

CWP No.27186 of 2016(O&M) & connected cases 1

Sr. No. 228+241

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

**CWP No.27186 of 2016(O&M)
Date of decision: 16.05.2018**

Balwinder Singh and othersPetitioners

versus

State of Punjab and othersRespondents

CWP No.3567 of 2017(O&M)

Balwinder SinghPetitioner

versus

State of Punjab and othersRespondents

CWP No. 1873 of 2018(O&M)

Balwinder Singh and othersPetitioners

versus

State of Punjab and othersRespondents

Coram: **Hon'ble Mr. Justice Mahesh Grover
 Hon'ble Mr. Justice Rajbir Sehrawat**

Present: Mr. Salil Sagar, Sr. Advocate with
 Mr. Samarth Sagar, Advocate(in CWP No. 27186 of 2016)
 Mr. Girish Agnihotri, Sr. Advocate with
 Mr. Arvind Seth, Advocate and
 Mr. Hardyal Mishra, Advocate(in CWP No. 1873 of 2018)
 for the petitioners.

Ms. Anu Pal, AAG, Punjab.

Mr. D.S.Patwalia, Sr. Advocate for
Mr. Gaurav Rana, Advocate
for respondents No. 6 to 21(in CWP No. 27186/2016 and
CWP No. 3567/2017)
Mr. Tarun Vir Singh Lehal, Advocate
for the respondent/MC Mansa(in CWP Nos. 27186/2016 &
3567/2017)

Mahesh Grover, J.(Oral)

By this Order we will dispose of three Civil Writ petitions No.27186 of 2016, 3567 of 2017 and 1873 of 2018. Facts are taken from CWP No. 27186 of 2016.

The petitioner is a Municipal Councilor in the Municipal Council, Mansa and was elected as a President of the local body on 18.04.2015. Meeting was requisitioned on 20.04.2016 by some disgruntled councilors who proposed to pass 'No Confidence Motion' against the petitioner. The Executive Officer of the Council informed the petitioner about the said requisition and a meeting was slated for the purpose on 18.05.2016 in which the petitioner was overwhelmingly voted out by a vote of 22 councilors out of the total of 26 councilors. Section 22 of the Punjab Municipal Act, 1911 (hereinafter referred to as 'the Act') as extracted below requires a certain procedure before a President can be removed:-

“22. Resignation [or removal] 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 [State] Government on the ground of abuse of his powers or 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.”

In accordance with the proviso, before the State Government notified the removal of the petitioner from the post of President pursuant to the meeting of 'No Confidence Motion' on 18.05.2016, letter was sent to State Government on 19.05.2016 and the State Government in turn as per the second proviso communicated vide letter dated 28.06.2015 to the petitioner the proposal for his removal to which the petitioner responded on 15.07.2016. An additional representation was also submitted subsequent thereto.

On 19.10.2016 State Government passed an order for removing the petitioner from the post of President.

Before this order could be passed the petitioner had initiated Civil Writ Petition No. 16532 of 2016 against the '*Show Cause Notice*' requiring him to submit his response in terms of the 2nd proviso to Section 22 of the Act. The petition was dismissed.

After order dated 19.10.2016 was passed, and once again petitioner filed a Civil Writ Petition No. 23228 of 2016.

In this writ petition while pressing his claim before the Court, learned counsel for the petitioner contended that against '*Show Cause*

Notice' dated 28.06.2016 he had filed a representation dated 15.07.2016 as also the additional reply dated 08.08.2016 but no order thereon had been passed. In the mean time, Order dated 19.10.2016 had been passed by the State Government without considering his pleas and issues raised in his representation.

After highlighting his grievance the petitioner confined his prayer at that stage of writ proceedings to a direction to be issued to respondent No. 2 in the petition to decide his reply/representation and the additional reply in a time bound manner which was accepted and the writ court disposed of the writ petition with a mandate as prayed for by the petitioner to direct respondent No. 2 to pass a speaking order after affording an opportunity of hearing to the petitioner in accordance with law within a period of one month from the date of receipt of copy of this order, but without setting aside the order of 19.10.2016.

For the purposes of ready reference the relevant portion of the order highlighting the grievance, the prayer made and the terms in which it was accepted is extracted hereinbelow:-

“It has been stated by learned counsel for the petitioner that in pursuance to the show-cause notice dated 28.06.2016(Annexure P-5), petitioner had filed a reply/representation dated 15.07.2016 (Annexure P-6) and additional reply dated 08.08.2016(Annexure P-8) in terms of Section 22 of the Punjab Municipal Act, 1911 but no order thereon has been passed so far and in the meantime order dated 19.10.2016(Annexure P-11) has been passed.

Prayer was made by learned counsel for the petitioner that petitioner at this stage shall be

satisfied in case direction is issued to respondent No. 2 to take decision on the reply/representation dated 15.07.2016(Annexure P-6) and the additional reply dated 08.08.2016(Annexure P-8) within a time bound manner.

After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the controversy, we dispose of the writ petition by directing respondent No. 2 to take a decision on the reply/representation dated 15.07.2016(Annexure P-6) and the additional reply dated 08.08.2016 (Annexure P-8) by passing a speaking order and after affording an opportunity of hearing to the petitioner, in accordance with law, within a period of one month from the date of receipt of copy of this order.”

What is interesting to note here is that the issue of representation remaining undecided was raised after the order dated 19.10.2016 had come into existence and even after the decision of the writ petition, mandating the authority to look into the representation, the order dated 19.10.2016 continued to exist as neither the petitioner persisted with his challenge to it nor did the Court specifically set it aside. It is not for us to comment as to what purpose the aforesaid mandate would have served if the impugned order therein dated 19.10.2016 warranting removal of the petitioner from the post of President was to exist.

Of course learned counsel for the petitioner would contend that the intention of the Court manifests itself from the mandate and it has to be presumed that impliedly the order was set aside.

We would comment upon this at a subsequent stage where we

record our reasons in complete.

Before we do so we would complete the narration and the sequence which unfolded subsequent to the aforesaid order of the Court. A meeting was called on 16.12.2016 in the office of Municipal Council, Mansa for formalising a proposed meeting on 19.12.2016 to fill up the vacant post of President by Election.

Pursuant thereto on 19.12.2016 an Election did take place resulting in election of respondent No. 12 Mandeep Singh Gora as a President. The proceedings of the special meeting dated 19.12.2016 indicates that the Deputy Commissioner had initiated the process prior thereto i.e. on 28.10.2016 itself and appointed and authorised the Sub Divisional Magistrate(SDM) to initiate the process for the purpose. It also indicates that meeting was held on 11.11.2016 at 3:00 PM at Bachat Bhawan, Mansa but because of lack of quorum the proposal could not be taken forward.

The petitioner was a participant in the meeting of 19.12.2016 and rather prior thereto he had recorded his no objection to the election for the post of President in writing.

It is this election of the said respondent which is now impugned by the petitioner by stating that once the earlier order removing him from the post of President was in contravention of the law, all subsequent proceedings would be rendered a nullity. It has been contended before us that numerous judgments would support this argument. It has further been contended before us that there were gross violation of the principles of Natural Justice because once the notice had been issued by the State Government seeking his response on 28.06.2016 which indeed was done on

15.07.2016 and 08.08.2016 non-consideration thereof to pass an order of his removal would certainly be unsustainable in the eyes of law.

Learned counsel for the petitioner has urged before the Court that application of mind and giving reasons is a duty cast upon the State by the statute itself and it is duly supplemented by the general rule of adherence to the principles of natural justice; the violation of which certainly invites a charge of arbitrariness and a likely reversal of such a decision by the courts in the exercise of their powers of judicial review. In this regard learned counsel for the petitioner has placed reliance on the judgments of the Hon'ble Supreme Court rendered in *Tarlochan Dev Sharma vs. State of Punjab and others*; (2001) 6 SCC 260 and *Ravi Yashwant Bhoir vs. District Collector, Rajgad and others*; (2012)4 SCC 407, the relevant paragraph of the judgment of *Ravi Yashwant Bhoir's* case is extracted hereinbelow:-

“46. The emphasis on recording reasons is that if the decision reveals the “inscrutable face of the sphinx”, it can by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind of the authority before the court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out the reasons for the order made, in other words, a speaking out. The inscrutable face of the sphinx is ordinarily incongruous with a judicial or quasi-judicial performance.”

Learned counsel for the petitioner has drawn our attention to the representation that he had submitted as also the supplementary one to contend that numerous issues were raised but left unanswered.

As against this learned counsel for the respondent has referred to the narrative that unfolded subsequent to his removal vide order dated 19.10.2016 and it is contended that once the petitioner approached this Court questioning the said order of his removal and did not persist with this challenge, the order would continue to stand unless it was set aside by Court of competent jurisdiction and any other direction given by the Court to consider the representation would be an exercise in futility with no meaningful consequence. That apart it has been contended that even if it is assumed for the sake of argument that the contention of the learned counsel for the petitioner merited acceptance the fact that he himself acquiesced to the process of a fresh election would be sufficient to discard the challenge in the petition because having fought and lost it would not lie in his mouth now to question a process or an order of 19.10.2016 on account of the intervening events.

We have heard learned counsel for the parties and have perused the record as well.

It would be fruitful to refer once again the language of Section 22 of the Act which clearly envisages contingencies that may arise resulting in the removal of the President/Vice President. It visualises a situation where these posts fall vacant on account of a willful abdication by the said office bearers through resignation or a removal from office by the State Government on the ground of abuse of powers or a habitual failure to perform duties or in pursuance of a resolution requesting his removal passed

by 2/3rd of the members of the Committee.

These three contingencies according to us would also pave the way for a proper appraisal of the applicability of the proviso dealing with each of the three contingencies.

Evidently the second proviso provides that the State Government would notify the removal of the President and the reasons for such a course through a registered letter which shall also call upon him to tender within 21 days an explanation in writing failing which the office of the appropriate Secretary to State Government within 21 days of the despatch of the registered letter proceed to notify the removal. It is no ones case that the notices were not sent or the petitioner did not respond to the notice. The specific case of the petitioner is that his explanation was not considered. For this purpose we have seen the record and it mentions that the explanation of the petitioner of 15.07.2016 was considered. The petitioner in this representation has blamed the opposition for passing the 'No Confidence' resolution as he did not oblige the corrupt and this is duly noticed in the proceedings. Thus the competent authority was alive to the explanation offered by the petitioner and it is not a case where a complete go by has been given to the explanation of the petitioners in the representation dated 15.07.2016. Whether sufficiency of reasons could have been gone into or not is a different issue.

We can not be oblivious to the fact that it is a case of 'No Confidence Motion' and not a case of misconduct or dereliction of duty on the part of the President in the discharge of his official function. Like an election that brought him into the office, the removal also was through the same process. In this situation, the State Government would have very little

choice to offer its own reasons on the representation unless there was a allegation of serious departure of the process of law or rules leading to the process of removal.

Lest we fail the cause of the petition, we also had the occasion to go through the response submitted by him on 15.07.2016 and apart from the allegations of corruption that are normal accompaniments in a political circle the only reference to violation of the procedure is of the process being carried out by show of hands and not through secret ballot. Even this would be inconsequential as voting by show of hands is not only recognized by the relevant rules but has also found approval in various pronouncements of the Courts.

Be that as it may the fact remains that the petitioner for some strange reason did not persist with the challenge to the order of removal dated 19.10.2016 despite having mounted a challenge in the writ petition proceedings and rather chose an evasive course of a mandate from the Court to get his representation decided which to our minds would hardly be of any consequence if the notification removing the petitioner as a President had come into being, to exist in form and substance.

It has been argued with great vehemence before us that a serious prejudice has been caused to the petitioner on account of violation of the principles of the natural justice as the earlier order of removal was passed without considering his reply and offering any reasons.

We have already observed above that Record speaks to the contrary and even otherwise the petitions did not persist with the challenge to the order of removal dated 19.10.2016.

There would have been some substance if the petitioner himself

had not given his 'No Objection' to the subsequent process of election on 19.12.2016. This becomes significant for even if we assume for a minute that this Court had impliedly set aside the order of removal dated 19.10.2016 while mandating the authorities to look into the reply submitted by the petitioner then also considering that his removal flowed from 'No Confidence Motion' the most likely result in the event of acceptance of the grievance of the petitioner by the competent authority would still have been a fresh election by discarding the previous process and if that be so and with or without the earlier orders, the subsequent process of 19.12.2016 did not offer any redemption to the petitioner as he was still not elected. Whatever prejudice if any that the earlier order may have caused to the petitioner the effect of the same stands erased by the subsequent events that have unfolded with the petitioner being a willing participant.

Before we part with the order we notice that the State Government passed an order on 30.01.2017 during the pendency of CWP No. 16532 of 2016 and to our minds seems to be a futile exercise at this juncture to even open up this matter considering the intervening election of 19.12.2016.

All the petitions stand dismissed.

[MAHESH GROVER]
JUDGE

16th May, 2018
Shivani Kaushik

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*