
(2010) 07 P&H CK 0258
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 11798 of 2010

Ulfat Rai Sahota

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 07-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Punjab Municipal Act, 1911 — Section 16, 16(1), 24, 24(2)

Citation : (2011) 1 RCR(Civil) 618

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Alok Singh, J.—Petitioner has invoked jurisdiction of this Court under Articles 226/227 of the Constitution of India, challenging order dated 31.5.2010 passed by the Principal Secretary, Department of Local Government, Punjab, directing removal of the Petitioner from the membership of Municipal Council while exercising power u/s 16 of the Punjab Municipal Act, 1911 (hereinafter referred to as the 1911 Act).

2. Petitioner was issued show cause notice bearing No. 6/71/09- 1 LG 3 dated 9.7.2009 u/s 16 of the 1911 Act to show cause as to why Petitioner be not removed from the membership of Municipal Council, Ferozepur on the ground that on 22.7.2008 meeting was convened in the presence of the SDM, Bari to subscribe oath to the newly elected members and to elect President, Senior Vice President and Vice President of the Municipal Council; however, on 22.7.2008 no oath could be subscribed and no election of President, Senior Vice President and Vice President could be held as unidentified persons had entered into the meeting hall and there was a quarrel and commotion. Petitioner posing himself newly elected Vice President of the Municipal Council, entered into the office of the Municipal Council, Ferozepur and signed three cheques as Senior Vice President of the Municipal, Council to be issued to different people. This way,

Petitioner is guilty of misconduct and flagrant abuse of his position as member of the council.

3. Petitioner submitted his reply dated 8.8.2009; in the reply, Petitioner submitted that on the date of meeting, he was elected as Senior Vice President and he admitted having signed three cheques as Senior Vice President of the council. According to the Petitioner, abovesaid three cheques were filled up by the accounts clerk with the order of the Executive Officer and were placed before the Petitioner for his signatures. Having found the Petitioner guilty of flagrant abuse of his position as a member of the council, impugned removal order was passed against the Petitioner.

4. Learned Counsel for the Petitioner vehemently argued that first of all, all the three cheques were placed before him under the direction of the Executive Officer of the Municipal Council, hence in good faith the Petitioner signed all the three cheques. However, these cheques were never encashed. Petitioner was elected as Senior Vice President with the consent of 18 members present in the meeting, hence bona fide signed the cheques. Since no financial loss was caused to the Municipal Council, Ferozepur, hence there is no question of abusing the position. Hence, Petitioner cannot be removed on this ground. He further argued that despite of reminders, copies of all the documents relied upon by the Secretary while passing the impugned order, were not supplied to the Petitioner.

5. Learned Counsel for the Petitioner Mr. Behl stated that in the show cause notice, Section 16(b) is mentioned, while impugned order is stated to have been passed u/s 16(1)(f) of the Act, hence impugned order must go.

6. Undisputedly, meeting was convened for 22.7.2008 to subscribe oath to the elected members of the council and for the purpose of election of President and Vice President of the council. Undisputedly, meeting had to be postponed by the SDM due to unpleasant situation in the hall created by some supporters. No oath could be subscribed to newly elected members on 22.7.2008. No election of President or Vice President could be held on 22.7.2008. Undisputedly, earlier CWP No. 12952 of 2008 was preferred by the Petitioner and others seeking mandamus directing the Respondents - State to notify election of the Petitioner and other persons as required u/s 24(2) of the 1911 Act with the contention that on 22.7.2008, Petitioner was elected as Senior Vice President of the municipality. The writ petition was dismissed by the Division Bench of this Court vide judgment dated 15.10.2008. The Division Bench of this Court has observed as under:

It is the categorical stand of the convener - Respondent No. 3 that in the meeting held on 22.7.2008, neither the oath to the elected members nor the election of the office of President and Vice President of the Municipal Council could take place due to the disruption of the proceedings of the meeting. There is no material produced on record to show that the stand of the Respondent - convener of the meeting could be disbelieved.

7. Undisputedly, order of the Division Bench of this Court has attained finality as the same was never challenged.

8. Petitioner is not disputing signing of the three cheques by him in the capacity of Senior Vice President of the Municipal Council. In view of the above two undisputed facts, it can safely be held that no meeting was held on 22.7.2008 and no oath was subscribed to any of the elected members including the Petitioner as required by Section 24 of the 1911 Act. Section 24 of the 1911 Act reads as under:

24. Notification of election and oath or affirmation of allegiance.- (1) No elected member of the Municipality shall enter upon his duties as such member until he has taken or made, at a meeting of the Municipality, an oath or affirmation of his allegiance to India in the following form, namely. -

1. A.B. Having been elected Member of the Nagar Panchayat or Municipal Council of.....do hereby solemnly swear (or affirm) that I will be faithful and bear true allegiance to India and to the Constitution of India as by the law established and I will faithfully discharge the duties upon which I am about to enter."

(2) The State Government shall notify in the Official Gazette every election of President of a Municipality and no President shall enter upon his duties as such until his election is so notified.

Provided that the State Government may refuse to notify the election as President of any person who has incurred a disqualification under this Act or under any other law from the time being in force, subsequent to his election as member of the Municipality:

Provided further that the State Government shall not refuse to notify the election of the President without giving an opportunity of being heard to the concerned person.

9. From the perusal of Section 24 of the 1911 Act, it is clear that no elected member of the municipality shall enter upon his duties as such member until he has taken or made an oath or affirmation at a meeting of the municipality in the prescribed form. Since no oath was ever subscribed as required by Section 24 of the 1911 Act, Petitioner was not at all authorised to enter upon his duties even as a member and was not authorised to sign three cheques which he had signed. Entering into the office and signing the cheques, posing himself as Senior Vice President of the Municipal Council, certainly amounts to flagrant abuse of his position as a member of the municipality.

10. In view of the filing of CWP No. 12952 of 2008, Petitioner was having Knowledge of the fact that in fact no meeting was held on 22.7.2008 and no oath was subscribed to him and he was not authorised to enter into the office and to sign the cheques. Hence, there was no requirement to supply any copy of the report on the basis of which show cause notice was issued to the Petitioner on the ground mentioned hereinabove. Both the grounds were known to the

Petitioner.

11. Mentioning of wrong Section in the show cause notice or in the impugned order does not make any difference and does not cause any prejudice to the Petitioner. As observed above, show cause notice was issued to the Petitioner on the ground that no meeting was held on 22.7.2008; no oath was subscribed and no elections were held and the Petitioner posing himself as Senior Vice President, signed three cheques in the capacity of Senior Vice President of the Municipal Council and thereby flagrantly abused his position, hence is liable to be removed. Impugned order is also based on the same ground. Section 16(1)(e) of the 1911 Act provides that if elected member of the Committee is guilty of flagrantly abusing his position as a member, he can be removed u/s 16(1) of the 1911 Act

12. No other point was raised. Petition is devoid of merit and hence, is dismissed in limine.