

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

CWP No.18061 of 2017 (O&M)
Date of Decision: 27th September, 2017

Subhash Tanwar and another

. . . . Petitioners

Vs.

State of Haryana and others

. . . . Respondents

CORAM: - HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr.Amit Jhanji, Advocate,
for the petitioners.

Mr.Ashok Muthreja, DAG, Haryana,
for respondent Nos.1 to 3.

Mr.Ashok Singla, Advocate,
for respondent No.4.

Mr.Gaurav Mohunta, Advocate,
for respondent No.5.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioners are the Municipal Councillors of the Municipal Committee, Bawani Khera, who have approached this Court for seeking a mandamus directing the official respondents No.1 to 3 to remove respondent No.5 from the post of president of the Municipal Committee.

In brief, it is submitted that the petitioners had made a complaint to respondent No.1 regarding bungling in the accounts, at the instance of respondent No.5, in construction of Rajiv Gandhi Park at Bawani Khera. Initially, the said complaint was entrusted to the Executive Engineer, MC, Hisar but since he was not the competent authority to hold the enquiry, therefore, the enquiry was handed over to the Additional Deputy

opportunity of personal hearing to respondent No.5, as reflected by document Annexure P-7, came to the conclusion that all the charges leveled against respondent No.5 have been found proved. An order was thus passed on 5.4.2017 that respondent No.5 can be removed from the membership as well as from the post of president in terms of Sections 14 and 22 of the Haryana Municipal Act, 1973 [for short 'the Act'] after issuing *show cause notice* to her. It is also mentioned therein that if the authorities agree then before issuing *show cause notice*, approval of the Chief Minister be obtained. The said proposal of obtaining the approval of the Chief Minister, Haryana was approved by the Minister, Haryana Urban Local Bodies on 10.4.2017 and was approved by the Chief Minister, Haryana thereafter. It is alleged that *show cause notice* dated 20.4.2017, for initiating disciplinary action against respondent No.5, in terms of Sections 14 & 22 of the Act was sought to be issued and the draft notice was submitted for approval. On 20.4.2017/3.5.2017, *show cause notice* was issued by the Secretary, Urban Local Bodies, Haryana to which reply was allegedly filed by respondent No.5. Ultimately, Secretary, Urban Local Bodies, Haryana passed the order on 28.7.2017 stating that “*in this regard, no verbal or written reply has been received from Smt. Kamal Devi, President, Municipal Committee, Bawani Khera. Therefore, if the authorities agree, permission of Minister/Chief Minister may be obtained for removal of the councilor from membership and Smt. Kamal Devi, President, Municipal Committee, Bawani Khera under Rule 14 and 22 of the Act, 1973. Case is submitted for orders*”. Thereafter, nothing has been done. Hence, the present petition has been filed after waiting sufficiently.

Learned counsel for the petitioners has submitted that once respondent No.5 has been found guilty in the enquiry held by the Additional

and *show cause notice* was given to her before taking action under Sections 14 & 22 of the Act, respondent No.1 was obliged to proceed further in this matter for the purpose of passing an order of removal of respondent No.5 from the membership of Municipal Committee and also from the post of president of the Municipal Committee.

Though no reply has been filed at the instance of respondents No.1 to 4, however, reply by respondent No.5 has been filed.

Learned counsel for respondent No.5 has also submitted that he has no objection if the decision is taken by respondent No.1, one way or the other, but he may take the decision after taking all the aspects into consideration.

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

Respondent No.5 has dual status in the Municipal Committee. One of the membership of the Municipal Committee and the other of president of the Municipal Committee. Once a person is elected from the Municipal ward as member of the Municipal Committee then he becomes eligible to contest for post of president of the Municipal Committee in terms of Section 18 of the Act. There are two different procedures prescribed under the Act for the purpose of removal of the member of the Municipal Committee and the president of the Municipal Committee. Insofar as the member of the Municipal Committee is concerned, procedure is prescribed in Section 14 of the Act and insofar as the removal of president of the Municipal Committee is concerned, procedure is prescribed in Section 22 of the Act. It is provided in Section 14 of the Act that the State Government, vide notification, can remove any member of the Municipal Committee on the grounds mentioned in Section 14 of the Act

enquiry has to be necessarily held through an officer not below the rank of an Extra Assistant Commissioner. Section 22 of the Act confers the powers upon the State Government to remove president or vice president, by issuing a notification, on the ground of abuse of his power or of habitual failure to perform his duties. The proviso to Section 22 of the Act says that the removal of the president or the vice president has to be after an enquiry which has to be held through an officer, not below the rank of an Extra Assistant Commissioner, appointed by the State Government and after affording reasonable opportunity of hearing. No dispute has been raised at the instance of the respondents that due procedure has not been followed at all while conducting the enquiry against respondent No.5 as member of the Municipal Committee or the president of the Municipal Committee. The only issue is as to what is to be done after the enquiry is completed and respondent No.5 is found guilty, on which, she could be removed from both the posts?

Learned counsel for the State, though submits that the petition is premature but has failed to make out as to how the petition is premature.

Learned counsel for respondent No.5 has been candid enough to submit that respondent No.1 may take a decision one way or the other but his only anxiety is that while taking decision he should consider all the aspects of the matter.

In view of the aforesaid facts and circumstances, I am of the considered opinion that this petition deserves success and as such the direction is issued to respondent No.1 to accelerate the proceedings forthwith, pursuant to the order dated 28.7.2017 having been passed by him, inconsonance with the provisions of Sections 14 & 22 of the Act. It is needless to mention that the necessary order shall be passed by respondent No.1 within a period of 15 days

then respondent No.5 shall be restrained from discharging functions of the president.

27th SEPTEMBER, 2017
Vivek

(RAKESH KUMAR JAIN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>