

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

CWP No.11792 of 2018
DATE OF DECISION : 27th NOVEMBER, 2018

Rupinder Singh

.... Petitioner

Versus

State of Punjab and others

.... Respondents

**CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI
HON'BLE MR. JUSTICE H. S. MADAAN**

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Present : Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. H. S. Saini, Advocate for the petitioner.

Ms. Anu Pal, Deputy Advocate General, Punjab.

Mr. R. S. Randhawa, Advocate
for caveator/respondent No.2.

Mr. J. S. Bhandohal, Advocate for respondent No.3.

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A. B. CHAUDHARI, J. (Oral)

By the present writ petition, petitioner Rupinder Singh has put to challenge the impugned notification/order dated 01.05.2018 (Annexure P-1) passed by the first respondent by which the petitioner was relieved from the post of the President, Municipal Council, Talwandi Bhai, District Ferozepur, under Section 22 of the Punjab Municipal Act, 1911.

Facts:

The petitioner was elected as the President, Municipal Council, Talwandi Bhai, and took charge as such on 15.03.2015. The petitioner was given show cause notice by respondent No.1 on 07.12.2017 to which he had given his reply. In the show cause notice, in all three charges were levelled against him. The first charge was that failure to call regular meetings of the Committee. The second charge

was award of contract dated 19.01.2015 for cleaning the village and next year contract was given for the said purpose by conducting open auction rather than e-tendering. Respondent No.1 had called report from the Deputy Director, Local Government, Ferozepur who had given his report vide letter dated 13.02.2018. According to respondent No.1 the petitioner was given personal hearing on 03.04.2018. The respondent No.1 after considering the report received from the Deputy Director and upon perusal of the reply, passed the impugned order holding that due to the administrative lapses done by the President, Municipal Council, Talwandi Bhai, he was being relieved from the post. Hence, this petition.

Arguments:

In support of the writ petition the learned counsel for the petitioner vehemently argued that bare perusal of the impugned order shows that the same is a non-speaking order. The learned counsel for the petitioner further submitted that respondent No.1 has not applied his mind to the report that was given by the Deputy Director, Local Government, Ferozepur under letter dated 13.02.2018. According to him holding of monthly meetings is a matter depending upon the exigencies of holding a meeting. The provision for holding monthly meetings is directory and not mandatory. In the absence of any mandatory provision, the consequence of his removal from the post could not have taken place.

As to the contract under agreement dated 19.01.2015 he submitted that the said contract was of date 19.01.2015 but he became the President on 01.03.2015 and took the charge on 15.03.2015. However, even for that charge, he has been held guilty which shows non-application of mind. The counsel for the petitioner then submitted that the last charge was also not proved as no loss was caused to the Municipal Council. On the contrary, the contract was given for the lesser amount than the Government bid amount. He, therefore, prayed that the

petition be allowed and the petitioner be reinstated on the post of President, Municipal Council. In the alternative he submitted that the present President should be restrained from working as President.

Per contra, Mr. R. S. Randhawa, learned counsel for the respondent and learned State counsel vehemently opposed the petition. Mr. R. S. Randhawa, Advocate for the contesting respondents vehemently argued that the reasons given by the petitioner for not calling the meeting is that he did not know the law. He further submitted that third charge regarding contract that was given was clearly proved. In the year 2015 the contract was given for ₹3.35 lacs and in the year 2018 the contract was given for ₹17.7 lacs. That there is vast difference between the two which clearly proves charge No.3. He, therefore, submitted that there is no merit in the petition and the same should be dismissed.

Consideration:

We have heard learned counsel for the rival parties at length. We have perused the impugned order. We have considered the submissions carefully. At the outset, we find that the word used in Section 22 of the Punjab Municipal Act is 'habitual failure', the relevant portion of the Act reads thus:

22. Resignation [or removal]4 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 5 [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:

XXX.... XXX.... XXX....

XXX.... XXX.... XXX....

The respondent No.1 was therefore, required to record a finding as to whether the petitioner could be said to be guilty of habitual failure in relation to the charge No.1. There is no such finding in the impugned order.

Insofar as the second charge is concerned, admittedly the petitioner was not holding the charge of President when the contract dated 19.01.2015 was entered into. That shows the non-application of mind.

The third charge is again regarding the contract for cleaning from 19.01.2015 to 18.07.2015 to which the affidavit has been filed by respondent No.1-State of Punjab. Para 8 thereof reads thus:

“8. That the Deputy Director, Local Government, Ferozepur vide its letter No.1DDLg-18/3543 dated 13.02.2018 duly submitted its comments, wherein it was stated as under:

- (i) Proceeding register had been checked and it was found that last general meeting was conducted on 26.12.2016 thereafter it was conducted on 19.1.2018 which was cancelled due to illness of president. It was further informed that a Budget meeting was called by the President on 25.4.2017 and the same was cancelled as the quorum for the meeting was not complete. After that a special meeting on dated 14.9.2017 was held for the election of Vice president.

- (ii) That cleaning contract from 19.1.2015 to 18.7.2015 was given on 19.1.2015 whereas he assumed the post of President on 1.3.2015. So this charge did not relate to the President, Sh. Rupinder Singh.
- (iii) Though Safai contract was given through open auction and whereas as per government instruction e-tendering was to be carried. But in this process no financial loss incurred to the Municipal council, Talwandi bhai. So this charge did not relate to the president, Sh. Rupinder Singh.

Reading of the above paragraph shows that there is a finding recorded by the Deputy Director, Local Government, Ferozepur that no loss was caused to the Municipal Council, Talwandi Bhai.

The reading of the impugned order and in particular the reasons therein in para 3 thereof does not at all show that all the material averments and papers have been considered by the respondent No.1, thus rendering the impugned order/notification non-speaking one. After all, the proceeding in question are of *quasi* judicial nature and the authority is required to pass a reasoned order, since it affects the important civil right of the party.

In that view of the matter, we are inclined to remand the matter to respondent No.1-State of Punjab. Insofar as the prayer for removal of the present President is concerned, we are unable to agree with the senior counsel for the petitioner. We do not want to stop the working of the Municipal Council. However, in our opinion the President of the Municipal Council should not take major financial

decisions without concurrence of the Municipal Committee till the fresh decision on remand. In the result we make the following order:

ORDER

- (i) CWP No.11792 of 2018 is partly allowed.
- (ii) The impugned notification/order dated 01.05.2018 (Annexure P-1) is quashed and set aside.
- (iii) The proceedings under Section 22 of the Punjab Municipal Act, 1911 are remanded to respondent No.1-State of Punjab for fresh hearing and disposal, in accordance with law, within a period of four months from today.
- (iv) The petitioner shall place the copy of this order before respondent No.1.
- (v) The petitioner as well as all the concerned respondents shall remain present before respondent No.1 on 17.12.2018, on which date respondent No.1 shall fix the date as per convenience and decide the matter within four months from today.
- (vi) The present President, Municipal Council, Talwandi Bhai shall not take any major financial decisions without concurrence of Municipal Committee till then.

(A. B. CHAUDHARI)
JUDGE

27th NOVEMBER, 2018
'raj'

(H. S. MADAAN)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>