
(2011) 03 P&H CK 0789
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 1045 of 2010 (O and M)

Ulfat Rai Sahota

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 30-03-2011

Acts Referred:

Punjab Municipal Act, 1911 — Section 16, 16(1), 16B, 2(9), 22

Citation : (2011) 3 RCR(Civil) 244

Hon'ble Judges : Ranjan Gogoi, C.J.; Kanwaljit Singh Ahluwalia, J

Bench : Division Bench

Judgement

Ranjan Gogoi, C.J.—With the consent of the parties the appeal had been heard finally and is being disposed of by this order.

2. This appeal is directed against the order dated 07.07.2010 passed by a learned Single Judge of this Court by which the writ petition filed by the appellant has been dismissed. In the said writ petition, the appellant/writ petitioner, had challenged an order dated 03.06.2010 passed by the Principal Secretary, Department of Local Government, Punjab by which the petitioner has been removed from the membership of the Municipal Council, Ferozepur in exercise of powers u/s 16 of the Punjab Municipal Act, 1911 (hereinafter referred to as the Act).

The relevant facts may be very briefly noticed at this stage.

3. A meeting of the newly elected members of the Municipal Council, Ferozepur was called on 22.07.2008 for the purpose of administration of oath to the members and for the election of the President, Vice President etc. It appears that no business could be transacted in the said meeting on account of some mob violence, where after, a section of the members is alleged to have held their own meeting at some other venue. In the said election the appellant/writ petitioner was declared elected as the Senior Vice President of the Municipal Council. On the same day, the appellant, acting as the Senior Vice President of the Municipal

Council, signed three cheques -of Rs. 395/-, Rs. 400/- and Rs. 57,500/-. However, the cheques were neither presented nor encashed.

4. The appellant, as the writ petitioner, had instituted another proceeding before this Court i.e. CWP No. 12952 of 2008 seeking a direction to the respondents therein to notify the election of the appellant and the co-petitioners as required under Section 24(2) of the Act. It was the specific case of the appellant in the said writ petition that in the meeting held on 22.07.2008 he was elected as the Senior Vice President of the Municipal Council. The writ petition in question was dismissed by a Division Bench of this Court by order dated 15.10.2008, *inter-alia*, on the grounds stated below :-

It is the categorical stand of the convener - respondent No. 3 that in the meeting held on 22.07.2008, 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.

5. There is no dispute between the parties that the said order of the Court dated 15.10.2008 has attained finality in law. Thereafter, a show cause notice dated 09.07.2009 u/s 16(B) of the Act was issued and served on the appellant asking him to show cause as to why he should not be removed from the membership of the Municipal Council. The appellant submitted his reply to the above show cause notice on 08.08.2009 and thereafter he was afforded a personal hearing on 08.04.2010. According to the appellant, the Executive Officer of the Municipal Council had placed the cheques before him for signature without apprising him that he could not enter upon the duties of the office of Vice President without taking oath as a member of the Municipal Council. According to the appellant, at the time when he had signed the cheques he was also not informed that his election as the Senior Vice President had to be approved by the State Government and further that his specimen signatures as an authorized-signatory of the Municipal Council had not been forwarded to the bank.

6. The Principal Secretary to the Government of Punjab, Department of Local Government who had considered the matter and passed the impugned order dated 03.06.2010 came to the conclusion that from the order of the High Court dated 15.10.2008 disposing of CWP No. 12952 of 2008 it was quite clear that election to the office of the President and Vice President had not taken place and that on the said finding the only conclusion that can be reached is that the appellant had signed the cheques in flagrant abuse of his position as a member of the Municipal Council. It was therefore, concluded that the appellant is guilty of flagrant abuse of position as a Councillor for which reason he was liable to be removed u/s 16(1) of the Act. Accordingly, the impugned order dated 03.06.2010 ordering the removal of the appellant as a member of the Municipal Council was passed.

7. The learned Single Judge hearing the writ petition took the view that there is no dispute in the present case that the appellant/writ petitioner had signed the three cheques on 22.07.2008 in the capacity of Senior Vice President of the Municipal Council. Referring to the order dated 15.10.2008 passed in CWP No. 12952 of 2008, the learned Single Judge came to the conclusion that as it had been held by a Division Bench of this Court that no oath was administered to the Councillors and no election to the post of President or Vice President had taken place in the meeting held on 22.07.2008, the appellant/writ petitioner, was not authorized to sign the cheques purporting to act as the Vice President of the Committee. Relying on the provisions Section 24 of the Act, the learned Single Judge came to the conclusion that as no oath was administered to any of the elected Councillors in the meeting dated 22.07.2008, the petitioner was not authorized to enter upon his duties as a member of the Municipal Council. Therefore, according to learned Single Judge, entering into the office and signing the three cheques by purporting to act as the Vice President of the Municipal Council did amount to flagrant abuse of the position of the appellant as a member of the Council. Accordingly, the writ petition was dismissed giving rise to the present appeal.

8. Mr. Jain, learned Senior Counsel appearing for the appellant has vehemently contended before us that though actions contrary to Section 16(B) of the Act has been alleged in the show cause notice dated 09.07.2009, there is no such provision in the Act. In the impugned order dated 03.06.2010, the appellant had been found liable for contravening Section 16(1)(f) of the Act. Pointing out to the provisions of Section 16(1)(f) of the Act, learned Counsel has submitted that the said provision does not contemplate any charge of flagrant abuse of position which has been found against the appellant. Rather, such a charge is contemplated by Section 16(1)(e) of the Act. All this, according to learned Counsel, shows non-application of mind on the part of the authority that had passed the order of removal against the appellant. Mr. Jain has further submitted that the finding against the appellant is that he had signed the cheques purporting to act as the Vice President of the Municipal Council, though, according to the respondents themselves, no election to the said post took place in the meeting held on 22.07.2008. It is further submitted that on the date when the cheques were signed i.e. 22.07.2008, according to the respondents themselves, no Councillor including the appellant had been administered the oath. Without subscribing to the oath u/s 24 of the Act, an elected Councillor cannot enter upon the office. It is therefore, contended that by the impugned order, the petitioner has been removed from the post of Councillor for actions performed by him as the Vice President. It is also pointed out that for removal of the President/Vice President there are separate provisions contained in the Act (Section 22). Mr. Jain has also contended that the appellant, not having administered oath on 22.07.2008, did not enter upon his duties even as a Councillor for which reason the order of removal of the appellant as a Councillor has no legs to stand. Lastly, it is contended by Mr. Jain, that the cheques in

question were not encashed; they were not even presented to the bank and, therefore, the finding of flagrant abuse recorded against the appellant is wholly untenable. Referring to the decisions of the Apex Court in *Sharda Kailash Mittal v. State of Madhya Pradesh and others*, (2010) SCC 319 and *State of Punjab and Others Vs. Bhajan Singh and Another*, Mr. Jain has submitted that the alleged misconduct is neither grave nor exceptional so as to amount to flagrant abuse which is contemplated by Section 16(1)(e) of the Act.

9. I reply, Mr Puri learned Additional Advocate General Punjab has submitted that on the admitted facts of the case i.e. that the appellant had signed the cheques on 22.07.2008 on which date he was neither administered oath as a Councillor nor was he elected as a President. As a grave misconduct on the part of the appellant is established, the flagrant abuse contemplated by Section 16(1)(e) of the Act is squarely applicable to the present case. Mr. Puri has pointed out that in view of the finding recorded by this Court in its order dated 15.10.2008 in CWP No. 12952 of 2008, the actions of the appellant in signing the cheques without being authorized can not but be viewed as a serious abuse which could warrant no other order save and except the order of removal under the Act.

10. We have considered the submissions advanced on behalf of the rival parties.

11. The errors on the part of the respondents in quoting the wrong provisions of the Act in the show cause notice as well as in the order dated 03.06.2010 in our considered view will not be very material so long as the appellant was aware of the charge levelled against him and he was given due opportunity to defend himself. A perusal of the show cause notice and the details of the charges enclosed thereto would clearly reveal that at all material times, the charge levelled against the petitioner was crystal clear, namely, that he had unauthorizedly signed the three cheques purporting to act as the Vice President of the Municipal Council. The petitioner was given an opportunity to submit his explanations and he was also given of personal hearing in the matter. In his reply to the show cause notice as well as in the course of the personal hearing, the petitioner, had put up his defence against the charge levelled. If the charge itself was clear and the petitioner had availed of the opportunity to defend himself against the charge levelled, we do not see how merely because the provisions of the Act were incorrectly recorded the proceedings against the appellant and the conclusions arrived therein would stand vitiated in law. Keeping in view the charge levelled, which was understood by the appellant who had offered specific defences against the said charge, it has to be construed that the objection now taken raises highly technical questions which cannot be allowed to defeat the essence of the charges levelled against the appellant.

12. The signing of the cheques on 22.07.2008 by the appellant purporting to act as the Senior Vice President of the Municipal Council is an admitted fact. On the said date, the appellant was neither administered the oath of office as a member of the Municipal Council, nor was he elected as the Vice President of the Municipal Committee. The acts attributed to the appellant, therefore, were clearly

unauthorized. However, what has to be examined is whether in the context of the said acts, the appellant was liable to be removed as a member of the Council. This is an area where the rules of strict interpretation must be applied in as much as power of removal of an elected member has the effect of nullifying the election process by which a member gets himself elected to the Municipal Council. A order of removal also visits the affected person with a disqualification from contesting future elections for a period of 05 years. An act however reprehensible, therefore, cannot attract the provisions of the Act unless it satisfies the rule of strict interpretation if it does not, the act must be left to be dealt with by other provisions of law as may be applicable.

13. In the present case, the status of the appellant on 22.07.2008 was that of a member of a newly constituted Committee as defined in Section 2(9b) of the Act. It is only after an elected member takes oath in the form prescribed by Section 24 that he can enter upon his duties as a member of a Municipal Committee. Admittedly, the said event did not happen in the present case. If that is so, it is difficult to see how Section 16 of the Act which deals with removal of members can have any application to the appellant/writ petitioner. Until and unless oath, as prescribed by Section 24 of the Act, had been administered, the appellant could not be understood to have entered upon his duties as a member of the Municipal Council. If that is so, his actions, however reprehensible and condemnable, cannot be in the capacity of a member of the Committee. What Section 16(1)(e) of the Act contemplates is flagrant abuse by a member of his position as a member of the Committee. It is difficult to see how the said provision can have any application to the present case when the appellant had not even entered the office as a member of the Committee. We, therefore, are of the opinion that the impugned order dated 03.06.2010 cannot be construed to be legally valid and tenable, Accordingly, we allow the appeal and set aside the order of the learned Single Judge dated 07.07.2010 passed in CWP No. 11798 of 2010 as well as the impugned order dated 03.06.2010 passed by the. Principal Secretary, Department of Local Government, Punjab. We, however, make it clear that this order will discharge the appellant of any liability under the provisions of any other law as may be applicable.