

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1) LPA No. 664 of 2015 (O&M)

Deputy Commissioner, Karnal and another
.... APPELLANTS

Versus

Smt. Sunita and others
.... RESPONDENTS

(2) LPA No. 665 of 2015 (O&M)

Sukhwinder Kaur and others
.... APPELLANTS

Versus

Smt. Sunita and others
.... RESPONDENTS

DATE OF DECISION : 03.07.2015

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present : Mr. Lokesh Sinhal, Addl. A.G., Haryana,
for the appellants (in LPA No. 664 of 2015) and
for respondents No.4 and 5 (in LPA No. 665 of 2015)

Mr. Amar Vivek, Advocate,
for the appellants (in LPA No. 665 of 2015)

Mr. Bhoop Singh, Advocate,
for respondents No.1 to 3 (in both the LPAs)

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SATISH KUMAR MITTAL, J.

This order shall dispose of two Letters Patent Appeals under

Clause X of the Letters Patent, i.e. LPA No. 664 of 2015 filed by Deputy Commissioner, Karnal and Sub Divisional Officer (C) Indri; and LPA No. 665 of 2015 filed by Sukhwinder Kaur and six others (elected members of Municipal Committee, Indri), against the judgment dated 20.04.2015 passed by the learned Single Judge, whereby the writ petition (CWP No. 2849 of 2015) filed by Smt. Sunita and two others (respondents No.1 to 3 in both these appeals) seeking quashing of the proceedings dated 12.02.2015 (Annexure P-3) passing No Confidence Motion against Smt. Sunita as President of Municipal Committee, Indri, by more than two-third of the elected members of the Municipal Committee, has been allowed and the proceedings passing No Confidence Motion against Smt. Sunita, President of the Municipal Committee, Indri, has been set aside.

Before considering the questions of law involved in these appeals, it is necessary to give brief facts of the case.

Municipal Committee, Indri (hereinafter referred to as 'the Committee') consists 15 members, i.e. 13 elected members and 2 nominated members (Member of Parliament and Member of Legislative Assembly of the area). Election of the Committee took place in February, 2013. Smt. Sunita (respondent No.1 herein) was elected as President of the Committee in May/June, 2013.

Majority of the members of the Committee were not satisfied with the functioning of the President of the Committee. Therefore, on

16.01.2015, 10 elected members of the Committee submitted a requisition along with their respective affidavits to the Deputy Commissioner, Karnal, for convening the meeting of the Committee to consider the No Confidence Motion against the President of the Committee. On the said requisition, the Deputy Commissioner, Karnal, vide letter dated 19.01.2015, authorised the Sub Divisional Officer (Civil) Indri, to convene a special meeting as per Rule 72-A of the Haryana Municipal Election Rules, 1978 (hereinafter referred to as 'the Election Rules of 1978'), for consideration of No Confidence Motion against the President of the Committee. The Sub Divisional Officer (Civil), Indri, issued notice dated 23.01.2015 to all the 15 members of the Committee, convening of special meeting on 12.02.2015 at 3.00 PM in the Office of the Committee, to consider No Confidence Motion against the President of the Committee. On the date, time and place fixed, the special meeting was held, which was attended by 14 members of the Committee, i.e. 13 elected members and one nominated member (Member of Legislative Assembly of the municipal area). Out of 13 elected members, 10 elected members supported the No Confidence Motion against the President of the Committee. They duly signed the proceedings in support of passing the No Confidence Motion. The remaining 3 elected members of the Committee, including the President of the Committee, demanded for putting the motion of no-confidence to vote by secret ballot, and did not support the No Confidence Motion. In view of this, the Presiding Officer recorded that

No Confidence Motion has been passed by two-third elected members of the Committee, and as per Section 21 (3) of the Haryana Municipal Act, 1973 (hereinafter referred to as 'the Act'), the President shall be deemed to have vacated the office of the President of the Committee.

The President and two other elected members of the Committee, who did not support the No Confidence Motion, filed the aforesaid writ petition challenging the proceedings of passing No Confidence Motion against the President of the Committee, on the ground that in spite of the demand of 3 elected members of the Committee, the Presiding Officer did not put the motion of no-confidence to vote by secret ballot, and acted illegally and arbitrarily while rejecting the request of 3 elected members for secret ballot. Hence, the proceedings of passing No Confidence Motion against the President of the Committee by show of hands was illegal and is liable to be set aside.

The learned Single Judge allowed the writ petition and set aside the proceedings dated 12.02.2015 (Annexure P-3) passing No Confidence Motion against the President of the Committee, while observing that when 3 elected members of the Committee had demanded for secret ballot, then the Presiding Officer of the meeting was duty bound to conduct the No Confidence Motion by secret ballots. In this regard, the learned Single Judge relied upon a Division Bench judgment of this Court reported as **Kitab Singh Vs. Deputy Commissioner of Fatehabad and others**, 2008 (4)

PLR 361.

Against the said judgment, these two LPAs have been filed.

Learned counsel for the appellants, while referring to sub-sections (2) and (3) of Section 21 of the Act and Rule 72-A of the Election Rules of 1978, argued that as per the legal requirement, No Confidence Motion against the President of a Municipal Committee is to be carried with the support of not less than two-third of the elected members of that Committee. If such a motion is passed with the support of that strength of the elected members of the Committee, the President of the Committee is deemed to have vacated his/her office. Rule 72-A of the Election Rules of 1978 provides the procedure for conducting the No Confidence Motion moved against the President of the Committee, and the manner in which such motion is to be considered. Learned counsel argued that neither under sub-sections (2) and (3) of Section 21 of the Act, nor under Rule 72-A of the Election Rules of 1978, it has been provided that No Confidence Motion against the President of a Committee is required to be put to vote by secret ballots. The only requirement under Section 21 (3) of the Act and Rule 72-A of the Election Rules of 1978 is that if the motion is carried with the support of not less than two-third of the elected members of the Committee, then the President of the Committee is deemed to have vacated his/her office. Learned counsel further argued that in the present case, the learned Single Judge has committed grave illegality while holding that in case, a member

demands a vote by secret ballot, then the Presiding Officer is duty bound to conduct the No Confidence Motion by secret ballot, particularly when out of 13 elected members, 10 elected members had clearly and unequivocally supported the No Confidence Motion against the President of the Committee. Learned counsel argued that Division Bench decision of this Court in **Kitab Singh's case** (supra) relied upon by the learned Single Judge, is not applicable in the present case, as in that case, No Confidence Motion passed against the President of the Committee by show of hands was held to be valid. The question that No Confidence Motion is to be put to vote by secret ballot was not raised in that case. Learned counsel further argued that a Division Bench of this Court in **Hari Kishan Arora Vs. State of Haryana**, 2009 (2) PLR 32, wherein the learned Single Judge was a member of the Bench, clearly lays down that there is no provision in the Act and the Election Rules of 1978 that a No Confidence Motion should be passed by a secret ballot, and the provision contained in Rule 71 of the Election Rules of 1978, which provide for election of the President by secret ballot cannot be made applicable for passing No Confidence Motion. It has been held that if No Confidence Motion against the President is carried with not less than two-third of the elected members of the Committee, the President shall be deemed to have vacated his/her office. In the light of these facts, it has been inter-alia argued that the judgment passed by the learned Single Judge is not sustainable.

On the other hand, learned counsel for respondents No.1 to 3 argued that though sub-sections (2) and (3) of Section 21 of the Act and Rule 72-A of the Election Rules of 1978 do not provide any specific procedure to put a No Confidence Motion to vote by secret ballot, yet since a demand for secret ballot was made by 3 elected members of the Committee, the Presiding Officer of the special meeting was duty bound to put the motion of no-confidence to vote by secret ballot. This was essential to fairly assess and ascertain the wish of the elected members of the Committee. It has been further argued that to maintain the purity of the election process, procedure of voting by secret ballot should have been adopted. Learned counsel further argued that Rule 71 of the Election Rules of 1978 provides that in case of election of the President and Vice-President of a Committee, if the number of proposed candidates is more than one for each office, the voting shall be by ballot. According to the learned counsel, the same procedure should have been followed for removal of the President or the Vice-President. Learned counsel argued that in view of Section 21 of the General Clauses Act, 1897 as well as Section 18 of the Punjab General Clauses Act, 1898, the Presiding Officer of the meeting, in absence of specific procedure prescribed for removal, should have followed the same procedure as prescribed for election of the President. In support of this contention, learned counsel for respondents No.1 to 3 relied upon Division Bench decisions of this Court reported as **Dharam Singh and Risal Singh**

Vs. State of Haryana and others, 1974 PLJ 365; **Hardatt Singh Vs. Block Development and Panchayat Officer**, 1975 PLJ 449; and **Sheo Chand Vs. Jee Ram and others**, 1975 PLJ 4. Learned counsel also referred to certain observations made in a decision of this Court in **Sarwan Singh, Ex-President, M.C. Hoshiarpur Vs. State of Punjab**, 1994 PLJ 317 and **Kitab Singh's case** (supra) as well as **Hari Kishan Arora's case** (supra).

After considering the various submissions made by learned counsel for the parties and going through the judgments cited by them, we are of the opinion that in the facts and circumstances of the present case, the following questions of law are arising for consideration :-

- (i) Whether under sub-sections (2) and (3) of Section 21 of the Act and Rule 72-A of the Election Rules of 1978, a motion of no-confidence against the President or Vice-President of a Municipal Committee is required to be put to vote by secret ballot ?
- (ii) Whether the procedure for election of President of a Municipal Committee as provided under Rule 71 of the Election Rules of 1978 is to be followed, while considering No Confidence Motion against the President of a Municipal Committee under Rule 72-A of the Election Rules of 1978 ?
- (iii) Whether the Presiding Officer of a special meeting convened for consideration of No Confidence Motion under Rule 72-A of

the Election Rules of 1978 is duty bound to put the motion of no-confidence against the President of a Committee to vote by secret ballot, if so demanded by an elected member, particularly when wish of more than two-third of the elected members of the Committee who are supporting the No Confidence Motion is clear ?

Before dealing the aforesaid questions, it will be appropriate to quote certain provisions of the Act and the Election Rules of 1978, in order to appreciate the controversy involved in the instant case.

To strengthen the Urban Local Government, which is considered to be third tier of Indian Government and to fortify the democracy at the grass root level, 74th amendment was made in the Constitution of India. Articles 243P to 243ZG were introduced in the Constitution. Article 243R provides for composition of Municipalities. Article 243T provides for reservation of seats in the Municipal Committee, Municipal Council or Municipal Corporation, as the case may be. Article 243U provides for duration of Municipalities, etc. and Article 243ZA provides for election to the Municipalities. After introducing the aforesaid Articles in the Constitution of India, various amendments were made in the Haryana Municipal Act, 1973, in consonance with the aforesaid Articles. Section 18 of the Act provides for election of President and Vice-President of the Municipal Committee. The President or Vice-President of a

Municipal Committee is to be elected by its members. Rule 71 (1) of the Election Rules of 1978 provides that if only one candidate each for the offices of the President or Vice-President is proposed, such candidate shall be declared to have been duly elected. If the number of proposed candidates is more than one for each office, the voting shall be by ballot. Section 21 of the Act provides for Motion of no-confidence against President or Vice-President, which reads as under :-

“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 authorise, shall convene a meeting for the 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-third 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 authorised 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 authorised by him, but neither he nor such officer shall have right to vote at such meeting.”

Section 22 of the Act provides for removal of President or Vice-President, which reads as under :-

“22. Removal of president or vice-president – The State Government may, at any time, by notification, remove a president or vice-president from his office on the ground of abuse of his power or of habitual failure to perform his duties :

Provided that no removal of the president or vice-president shall be notified unless the matter has been enquired into by an officer, not below the rank of an Extra Assistant Commissioner, appointed by the State Government and the president or vice-president, as the case may be, has been given a reasonable opportunity of being heard or there is a finding by the competent court in this regard.”

There is difference between removal of President or Vice-President under Section 22 of the Act and passing of No Confidence Motion against the President or Vice-President under Section 21 of the Act. The removal of the President or Vice-President from the office can be made on the ground of abuse of his power or of habitual failure to perform his duties. Whereas under Section 21 of the Act, on passing a No Confidence Motion against the

President or Vice-President by not less than two-third of the elected members of the Committee, he shall be deemed to have vacated his office. The object and intention of Section 21 of the Act is very clear that if an elected President loses the confidence of the House and a motion of no-confidence is carried against him with the support of not less than two-third of the elected members of the Committee, he is deemed to have vacated the office. On passing of motion of no-confidence against the President by not less than two-third of the elected members of the Committee automatically leads to his removal. The moment, such motion is passed, the President is deemed to have vacated his office. Thus, the intention of Section 21 of the Act is that when a President has lost the support of two-third of the elected members of the Committee, he cannot remain in the office.

The procedure to convene and conduct the special meeting for considering No Confidence Motion has been prescribed under Rule 72-A of the Election Rules of 1978, which reads as under :-

72-A – No confidence motion against president or vice-president – (1) A motion of no confidence against the president or vice-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 number of the 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 authorise, 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 authorise, 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.”

Vide the aforesaid Rule, a clear procedure has been provided for requisitioning the meeting of the Committee and considering No Confidence Motion against the President or Vice-President. There is no ambiguity in the procedure. It clearly provides that if one third of the total number of the members of the Committee make a written request to the Deputy Commissioner for bringing a No Confidence Motion against the President or Vice-President, the Deputy Commissioner is duty bound to convene a meeting of the Committee for consideration of No Confidence

Motion against the President or Vice-President, as the case may be. The Deputy Commissioner may either himself or his authorised officer, who shall not be below the rank of an Extra Assistant Commissioner, shall convene a special meeting by giving a notice of not less than fifteen days for the consideration of No Confidence Motion. Only one rider has been 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. Sub-rule (4) read with Section 21 (3) of the Act clearly provides that in the said meeting, if the motion is carried out with the support of not less than two-third of the elected members of the Committee, the President or Vice-President of the Committee, as the case may be, shall be deemed to have vacated his office. The intention of the legislation in introducing the aforesaid provision is clear that if President or Vice-President of a Municipal Committee loses the faith and confidence of more than two-third of the elected members of the Committee, and if those members pass a resolution of No Confidence Motion against him, then the President or Vice-President cannot remain in his office and he shall be deemed to have vacated his office. Thus, neither under Section 21 of the Act nor under Rule 72-A of the Election Rules of 1978, there is any requirement that to ascertain the wish of the elected members of the Committee, motion of no-confidence has to be put to vote by secret ballot. If two-third elected members of the Committee are openly supporting the motion of no

confidence against the President of the Committee, in that situation, merely on the asking of the minority group having less than one-third members of the elected members of the Committee to put the motion of no-confidence to vote by secret ballot, the Presiding Officer of the meeting is not required to ask the majority group of the elected members of the Committee to cast their vote by secret ballot. Only in a situation when the provision of law clearly requires that No Confidence Motion has to be put to vote by secret ballot, the Presiding Officer of the meeting is duty bound to put the motion of no-confidence to vote by secret ballot, even on the asking of one elected member of the Committee. But when the statute does not provide for secret ballot in case of considering No Confidence Motion against the President or the Vice-President of the Committee, the court cannot impliedly read such provision of law in the statute. If the wish of the House or the members of the Committee is not clear, then it will be open for the Presiding Officer of the meeting to put the motion of no-confidence to vote by secret ballot, but it cannot be laid down as a law that in all circumstances, the Presiding Officer is duty bound to put the motion of no-confidence to vote by secret ballot, if demanded even by one member of the Committee, irrespective of the fact that two-third elected members of the Committee have openly and unequivocally supported the motion of no-confidence not only by giving their respective affidavits, but also by putting their signatures on the proceedings of the meeting held for considering No Confidence Motion.

The contention of learned counsel for respondents No.1 to 3 that the procedure prescribed under Rule 71 of the Election Rules of 1978 for electing the President or Vice-President of a Municipal Committee by secret ballot should have been followed, while considering No Confidence Motion against the President or Vice-President, also cannot be accepted. If only one candidate each for the offices of the President or Vice-President is proposed, then as per Rule 71 of the Election Rules, no voting by secret ballot is required. Voting by secret ballot is required, only if the number of proposed candidates is more than one for each office. This procedure has to be adopted only in case of election of the President or Vice-President, but that is not the requirement for considering No Confidence Motion against the President or Vice-President. Here, the motion is one, either to be accepted or rejected. If two-third of the elected members of the Committee are supporting No Confidence Motion against the President, then it has to be declared to be carried out successfully, resulting into vacation of the office of the President. When not less than two-third of the elected members of the Committee clearly, unequivocally and openly support the motion of no-confidence against the President, then there is no duty cast upon the Presiding Officer of the meeting to ask those members to express their opinion in favour of the motion of no-confidence by secret ballot.

The aforesaid issue came up for consideration before a Division Bench of this Court in **Hari Kishan Arora's case** (supra). In that case, in a

meeting convened for considering No Confidence Motion, out of 15 elected members, 10 elected members came present in the special meeting and unanimously supported the No Confidence Motion. The resolution was challenged on the ground that No Confidence Motion should have been passed only by secret ballot and not by signing the resolution by two-third majority of the members. In that case, it was also argued that the procedure prescribed under Rule 71 of the Election Rules of 1978 for electing the President or Vice-President through secret ballot should have been followed while considering the No Confidence Motion. The Division Bench of this Court, while rejecting the said contention, has observed as under :-

“The second contention of counsel for the petitioner that no confidence motion should have been passed by secret ballots, also cannot be accepted. Neither section 21 of the Act nor Rule 72-A of the Municipal Rules prescribe any procedure for passing the no confidence motion by secret ballot. In these provisions, only it is provided that if the motion is carried out with the support of not less than two-third 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. The contention of the petitioner is that in this regard, Rule 71 of the Municipal Rules, where the procedure for the election of President or Vice President has been prescribed, should be followed. Rule 71 of the Municipal Rules provides that if the number of proposed candidates for the offices of the President or Vice President is more than one for each office, the voting shall be by ballot. In our view, the said provision cannot be

made applicable for passing of no confidence motion. If the no confidence motion against the President is carried by two-third of the elected members of the committee, the President shall be deemed to have vacated his office.”

Keeping in view the facts of that case, it was observed that even no request was made by any one for secret ballot. This observation, in our opinion, does not support the contention of learned counsel for respondents No.1 to 3 that No Confidence Motion is to be put to vote by secret ballot. In that case, the ratio of the decision was that the procedure of Rule 71 of the Election Rules of 1978 cannot be made applicable in case of considering and passing of No Confidence Motion against the President.

The learned Single Judge relied upon the decision of **Kitab Singh's case** (supra), while reaching the conclusion that the Presiding Officer of the meeting was duty bound to conduct the No Confidence Motion by secret ballot. In our opinion, ratio of the said decision is not such as has been taken by the learned Single Judge. In that case, out of 22 members of Municipal Council, who attended the meeting, 19 members supported the No Confidence Motion against the President of the Municipal Council. The said resolution was passed by show of hands. The President of the Municipal Council, challenged the proceedings of passing No Confidence Motion against him, by filing writ petition on the ground that the motion should have been put to vote and considered through casting of secret ballot. The said writ petition was dismissed by the Division Bench of

this Court, while observing as under :-

“8. We are unable to see any parity between the present case and Dharam Singh's case (*supra*). This court in **Sarwan Singh v. State of Punjab, 1994 (2)Recent Revenue Reports 461**, a case under the provisions of Punjab Municipal Rules, 1952, had categorically found a no confidence motion passed by show of hands to be valid.

9. In any case when the meeting was convened on February 7, 2007 at 11 a.m. 22 members including the petitioner were present as is evident from Annexure P-1 which is the record of the proceedings of the meeting. When the motion was put to vote 19 members raised their hands in favour of the motion. The motion was passed by 19 votes in favour. All 19 members had signed the proceedings. After the motion had been passed the office of the President was declared as having fallen vacant.

10. Recently this court had in **Seema Chaudhary v. The State of Haryana and others, CWP No. 6534 of 2005 decided on September 19, 2007** quashed the no confidence motion on the ground that secrecy of the ballot had not been maintained. However, that was a case where the petitioner had obtained a direction from this Court by filing a writ petition that the no confidence motion should be put to vote through a secret ballot. The petitioner had also sought secret ballot at the time of the actual voting. In the present case there was no demand from the petitioner or any member that the motion be put to vote through a secret ballot. Thus the judgment in Seema Chaudhary's case (*supra*) is clearly distinguishable.”

From the aforesaid observations, ratio of the judgment is clear that if the

motion of no-confidence is supported by two-third of the elected members of the Committee even by show of hands, then the motion is deemed to have been passed against the President. However, the learned Division Bench in para 11 of the judgment has observed that had the petitioner demanded a secret ballot, the Presiding Officer would have been duty bound to conduct the voting by secret ballot. In our opinion, it was not the issue before the learned Division Bench, as to whether on demand by a member of the Committee, may be in gross minority, and particularly when majority group of two-third of the elected members of the Committee are supporting the motion of no-confidence, the Presiding Officer is duty bound to put the motion to vote by secret ballot. In our opinion, when the law does not require that the motion of no-confidence is to be put to vote by secret ballot, the Presiding Officer is not duty bound to put the motion to secret ballot, merely on the asking of one or two members of the Committee, who are grossly in minority. In **Sarwan Singh's case** (supra), learned Single Judge of this Court, considered this aspect of the matter. In that case, the motion of no-confidence against the President of the Committee was passed by requisite majority of two-third elected members of the Committee, by show of hands, in spite of the fact that one member demanded voting on the No Confidence Motion by secret ballot. A contention was raised that the motion of no-confidence should have been put to vote by secret ballot, as is done at the time of electing the President. This contention was rejected and the

motion of no-confidence passed against the President was upheld, while observing that the matters relating to elections to the committees and the removal of members or office-bearers relate to questions of policy. While it is prerogative of the Legislature to legislate, the primary job of the Courts is to find out whether or not the Executive has acted in conformity with the laws which have been validly enacted. Even if it appears desirable that the secrecy of ballot should be maintained at all levels and in the conduct of all proceedings, no action or order can be quashed till it is found to have been passed in violation of the law. It has been further held that where no specific procedure has been prescribed for passing of a motion of no-confidence, the Presiding Officer of the meeting is not bound to follow the procedure prescribed for election of the President.

While raising the contention that when Rule 72-A of the Election Rules of 1978 does not prescribe any procedure for putting the motion of no-confidence to ballot, then the Presiding Officer should have followed the same procedure as has been prescribed for election of the President or Vice-President under Rule 71 of the Election Rules of 1978, learned counsel for respondents No.1 to 3 relied upon the decision of **Dharam Singh's case** (supra), which has been followed in two other cases. These three cases pertain to the Punjab Gram Panchayat Act, 1952. Section 9 of the said Punjab Gram Panchayat Act, 1952 (as applicable to the State of Haryana), provides that subject to approval of the Director, the Sarpanch

may be removed from his office by a majority of the votes of the Panches constituting the Gram Panchayat at its extraordinary general meeting held with previous permission of Director. In that case, it was held that the Haryana Gram Panchayat Election Rules, 1971, do not prescribe the manner in which a meeting of the Panches for the consideration of no-confidence motion against the Sarpanch is to be called and conducted. Proviso 2 to sub-section (2) of Section 9 of the said Act does not provide the manner in which such a meeting is to be called and conducted. In that situation, the learned Division Bench of this Court, while applying provision of Section 21 of the General Clauses Act, 1897, held that meeting for the removal of a Sarpanch by passing a no-confidence resolution shall also be held in the same manner in which a meeting for the election of the Sarpanch is to be held. In our opinion, the said decision in **Dharam Singh's case** (supra) is not applicable to the facts of the present case. In the instant case, the provision is clear. Sub-sections (2) and (3) of Section 21 of the Act clearly lay down the procedure of calling meeting for considering No Confidence Motion and the manner in which such meeting is to be conducted. In **Sarwan Singh's case** (supra) and **Kitab Singh's case** (supra), it has been clearly laid down that the judgment of **Dharam Singh's case** (supra) is not applicable, in the facts and circumstances of the case arising under the Haryana Municipal Act, 1973 and the Election Rules of 1978 framed thereunder. As far as the Haryana Municipal Act, 1973 and the Election

Rules of 1978 are concerned, these are not vague or ambiguous. Therefore, in our opinion, in the present case, there is no scope to invoke the provision of Section 21 of the General Clauses Act, 1897.

In view of the above, answers to all the three questions arising in the present case go against the respondents.

Consequently, we are of the opinion that the impugned judgment passed by the learned Single Judge is not sustainable. Hence, both these appeals are allowed and the impugned judgment dated 20.04.2015 passed by the learned Single Judge is set aside.

**(SATISH KUMAR MITTAL)
JUDGE**

July 03, 2015
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**(HARINDER SINGH SIDHU)
JUDGE**