

IN THE HIGH COURT OF PUNJAB AND HARYANA, AT CHANDIGARH

CWP No.7419 of 2015 (O&M)

Date of Decision : 20.5.2015

Vinod Kumar and others

..Petitioners

Vs.

State of Haryana and others

..Respondents

**CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA, JUDGE
HON'BLE MRS. JUSTICE LISA GILL, JUDGE**

Present : Mr. Harkesh Manuja, Advocate for the petitioners.

 Mr. Vishal Garg, Addl.AG Haryana for the respondents.

Hemant Gupta, J.(Oral)

The grievance of the petitioners is in respect of non holding of election the post of President of Municipal Council, Gohana after the resignation of the previous President.

Shri Jorawar Singh, the President of the Municipal Council, Gohana resigned on 1.4.2015. The argument of the learned counsel for the petitioners is that in terms of Section 18 of the Haryana Municipal Act, 1973 (for short 'the Act') read with Rule 70 of the Haryana Election Municipal Election Rules, 1978, the vacancy of the President has to be filled in within 30 days whereas no steps have been taken by the respondents to fill up the vacancy, therefore, the petitioner is entitled to a mandamus to direct the respondents to conduct elections to the post of President of the municipality.

On the other hand, Mr. Vishal Garg, Addl. AG Haryana submits that there is no time limit for conduct of elections of the vacancy of the post of President though Sub Divisional Officer has been directed to initiate process of conduct of elections. It is also pointed out that term of the Municipal Council Gohana is coming to the end in the month of June 2015 and therefore, election to the post of President may not be proper at this stage when function of the Municipal Council is not being affected in any manner. It is argued that in the absence of President, the Vice President is officiating as President of the Municipal Council.

The Scheme of the Act shows that election of the first President and Vice President in terms of Section 18 read with Rule 70 of the Rules has to be conducted within 30 days of the constitution of a municipality but there is no such mandate to conduct elections on account of vacancy of the post of President or Vice President. Section 20 of the Act deals with resignation from the post of President or Vice President. Section 21 deals with motion of no-confidence against President or Vice President. Section 22 deals with removal of President or Vice President and Section 22-A deals with suspension of President or Vice President. On the other hand, Section 28 of the Act contemplates that at every meeting of the Municipal Council, the President, if present, or, in his absence or during the vacancy of his office, the vice president present, and if there be no president or vice president present, then one of the members as the members may elect, shall preside meeting as Chairman. It shows that even in the absence of President, the Municipal Council can function as per the procedure prescribed in the

Rule 70 of the Rules deals with election of the President and Vice President in the first meeting of the municipal councillors. Rule 72-A of the Rules deals with no confidence motion against President or Vice President whereas Rule 72-B deals with the election on account of vacancy of no confidence motion passed for the remainder of the period in accordance with the provisions contained in part IV of the Rules.

Thus, only in the situation of No Confidence Motion having passed, the election to the post of President or Vice President is required to be conducted within 30 days but such mandate cannot be read in the vacancy of President or Vice president arising other than of passing of no confidence motion.

In view thereof, we do not find any merit in the present writ petition and the same is hereby dismissed.

(Hemant Gupta)
Judge

(Lisa Gill)
Judge

20.5.2015
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