

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

**CWP No.15518 of 2017
Date of Decision: 19.07.2017**

Sarabjit Kaur

....Petitioner

Vs.

State of Punjab and others

....Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Anmol Rattan Sidhu, Sr. Advocate, with
Mr.Shiv Kumar Sharma, Advocate, and
Mr.Pratham Sethi, Advocate,
for the petitioner.

Mr.Arun Jain, Sr. Advocate, with
Mr.Vijay Sharma, Advocate,
for the Caveator.

RAKESH KUMAR JAIN, J. (ORAL)

This petition is filed at the instance of the President of Municipal Council, Tapa, District Barnala against the resolution passed by the Municipal Council on 10.7.2017 in which 'no confidence motion' has been passed by 2/3rd members of the Committee against him.

In short, Municipal Council, Tapa comprises of 15 elected members and 1 nominated member, namely, MLA. The petitioner was elected by the members as the President on 10.3.2015. The members moved a requisition to bring 'no confidence motion' against the petitioner. A special meeting in this regard was fixed on 3.7.2017 at 11.00 AM in the Municipal Council, Tapa. The said meeting, however, was postponed and was again fixed on 7.7.2017 for 10.7.2017 at 9:30 AM. The meeting was held as scheduled in which the members

voted in favour of the 'no confidence motion' with 2/3rd majority and as a result thereof, the petitioner was removed from the post of President of the Municipal Council.

Aggrieved against the said resolution, the present petition has been filed, alleging not only the violation of law but also *mala fides*. One of the members of the Municipal Council is on caveat.

Learned senior counsel for the caveator, at the threshold, raised a preliminary objection about the maintainability of the petition contending that the removal of the President has not come into operation so far as it depends upon an order to be passed by the State Government in this regard, ultimately notifying the removal of the petitioner, after it agrees with the resolution passed by the members in the meeting held on 10.7.2017. In this regard, he has referred to Section 22 of the Punjab Municipal Act, 1911 [for short 'the Act'].

In reply, learned senior counsel appearing on behalf of the petitioner has submitted that the petitioner cannot go to the State Government because as per Section 232 of the Act, the power vests with the Deputy Commissioner to suspend the resolution passed by the Committee and since the entire action has been taken with the connivance of the Deputy Commissioner, therefore, the present petition has been filed.

In this regard, learned senior counsel for the caveator has submitted that the powers of suspension of resolution operates in different field and not in regard to the special meeting which is called to consider 'no confidence motion' against the President or the Vice President.

I have heard learned counsel for the parties and perused the record.

In order to appreciate their respective contentions, it would be relevant to refer to Section 22 and 232 of the Act, which are reproduced as under: -

“22. Resignation or removal of President and Vice-President – *Wherever 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 of or 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 dispatch of the said registered letter, the State Government may proceed to notify his removal.”

“232. Powers to suspend any resolution or order of committee. *The Deputy Commissioner may, by order in writing, suspend the execution of any resolution or order of a committee, or joint committee or prohibit the doing of any act which is about to be done, or is being done in pursuance of or under cover of this act, or in pursuance of any sanction or permission granted by the committee in the exercise of its power under the Act, if, in is opinion the resolution, order or act is in excess of the powers conferred by law or contrary to the interests of the public or likely, to cause waste or damage of municipal funds or property, or the execution of the resolution or order, or the doing of the*

*act, is likely to lead to a breach of the peace,
to encourage lawlessness or to cause injury
or annoyance to the public or any class or
body of person.”*

There is a scheme provided under the Act of election of the member, President and Vice President of the Municipal Council. The member of the Municipal Council is elected by the electorate of the Ward and the President or Vice President of the Municipal Council/Municipality is elected by the elected members. The procedure of removal of the member, President and Vice President of the Municipal Council is also separately provided. In order to remove the President and Vice President of the Municipal Council, the procedure is prescribed under the law laid down in Section 22 of the Act in which it is laid down that the President or the Vice President of the Municipal Council/Municipality can be removed from his office on the grounds, namely, (i) abuse of his powers, (ii) habitual failure to perform his duties and: (iii) in pursuance of a resolution requesting his removal passed by two-thirds of the members of the committee.

The 1st proviso to Section 22 of the Act lays down that if a resolution requesting the removal of the President or Vice-President of the Municipal Council/Municipality is passed by two-third of the members of the committee, the President or the Vice-President shall be deemed to be under suspension immediately after such resolution is passed.

The 2nd proviso to Section 22 of the Act further provides that the resolution of removing the President or Vice President having been

passed by the 2/3rd of the members of the Committee will not come into operation until the State Government notifies his removal and before that the State Government shall by registered letter, inform him the reasons for his removal and would call upon the said authority i.e. the President or Vice President, within twenty-one days to furnish his explanation in writing. In case no such explanation is tendered or received in the office of the State Government within twenty one days of the dispatch of the said registered letter, the State Government may proceed to notify his removal accordingly.

According to the aforesaid provisions an inbuilt mechanism is there in Section 22 of the Act to check the powers of the members of the Committee of passing a 'no confidence motion' against the elected President or Vice President of the Committee by the State Government to provide him an opportunity of hearing by way of a reply to the proposed removal. The said opportunity is to be provided by a registered letter so that it should reach the concerned person, providing him 21 days time to give explanation in writing and then to take a decision as to whether the resolution for his removal has to be accepted or not to be accepted but if the said elected President or Vice President do not give his explanation within 21 days of dispatch of the registered letter, then it is presumed by the State Government that he has no explanation to give and then it can notify his removal.

I agree with the contention raised by learned senior counsel for the caveator that the present petition is premature because the petitioner has not been removed so far and a window is still open for him to raise all his grievances, which are raised by him in the present petition

either about the validity of procedure adopted by the Committee in calling the meeting etc. or of the *mala fides* alleged in the petition. Insofar as Section 232 of the Act is concerned, it deals with the resolution other than the resolution passed for removal of the President and Vice President because the power to accept or not to accept the resolution has been vested with the State Government and not with the Deputy Commissioner.

Thus, in my opinion, the present petition is premature at this stage because the petitioner has a remedy of approaching the State Government in terms of 2nd proviso to Section 22 of the Act.

With these observations, the present petition is hereby disposed of as premature.

19.07.2017

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*