

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.26 of 2018
Date of decision:31.05.2018

Suresh Kumar & anr.

... Petitioners

Versus

State of Haryana & ors.

... Respondents

**CORAM: HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

Present: Mr. S.K.Garg Narwana, Sr. Advocate with
Mr. Naveen Gupta, Advocate
for the petitioners.

Mr. Aman Pal, Advocate
for the applicants.

Mr. Lokesh Sinhal, Addl. AG, Haryana.

Rajbir Sehrawat, J.

The present petition has been filed challenging the proceedings dated 02.01.2018 whereby no confidence motion was passed against the petitioners, who were the President and Vice President of Municipal Council, Narwana. Further prayer has been made for staying the further proceedings for holding fresh election during the pendency of the present petition.

The brief facts involved in this case, as pleaded in the writ petition, are that the election of Municipal Council, Narwana were held in May, 2016 and thereafter the election for the office of President and Vice President were held. The petitioners were elected as President and the Vice President; respectively; on 07.07.2016 and had taken oath of their office accordingly.

The Municipal Council has 23 elected Municipal Councilors. Since the members were not satisfied with the functioning of the petitioners, therefore, a motion was made on 11.12.2017 for calling the special meeting of Municipal Council to discuss the issue with regard to the no confidence motion against the petitioners. This motion was handed over to the Deputy Commissioner, Jind for further proceedings as per the requirement of law. Accordingly, the Deputy Commissioner, Jind - respondent No.2 appointed respondent No.3 – SDM, Narwana, as Presiding Officer to preside over this special meeting to be held in the office of Municipal Council; Narwana, with regard to the no confidence motion against the petitioners.

On 15.12.2017, respondent No.3 issued a notice for calling the special meeting of Municipal Councilors for considering the no confidence motion; on 02.01.2018 at 11.00 am with regard to the post of President and at 12.10 pm with regard to the post of Vice President. This notice was circulated amongst all the members of the Municipal Council, Narwana. Pursuant to the above-said notice, the special meeting was actually held on 02.01.2018 and no confidence motion was passed against the petitioners. Respondent No.3 sent the entire proceedings to respondent No.2 – Deputy Commissioner, Jind. It is this resolution; passing of no confidence motion against the petitioners, which is under challenge in the present petition.

The petitioners assailed the resolution of no confidence motion passed against them on the ground of alleged procedural lapses on the part of the Presiding Officer. First of all, it is pleaded that the Presiding Officer had wrongly adopted the procedure of show of hands to seek a vote on no confidence motion. Petitioner No.1 had demanded a secret ballot on the no confidence motion. On his request, the Presiding Officer had even taken the

recourse to the secret ballot. The Presiding Officer had asked the voting councilors to write on the ballot paper whether he/she wanted to remove the President or not. In this voting, total 17 members had cast their vote. Petitioner No.1 cast his vote against the motion. Another councilor, namely, Smt. Poonam Devi, councilor from ward No.1, had not written anything on the ballot paper except putting her signatures, whereas, she was required to give her response to the question whether she was in favour of removing the President or not. In view of this, the vote of this councilor was rendered invalid. Therefore, the same could not be counted against the petitioners; and if this vote is excluded; then required $2/3^{\text{rd}}$ votes i.e. 16 votes are not reached. Hence, the resolution shall be deemed to have failed; because no confidence motion was required to be passed by $2/3^{\text{rd}}$ majority of total 23 elected members of Municipal Council. It is further pleaded that although the motion had not been carried due to invalidity of one vote, however, the Presiding Officer again wrongly resorted to vote by show of hands. During this show of hands, 16 members again raised their hands in favour of no confidence motion and therefore, the impugned proceedings were recorded and resolution was recorded as having been passed. It is pleaded that by resorting to method of show of hands, the secrecy of votes have been breached, which has rendered the election to be void. Still further it is pleaded that every ballot was having the signatures of the voter. Hence, the identify of voter can be very easily verified. This action has also breached the secrecy of voting. It is further pleaded that even at the time of counting of ballots, the Presiding Officer did not show the votes to any member of the Municipal Council and announced the result. It is pleaded in the writ petition that the entire proceedings were stage managed to prevent

the free and fair voting. Firstly, petitioner no.1 was not permitted to enter the office of Municipal Council, Narwana and only after arguments he was permitted to enter the office. Secondly, on entering the meeting room, he was threatened by respondent No.3. The respondent No.3 did not follow the due procedure and entire procedure was conducted in an illegal and malafide manner under political pressure. Against adoption of this procedure and alleged resolution passed in the meeting, petitioners had submitted their affidavit on the same day to the Deputy Commissioner – respondent No.2. However, no action was taken by him. Along with the writ petition, the petitioners have also filed a CD of the videography of the proceedings to show how the no confidence motion was passed.

After hearing learned counsel for the parties earlier, we had solicited a report in this regard from the Presiding Officer. It was also ordered that in the meantime records be sealed. Thereafter, report was submitted by respondent No.3 on 16.01.2018 and the case was adjourned for 30.01.2018. However, the petitioners again brought to the notice of this Court that respondent No.2 had fixed the meeting for election of the President and Vice President of the Municipal Council on 29.01.2018. Accordingly, vide order dated 29.01.2018, election to the post of President and Vice President of Municipal Council, Narwana was stayed. Another factor, which needs to be noticed is that all the 16 members, who had voted against the petitioners in no confidence motion, also filed a miscellaneous application for being impleaded as party respondent in the petition and to oppose the present petition.

In the report submitted by respondent No.3, it is submitted that on 11.12.2017, 16 members of the Municipal Council out of 23 members,

through a requisition in writing; addressed to Deputy Commissioner, Jind had made a motion of no confidence against the present President and Vice President. This motion was signed by all the 16 members, who are detailed in the report submitted by respondent No.3. Thereafter, the Deputy Commissioner had appointed respondent No.3 as Presiding Officer as per The Haryana Municipal Elections Rules, 1978 (hereinafter referred as Rules) to convene a special meeting regarding no confidence motion against President and Vice President of Municipal Council, Narwana. Accordingly, a special meeting of all the 23 elected members of Municipal Council was called vide notice dated 15.12.2017 by giving 15 days time as required under the Rules. Meeting was scheduled to be held on 02.01.2018. Accordingly, the meeting was held and 16 members out of 23 came present at 11.00 am, the time fixed on that date for meeting. One member i.e. President himself; came at 11.27 am and started arguing with respondent No.3. However, he was permitted to participate in the proceedings. The agenda of the meeting was told to all the members. For ascertaining the wish of the members, they were asked to raise their hands in support of no confidence motion. The 16 members out of 17 present raised their hands in support of no confidence motion against the President and Vice President. Accordingly, the motion was carried against the President and Vice President. But thereafter the President requested for ballot procedure. The same was also carried out. However, one member left the ballot paper blank and did not mention the clear vote. Therefore, to reaffirm the vote again, the show of hands was resorted to. Again the same 16 members raised their hands against the President and Vice President. The whole procedure was carried out as per Rules. After the motion was carried out, the proceedings

were written and sent to the Deputy Commissioner, Jind – respondent No.2. The videography of proceedings was also got done. Besides this, 16 members of Municipal Council who voted in favour of no confidence motion also submitted their joint affidavit before the Deputy Commissioner, Jind after the completion of special meeting of no confidence motion; regarding the convening of the meeting in a just and proper manner and regarding carrying the motion. Hence, the dismissal of the writ petition was prayed for. Thereafter, respondent No.3 also filed the written statement to the writ petition and reiterated almost the same contents, which were raised in the report earlier submitted.

While arguing the case, learned counsel for the petitioners has submitted that procedure adopted for carrying out the no confidence motion was totally illegal. Once the petitioner No.1 had raised the demand of secret ballot then the secret ballot only should have been resorted to. The show of hands is not the valid method of taking the vote on no confidence motion; because this is a breach of secrecy. It is further submitted that even when respondent No.3 had taken a vote by ballot then also no secrecy was maintained. It is further submitted that since there was a demand for secret ballot by the petitioners, therefore, the secret ballot with complete secrecy should have been taken on the no confidence motion. In support of his argument, learned counsel for the petitioners has relied upon the judgment of this Court rendered in *Kitab Singh vs. Deputy Commissioner, Fatehabad and ors.*, AIR 2008 P.&H.133. To the same fact, learned counsel also relies upon the judgment of Single Bench of this Court rendered in *CWP No.2849 of 2015* titled as *Smt. Sunita and ors. vs. Deputy Commissioner, Karnal and ors (decided on 20.04.2015)*. Learned

counsel further submits that since the one vote was found to be invalid, therefore, all the votes should have been put up to the scrutiny. To support his argument, he has relied upon the judgment of Hon'ble Supreme Court rendered in ***Km. Shradha Devi vs. Krishna Chandra Pant and ors., AIR 1982 Supreme Court 1569***. It is further submitted by learned counsel that as the election for the post of President was held by a secret ballot, therefore, for no confidence motion also, a secret ballot was required to be taken by respondent No.3. In the end, he submitted that in any case once the secret ballot was taken and one vote was found to be invalid; then the respondent No.3 could not have again taken the vote by show of hands. Hence, the entire proceedings stand vitiated.

On the other hand, learned counsel for the respondents submitted that there is no rule that 'no confidence motion' is to be carried through secret ballot. He further submits that there is no absolute rule that in case a candidate demands a secret ballot then a secret ballot has, necessarily, to be taken on 'no confidence motion'. To support his contention, learned counsel has relied upon the judgment of this Court rendered in ***Deputy Commissioner, Karnal and another vs. Sunita and ors., 2015 (4) RCR (Civil) 354***. It is his submission that the procedure for voting on 'no confidence motion' has been conducted in a total fair and transparent manner. Hence, there is no illegality involved in the matter.

Learned State counsel further submitted that after carrying out the 'no confidence motion', the petitioners had even consented for fresh election for the post of President and the Vice President. Accordingly, the same was conducted with due participation of the petitioners. However, in view of the interim orders passed by this Court, the same was kept in

abeyance.

Mr. Aman Pal, Advocate appearing for the applicants/16 Councilors, who carried the motion against the petitioners, submits that they all had submitted the notice of motion on no confidence against the petitioners. They all had voted against the petitioners during the meeting with their free will and without any external pressure from anybody. All the 16 members had given in writing to this effect even to the Deputy Commissioner that the procedure was conducted by respondent No.3 in fair manner. Therefore, the no confidence motion was rightly carried.

After hearing learned counsel for the parties and perusing the record, we find that this case has two aspects. Firstly, a question is raised regarding the procedure of voting to be adopted during the consideration for no confidence motion and secondly, the illegalities in the procedure; reflecting the external influence upon the members have been alleged saying that the entire proceedings were stage-managed under the political pressure.

So far as the procedure to be adopted for voting at the time of no confidence motion is concerned, the same is prescribed under Rule 72-A of The Haryana Municipal Election Rules, 1978, which is reproduced hereinbelow:

“ 72-A. - no confidence motion against president or vice-president -

(1) A motion of no confidence against the 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.

Explanations – Any fraction under this rule shall be taken as a whole.

(2) The Deputy Commissioner or such other officer not below the rank of extra Assistant Commissioner, as the Deputy Commissioner may authorize, 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. ”

However, before that; Rule 71 of The Haryana Municipal Election Rules, 1978 provides for election of President and Vice President of Municipal Council. The above-said rule is reproduced hereinbelow:

“71. Ballot to be taken and result thereof-- [1 {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 paper or electronic voting machine. The members present shall be required to vote

by ballot paper by marking with arrow cross mark rubber stamp or by electronic voting machine, as may be directed by the State Election Commission. The candidate getting the maximum number of votes shall be declared to have been elected. Special ballot paper shall be used for such voting and it shall bear an official mark to be placed thereon by the Deputy Commissioner.}]

(2) [.....]

(3) All ballot papers used for such voting shall, immediately after the counting of votes has been completed, be enclosed in the stout envelope and sealed by the officer who presided at the meeting in the view of the members preset there at and the description of the election to which the ballot papers relate shall be inscribed thereon and such envelope shall be enclosed in another large envelope which shall be addressed, and delivered to the Deputy Commissioner. The Deputy Commissioner shall preserve the inner envelope intact until the expiry of one year from the date of the election, and shall then, subject to any direction to the contrary made by the State Government, a competent court, or a person or persons appointed to hold an enquiry into an election under Part V of these rules, cause it to be destroyed with its contents.

(4) [...]”

A bare perusal of the above-said rules shows that while Rule Framing Authority have provided for a secret ballot for voting on election of President and Vice President of Municipal Council under Rule 71, no secret ballot voting has been prescribed by Rule 72-A for passing the no confidence motion against the President and Vice President of the Municipal Council. This shows that Rule Framing Authority was very much alive to and aware of the aspect of secret ballot in the context of the

election and removal of President and Vice President by way of 'no confidence motion'. Despite that the Rule Framing Authority has provided for secret ballot only in case of election of the President and Vice President of Municipal Council. But the secret ballot is not the prescribed procedure under Rule 72-A for the purpose of carrying the 'no confidence motion'. It is well established law that omission to legislate is always to be taken as intentional on the part of the legislature, particularly when legislature is alive to an aspect and still refrains from making a provision. Hence, the Rule Framing Authority has intentionally not prescribed for any secret ballot in case of passing of 'no confidence motion' against the President and the Vice President of the Municipal Council. Therefore, the Court would not be justified in reading the requirement of secret ballot in Rule 72-A of Rules by adding words and phrases to the Rule. Hence, it has to be held that the secret ballot is not required for consideration of a no confidence motion against the President and the Vice President of the Municipal Council under the Rules.

The argument that once a request for secret ballot is made by an incumbent President or anyone else at the time of voting, then it is the binding duty upon the Presiding Officer to go for a secret ballot; is also not supported by any statutory provision. Rather such a course would go against the intention of the Rule Framing Authority, which has not; deliberately; provided for a secret ballot in case of consideration of 'no confidence motion'. When the rules does not prescribe the secret ballot voting then wish and demand of a candidate or the member participating in the voting would not be sufficient to deemingly create a provision for secret voting; casting a mandate upon Presiding officer, to necessarily adopt the

voting through secret ballot. This view is fully supported by the judgment passed by the Division Bench of this Court; rendered in *Deputy Commissioner, Karnal and ors.'s case(supra)*. We respectfully agree with this judgment rendered by the Division Bench of this Court, which in fact had set aside in LPA one of judgments relied upon by the counsel for the petitioners.

So far as the judgments cited by learned counsel for the petitioners are concerned, suffice it to say that none of the judgments cited by him support his case in terms of being the binding precedent. So far as the judgment in *Kitab Singh's case(supra)* is concerned, in that case carrying of the no confidence motion by show of hands was upheld by the Division Bench of this Court. But the Court had also made observation that had the petitioner in that case demanded a secret ballot then the Presiding Officer would have been duty bound to conduct the voting by secret ballot. However, while making these observations, the Hon'ble Bench has gone by desirability and convenience of secret ballot; to hold that it would not have required much effort to go by secret ballot had the petitioner in that case so demanded. However, as held above, we do not find any statutory support for these observations from the Rules; covering the consideration of no confidence motion against the President and Vice President of Municipal Council under the Rules. Rather this would amount to reading in the Rules something which does not exist there in the Rules. Therefore, we with due deference, fail to agree with these observations made by the Hon'ble Division Bench in *kitab Singh's case(supra)*. It is one thing to perceive the desirability of a procedure and it is altogether a different thing to insist upon the legalities of that procedure. Howsoever desirable a procedure may be,

the same cannot be thrust upon the administrative machinery unless this is so prescribed or contemplated under the relevant rules. Desirability of a perceived requirement cannot be raised to the level of legal mandate of that requirement. The Presiding Officer conducting the proceedings cannot be presumed in the hindsight to have known what the Court would be considering to be the desirable at the subsequent time. Therefore, the action of the Presiding Officer cannot be found fault with only for the reason that some desirable thing has not been done by him. The action of an authority can be held to be illegal only if some prescribed procedure is violated by the authority.

Therefore, there is absolutely no illegality if the motion of no confidence is considered and carried by show of hands; in an otherwise properly called and held meeting.

So far as the conduct of the proceedings in the present case is concerned, a perusal of the videography shows that the Presiding Officer appears to be little bit inexperienced on the point of conducting proceedings for 'no confidence motion'. At the beginning to the meeting, when petitioner No.1 was not even present, she is seen saying that she would conduct voting by show of hands as well as by ballot. Then first of all she seeks the vote by show of hands. All the 16 members raised their hands in support of motion. Petitioner No.1 is only the person, who is seen opposing this motion. Then the Presiding Officer takes the vote by ballot also, which is not necessarily; a secret ballot. Although a vote marking area is separately made by covering with a cloth yet only the petitioner No.1 had cast his vote by going into the marking area. All the other members are seen marking their votes by putting them on a box outside the marking area itself.

Respondent No.6 is seen present near the box; though not necessarily seeing the vote/marking all the time. He is also seen busy in doing some other work simultaneously. But some time, he is seen seeing the ballot as well. After this process is undertaken, the Presiding Officer herself counts the votes and announce the result, which was the same as was displayed during the show off hands. However, thereafter once again a show off hands is asked by the Presiding Officer. Again the result remain the same and 16 members raised their hands in support of motion. The result of the meeting is declared and the motion is passed. At the end, petitioner No.1 also seems to be accepting the entire proceedings; because the Presiding Officer is seen asking everybody whether the proceedings have been conducted properly; and at this stage, there is no protest or objection by petitioner No.1, who happens to be present there.

Though the procedure adopted by the Presiding Officer in asking for show of hands in first instance, which displayed sufficient support to pass the resolution of 'no confidence motion', then going for a ballot vote in which one member has not voted either in favour of or against the motion and then again going for show of hands, which again confirmed passing of no confidence motion, may be irregular. However, it does not vitiate the result of the meeting at all. Rule 72-A of the Rules prescribes only carrying out a voting on 'no confidence motion'. The same can be very well by show of hands. The emphasis of the Rule is only to get the wish and intention; of the members present for voting; regarding the motion being considered in the meeting. In the present case a perusal of the ballot papers, produced by the respondents shows that one of the members i.e. Smt. Poonam Devi probably, was not clear as to what she was required

to write for voting in favour of no confidence motion. Her confusion can be gauged by comparing the perform of ballot paper and what actually the voting members were asked by respondent No.3 to write for supporting the motion. There does not appear to the coherent relation between the two. Hence, this lady member had started writing on the ballot paper to express her vote. But mid-way she stopped writing, making her vote to be incomprehensible. So the subsequent expression of votes by show of hands is only justified. By this show of hands, the members have only expressed their votes. If the votes/intention of the members have been sufficiently expressed, then mere some irregularity here or there would not be sufficient or even relevant for casting a shadow of illegality upon the result of the proceedings. Therefore, the resolution of no confidence against the petitioners withstands judicial scrutiny and cannot be held to be vitiated by mere procedural irregularity.

We also find force in the arguments of learned State counsel that petitioner No.1 himself has consented to the entire procedure by subsequently agreeing to holding of election of the President and Vice President afresh after the no confidence motion was passed against him. Despite having filed the present writ petition, petitioner no.1 participated in the process of election of the President and Vice President. Even otherwise, there is no doubt left qua the fact that the petitioners have lost the support of 2/3rd members of the Municipal Council, Narwana; because all the 16 members who had passed the no confidence motion against the petitioners have approached this Court also by moving an application for being impleaded as party. All these members have duly reiterated their stand that they had voted against the petitioners in the no confidence motion.

Therefore, the allegation of the petitioners regarding any political pressure upon these members is ruled out; per se. Had there been any pressure on anyone of them; then having voted for the no confidence motion against the petitioners, they need not come to this Court also; to support the result of their vote during the no confidence motion.

In view of the above, we do not find any merit in the present writ petition and dismiss the same.

(MAHESH GROVER)
JUDGE

(RAJBIR SEHRAWAT)
JUDGE

31.05.2018
sonia

Whether speaking/non-speaking?	Yes
Whether reportable?	Yes