. It cannot be said that the petitioner had no locus standi or that the writ petition at his behest was not maintainable. Additionally the Municipal Council also could have challenged the action of the respondent-State in nullifying the "no-confidence motion" by an order u/s 252(2) of the Act as it also affects and touches upon the functioning of the Municipal Council.

20. Lastly, taking up the matter on merits, as per Section 21(1) of the Act, a motion of "no-confidence motion" against the President or Vice President may be made in accordance with the procedure laid down in the rules. Under Sub-section (2) of Section 21, the Deputy Commissioner or any other officer not below the rank of an Extra Assistant Commissioner who is authorized by "the Deputy Commissioner shall convene meeting for consideration of the motion. According to Sub-section (3), the motion is to be carried with the support of not less than 2/3rd of the elected members of the Committee and the President and the Vice President shall vacate the office on the passing of the "no-confidence motion". Thereupon by virtue of Sub-section (4), the Sub Division Officer (Civil) of the area concerned or any other officer not below the rank of Extra Assistant Commissioner who is authorized by the Deputy Commissioner shall exercise powers till the date of election of the President is notified or Vice-President is elected. Under Sub-section (5), meeting for "no-confidence motion" is to be presided over by the Deputy Commissioner or any officer authorized by him.

21. Rule 72A (3) of the 1978 Rules provides that the Deputy Commissioner or any other person authorized by him shall convene a special meeting by giving a notice of not less than fifteen days for consideration of the motion and shall preside over the meeting. Under proviso to this sub-rule, no such meeting for the said purpose shall be convened unless a period of six months has elapsed since the date of last meeting convened for this purpose.

22. The cumulative effect of the reading of the aforesaid provisions is that a motion of no-confidence against the President or the Vice-President shall be by convening a special meeting by giving notice of not less than fifteen days for consideration and the same is required to be passed by 2/3rd of the elected members of the Committee. However, no meeting for on-confidence shall be

convened unless a period of six months has elapsed since the date of last meeting convened for this purpose.

23. From the factual matrix described above, the point which requires consideration now is whether the meeting for consideration "no-confidence motion" which took place on 19.10.2005 was convened or not. A Division Bench of this Court in Raghubar Dass's case (supra) had observed that the words "convene" a meeting" would indeed be synonymous with "holding a meeting". The Calcutta High Court in Dwarka Nath Dutta 's case (supra) had held that persons who are present at a meeting in fact but who do not take active part in the proceedings or vote, cannot be regarded as absent for the purpose of a quorum. A perusal of the proceedings of 10.10.2005 shows that the meeting for no confidence had started and 17 members had attended the same. It was after the starting of the meeting that 13 members wanted to withdraw the "no-confidence motion". There is no provision in the statute or under the rules which provides for withdrawal of "no-confidence motion" after a meeting has been convened. Under proviso to sub-rule(1) of Rule 72A of the 1978 Rules, a motion of no-confidence may be withdrawn at any time before the meeting is convened for that purpose. Thus, judgments in Baldev Mittar Khullar 's case (supra) and Kangiam Jadhob Singh's case (supra) do not advance the case of the respondents. However, Raghubar Dass's case (supra) supports the case of the petitioner.

24. Thus, no-confidence motion could not have been withdrawn once the meeting for considering the same had been convened and it had started. The word "convening" shall not mean the concluding of the meeting. In the facts of the present case, the no-confidence motion" which took place on 19.10.2005 had thus failed. Once it is so held then no second motion for no confidence could be called before the expiry of six months therefrom. "No-confidence motion" thus, moved on 15.2.2006 cannot be legally sustained.

25. The argument of the learned Counsel for the respondents that there was no quorum on 19.10.2005 when meeting for "no-confidence motion" took place, shall not detain use for long. In fact, there is no provision which provides for quorum for holding of meeting for "no-confidence motion" under the Act or the Rules. Section 27 of the Act requires quorum of 50% in case of conduct of business of the Committee and the meeting for "no-confidence motion" cannot be equated with the conduct of the business of the Committee. However, even otherwise 17 out of 33 members begin present on 19.10.2005, it cannot be said that the quorum was not present.

26. Now examining the validity of order dated 30.12.2005, Annexure P-2, a perusal of the same shows that no reason for declaring the meeting dated 19.10.2005 to be null and void has been stated therein. Furthermore, the official respondents had not provided any opportunity of hearing to the petitioner before declaring the meeting of 19.10.2005 as null and void. Respondent No. 2 was required to give reasons that the meeting held on 19.10.2005 was null and void

and in the absence of the same, the order is legally untenable being arbitrary and in violation of the principles of natural justice.

27. In view of the above, the writ petition is allowed and order dated 30.12.2005, Annexure P-2, notice dated 25.1.2006 convening the meeting for "no-confidence motion" and the "no-confidence motion" passed on 15.2.2006 are held to be illegal and are, thus, quashed. The parties are left to bear their own costs.