
Before J.S. Narang, J

RAJINDER PAL KAUR,—*Petitioner*

versus

THE STATE OF PUNJAB & OTHERS,—*Respondents*

C.W.P. No. 7688 of 2000

16th August, 2001

Punjab Municipal Act, 1911—S.22—Punjab Municipal (President & Vice President) Election Rules, 1994—Rl.4—Petitioner elected as President of Nagar Council—Members passing a resolution of 'No confidence Motion' against the petitioner by raising of hands—Government removing the petitioner from the office of President—1994 Rules provide that the voting shall be by ballot and that utmost secrecy shall be ensured—No provision either in the 1911 Act or in the 1994 Rules for passing resolution by show of hands—Resolution passed by the Council held to be illegal—Petition allowed while quashing the notification issued by the Government removing the petitioner from the office of President.

Held, that "passing of no confidence motion" is almost akin to electing an office bearer. It is specifically provided in the election rules applicable to President and Vice President that the voting shall be by ballot and that utmost secrecy shall be ensured. In view of the dicta upheld by a Division Bench of this Court, it was necessarily required that the procedure as envisaged under rule 4 of the election rules of President and Vice President should have been adhered to. It has been fairly admitted by the learned counsel for the respondent that secret ballot was asked for by some of the members and this fact is contained in the impugned resolution itself. I do not wish to go into the fact as to whether majority of the members had been influenced by the Local MLA for accepting or asking ballot by show of hands but the election rule does not give any escape route for seeking ballot by show of hands.

(Para 16)

M.S. Khaira Sr. Advocate, with Mukesh Gandhi, Advocate
for the petitioner.

B.S. Sewak, AAG Punjab, *for the state.*

S.S. Bhinder, Advocate, *for respondent no 3.*

S.C. Pathela, Advocate, *for respondents No. 4 and 5.*

JUDGMENT

J.S. NARANG, J

(1) Petitioner was duly elected as Municipal Councillor of Nagar Council, Barnala, in the election held in the month of January, 1998. She was elected as President of the nagar Council on 2nd May, 1998. Subsequently, seven members of the nagar Council submitted a requisition for convening a general meeting of the Nagar Council for consideration of "No Confidence Motion" against the petitioner. As a sequel thereto, a general meeting was convened for 28th January, 2000. It is in this meeting that some of the members demanded secret ballot for considering the aforesaid requisition. Despite categoric request having been made in this regard, the poll was held by show of hands and the resolution was carried and that resultantly the resolution, copy Annexure P2, is alleged to have been passed.

(2) CWP No. 1504 of 2000, was filed by the petitioner impugning the resolution dated 28th January, 2000. During the pendency of that petition a show cause notice dated 3rd March, 2000, was served upon the petitioner by the Principal Secretary to Government of Punjab, Department of Local Government copy Annexure P4. A detailed reply was submitted by the petitioner. Dehors of the reply, the impugned notification dated 29th May, 2000, copy Annexure P6 has been issued by the Government and that relying upon the alleged resolution "No confidence Motion" stated to have been passed through raising of hands, the petitioner has been removed from the office of President, in exercise of powers vested in the Government under Section 22 of the Punjab Municipal Act, 1911 (amended-updated 1994) (hereinafter referred to as "the Act").

(3) Since the present petition has been filed. CWP No. 1504 of 2000, was got dismissed as withdrawn as two petitions could not be sustained for seeking partial relief which is the same.

(4) Aggrieved of the impugned notification dated 29th May, 2000, the present petition has been filed making the resolution dated 28th January, 2000 and the notification dated 29th May, 2000 as the subject matter of challenge. The respondents had filed a caveat, and on the date of hearing, were granted time to file reply. Since no reply was filed on the adjourned date, the Motion Bench observed that result of election would be subject to the decision of this writ petition as the apprehension of the petitioner was that in view of the impugned notification a new President of Nagar Council may be elected. Thus, to protect the interest of the petitioner on account of the apprehended election, the aforesaid relief was granted. However, the petition was admitted on 28th May, 2001 and was ordered to be listed for hearing on 1st August, 2001.

(5) The challenge of the petitioner is that the impugned resolution, dated 28th January, 2000 is not sustainable under law because secret ballot had been demanded by 2-3 members of the council but the majority of members demanded poll by show of hands. It is contended that there is no provision in the statute or under the rules for initiating no confidence motion against the President and resultantly the removal of the president pursuant to Section 22 of the Punjab Municipal Act, 1911 (Amended-updated 1994). My attention has been drawn to the proviso to the aforesaid provision Act which reads as under :—

22. Resignation or removal of President and Vice-President.—

Whenever a President or Vice-President vacates his seat or tenders in writing to the Committee his resignation of his office he shall vacate his office; and any president or vice-president may be removed from office by the State Government on the ground of abuse of his powers or of habitual failure to perform his duties or in pursuance of a resolution requesting his removal passed by two-thirds of the members of the committee ;

Provided that if a resolution requesting the removal of the President or the Vice-President is passed by two-thirds of the members of the committee the President or, as

the case may be the vice-President shall be deemed to be under suspension immediately after such resolution is passed :

Provided further that before the State Government notifies his removal, the reason for his proposed removal shall be communicated to him by means of a registered letter in which he shall be called upon to tender within twenty-one days an explanation in writing and if no such explanation is received in the office of the appropriate Secretary to Government within twenty-one days of the despatch of the said registered letter, the State Government may proceed to notify his removal”.

(6) The argument is that if a resolution requesting the removal of the President is passed by two-third members of the committee, the President shall be deemed to be under suspension immediately after such resolution is passed. However, the method to pass such resolution has to be followed as provided in the Punjab Municipal (President and Vice-President) Election Rules, 1994. My attention has been drawn to rule 4 of the aforesaid rules which reads as under :—

4. **Voting by ballot.**—(1) The voting for the offices of President and Vice President or Vice-Presidents as the case may be shall be by ballot by writing ‘Yes’ or ‘No’ on the ballot paper. Special ballot papers shall be used for such voting, each bearing an official mark to be placed thereon by the Deputy Commissioner.
- (2) If any member is illiterate or is otherwise incapable of casting his vote by writing ‘yes’ or ‘No’ on the ballot paper, the person presiding over the meeting shall record ‘Yes’ or ‘No’, as the case may be, on the ballot paper on behalf of such member, in accordance with his wishes.
- (3) The person presiding over the meeting covered under rule 3 shall ensure utmost secrecy while recording the wishes of the members as laid down in sub rule (2) and shall keep a brief record of each such instance, without indicating the manner in which the vote has been cast.”

(7) It shall be apposite to observe here that the aforesaid rule now stands amended by virtue of the notification which has been issued and published on 17th May, 2001, which reads as under :—

No. G.S.R. 71/P.A.3/11/S. 240/Amd.(4)/2001.—with reference to Government of Punjab, Department of Local Government, Notification No. G.S.R.49/P.A.3/11/S. 240/Amd/2001, dated the 19th April, 2001, and in exercise of the powers conferred by section 240 of the Punjab Municipal Act, 1911 (Punjab Act No. 3 of 1911), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following rules further to amend the Punjab Municipal (President and Vice-President) Election Rules, 1994, namely :—

RULES

1. These rules may be called the Punjab Municipal (President and Vice President)(First Amendment) Election Rules, 2001.

2. In the Punjab Municipal (President and Vice President) Election Rules, 1994 (hereinafter referred to as the said rules), for rule 4, the following rule shall be substituted, namely :—

“4. (1) The voting for the offices of President, Senior Vice-President and Vice-President, as the case may be, shall be by show of hands.

(2) The person presiding over the meeting convened under rule 3, shall keep a brief record in writing.”

(8) Learned counsel for the petitioner has contended that in the case of the petitioner the unamended rule would be applicable. This contention has not been contested by the respondents. My attention has also been drawn to the resolution which has been recorded by the respondents in the Minute Book, copy Annexure P2, the excerpt of which reads as under :—

Resolution No. 206 :—

On the start of the meeting the Chairpersons said that the voting of the no confidence motion shall be by way of secret ballots whereas Shri Harwinder Singh, Member

said that the meeting shall be held by show of hands as per the law. Sarvshri/Smt. Raj Kumar Dhaula, Jodh Singh, Subhash Chander, Mandeep Singh, Jang Singh, Jagga Singh, Gulzar Singh, Balbir Singh, Hans Raj, Teja Singh, Siri Pal, Paramjit Kaur, Sukhdarshan Kaur, Balbir Kaur, Manjit Kaur, Smt. Amita Rani and Malkiat Singh M.L.A. stressed that the voting shall be held by show of hands. Apart from this Shri Satpal Said that as in Parliament or in Vidhan Sabha, the voting shall be held by secret ballots. Shri Boota Singh seconded the proposal made by Shri Satpal, thereafter members said that the voting be done by the secret ballot. 18 members have stated that the voting shall be done by show of hands. The President and the two members said that the same would be held by secret ballot.

Shri Harwinder Singh said that the main agenda be considered. Thereafter, the agenda was placed before the house that they have confidence in the President or not. Harwinder Singh also said that most of the members do not carry the confidence in Smt. Rajinder Pal Kaur, President, therefore, she be removed. This proposal was seconded by Shri Raj Kumar. Shri Boota Singh again said that the voting be done by secret ballot and they have confidence in the President. Shri Sat Pal seconded the proposal given by Shri Boota Singh. The proposal given by Shri Harwinder Singh, Mandeep Singh, Raj Kumar, Jodh Singh, Subhash Chander, Siri Pal, Jang Singh, Jagga Singh, Gulzar Singh, Balbir Singh, Hans Raj, Teja Singh, Paramjit Kaur, Sukhdarshan Kaur, Balbir Kaur, Manjit Kaur, Amita Rani, Harwinder Singh and Malkiat Singh M.L.A. cast their votes by showing their hands, Shri Sat Pal, Shri Boota Singh cast their vote in favour of the President. Shri Boota Singh again stated that the voting be held through secret ballot. He said that there can be pressure for the voting by show of hands. Therefore, the said voting is not accepted by us. This was seconded by Shri Sat Pal and the President. The President said that the M.L.A. has put the pressure upon the members

at the gun point. On this 17 members said that they are not under pressure at gun point. The President again said that these members are under pressure. On this Shri Harwinder Singh, Mandeep Singh, Raj Kumar Jodh Singh, Subhash Chander, Siri Pal, Jang Singh, Jagga Singh, Gulzar Singh, Balbir Singh, Hans Raj, Teja Singh, Paramjit Kaur, Sukhdarshan Kaur, Balbir Kaur, Manjeet Kaur, Amita Rani total 17 members said that they have not been brought at the gun point and neither they are under pressure. Therefore, out of total 26 members of the Municipal Council, 18 members have voted in favour of the proposal given by Shri Harwinder Singh against the President, 3 members supported the proposal of Boota Singh and cast their votes in favour of the President. Rest of the five members were not present in the meeting. Then the President said that she is not ready to accept the proceedings of the meeting.”

(9) It has been argued that the voting by show of hands, even if asked for by the majority, could not have been adopted in view of the categorical provision contained under the rules though the rule prescribes for such method to be adopted at the time of election of the President or Vice-President. Reliance has been placed upon a Division Bench judgment of this Court reported as *Dharam Singh and Risal Singh v. State of Haryana and others* (1). It is conceded that in the aforesaid judgment the interpretation of election rules of Municipal Committee were not involved but somewhat similarly situated proposition had arisen before the Single Bench and that the said Bench observed that if no procedure is provided for a meeting for passing “No Confidence Motion”, then in that case the procedure provided in the meeting for election of Sarpanch should be followed and in this regard the principle discernible in Section 21 of the General Clauses Act, 1987 has been resorted to.

(10) The contention is that in the Punjab Municipal Election Rules, 1994, no provision has been provided for consideration of “No Confidence Motion” against the Councillor but it has been specifically provided under the Election Rules of the President and Vice-President

(1) 1974 PLJ 365

that the voting shall take place by ballot 'Yes' or 'No' on the ballot paper and that utmost secrecy shall be ensured for recording wishes of the members. Since there is no provision for passing the resolution by showing of hands, the majority could not have adopted the method of passing the resolution by showing of hands especially when some of the members had specifically asked for secret ballot.

(11) It is contended that secret ballot had been asked for and substantial number of members had been given threat by the local M.L.A. and that it is on account of undue influence of the local M.L.A. that while deciding the fate of the resolution by show of hands, the substantial number could not express their independent opinion. Thus, the impugned resolution cannot be said to have been passed in accordance with law. Resultantly, the notification based upon the said impugned resolution is also not sustainable. The Government has not taken into consideration the objections raised by the petitioner in response to the show-cause notice and that it has been categorically mentioned in the notification issued by the Government that the resolution of "No Confidence Motion" was passed through raising of hands. The rule of law having not been adhered to, no legal resolution can be said to have been passed.

(12) It is also contended that during the pendency of the petition, respondent No. 5 Smt. Sukhdarshan Kaur is stated to have been elected as President but in view of the order dated 13th January, 2000, passed by the Motion Bench, as noticed above, the said election is not sustainable and the same deserves to be quashed.

(13) The stand of the respondents is that the mandate of the majority is a writing on the wall and that the inescapable conclusion is that the petitioner did not enjoy the confidence of the majority, as such, has been correctly removed from the office. The resolution dated 28th January, 2000, bears the signatures of 18 Councillors out of 25 and that the meeting had taken place in the presence of the Observer appointed by the Deputy Commissioner. Thus, there is no irregularity or illegality which can be said to have been committed. The resolution has been duly passed and recorded in the Minutes Book and that in pursuant thereto the notification dated 29th May, 2000, has been issued by the Government. On account of removal of the petitioner from the office of the President of the Council, Smt. Sukhdarshan

Kaur has been elected as the President of the Council. It has also been contended that 17 Councillors have categorically stated that they had supported the resolution without any fear or favour or any undue influence of the local M.L.A. and that it is the mandate of the majority.

(14) It has been further argued by the learned counsel for the respondents that the internal affairs of the council are governed by the bye-laws framed pursuant to the provisions of law. Reliance has been placed upon Regulation No. 26, wherein it is categorically provided that if a ballot is demanded by any member present, it shall be taken by show of hands and that the resolution of such ballot declared by the Chairman shall be deemed to be the resolution of the Committee. It shall be apposite to notice the aforesaid regulation which reads as under :—

“26. Unless a poll is demanded by any member present at the meeting a declaration made at the meeting by the Chairman, that a motion, resolution or amendment has been carried 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 show of hands, and the result of such poll as declared by the Chairman shall be deemed to be the resolution of the Committee. provided that the name of any member dissenting from any resolution of the Committee shall be recorded in the minutes.”

(15) It has been further argued that the government has placed reliance upon the law laid down by this Court in *Re: Sarwan Singh v. State of Punjab and others (2)*, whereby it has been held that the provisions of bye-law 26 are clear and are applicable to the proceedings where “No Confidence Motion” is initiated and that the ballot could take place only by show of hands and not by a secret ballot. It has been further argued that the majority which constituted more than two-third has openly and categorically mandated the passing of “No Confidence Motion” against the petitioner and by following the procedure by adhering to secret ballot will not change the result and that the petitioner has not been prejudiced in any manner whatsoever.

(16) I have heard the respective contention of the learned counsel for the parties and I am of the opinion that "passing of no confidence motion" is almost akin to electing an office bearer. It is specifically provided in the election rules applicable to President and Vice-President that the voting shall be by ballot and that utmost secrecy shall be ensured. In view of the dicta upheld by a Division Bench of this Court, it was necessarily required that the procedure as envisaged under rule 4 of the election rules of President and Vice-President should have been adhered to. It has been fairly admitted by the learned counsel for the respondents that secret ballot was asked for by the members and this fact is contained in the impugned resolution itself copy Annexure P2. I do not wish to go into the fact as to whether majority of the members had been influenced by the local MLA for accepting or asking ballot by show of hands but the aforesaid election rule does not give any escape route for seeking ballot by show of hands. It is correct that Regulation No. 26 of bye laws provides for seeking ballot by show of hands only but the said bye laws have not been made applicable to or to be followed at the time of election of the President or Vice-President. The said regulation has been provided for adopting a procedure for passing a normal ordinary resolution but when it comes to pass a resolution such as "No Confidence Motion", the status of the President or the Vice President comes at a stake which has to be compared and becomes comparable to election of a President or the Vice-President. Thus, in that situation, accepting and adhering to the rules framed for the said purpose is the only inevitable course. It looks that ambiguity did prevail in the minds of the framers of the rules and that it is very recent in May 2001, the said rule has been amended and it has been specifically provided that the voting for the offices of the President or Vice-President or Senior Vice President shall be by show of hands but till the amendment in the rule, the rule applicable to the election to the office of the President or the Vice President has to be adhered to. Similar situation had arisen before this Court and a Single Bench of this Court categorically observed that where no procedure is provided for deciding the fate of "No Confidence Motion", the rules provided for election of such office should be adhered to. The Single Bench judgment of this Court in *Swaran Singh's* case (supra) does not support the case of the respondents. In fact, his lordship has categorically observed before parting with the case that the factum of asking for secret ballot has not been corroborated as no

such plea is stated to have been taken while sending reply to the show cause issued to the petitioner in that case, whereas in the present case the facts stand corroborated from the perusal of the impugned resolution dated 28th January, 2000 that secret ballot has been demanded but the same was brushed aside by the alleged brutal majority. As observed above despite the majority the rule does not provide the ballot by showing of hands.

(17) In view of the above observation, I am of the considered opinion that the impugned resolution dated 28th January, 2000, copy Annexure P2, has not been legally passed and is, therefore, not sustainable and resultantly, the notification dated 29th May, 2000, is not sustainable. Thus, the petition is allowed, the impugned resolution dated 28th January, 2000 allegedly passed by the council by tossing of hands is quashed and the notification dated 29th, May, 2000 published by the government is also quashed. The resultant effect is that election of respondent No. 5 Smt. Sukhdarshan Kaur as President of Nagar Council is also set aside. The Petitioner shall stay as President of Nagar Council till removed in accordance with law. No costs.

R.N.R.

Before G.S. Singhvi, A.C.J. & Bakhshish Kaur, J

NARDEEP KUMAR MAHESHWARI—Petitioner

versus

INDIAN OIL CORPORATION & OTHERS—Respondents

C.W.P. No. 6133 OF 2001

1st March, 2002

Constitution of India, 1950—Arts. 14 & 226—Selection of respondent 4 as distributor of LPG—Allegations of arbitrariness, bias & mala fides against the Dealer Selection Board—Power of the High Court of judicial review—Ambit & scope—High Court has jurisdiction to examine whether the recommendations made by the Board are tainted by arbitrariness, or vitiated by mala fides, bias or prejudice.