

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

Reserved on: 08.01.2019

Date of decision: March 18, 2019

CWP No.24872 of 2018 (O&M)

Padma Singla

.....Petitioner

Versus

State of Haryana and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. B.S. Rana, Senior Advocate with
Mr. Ved Parkash, Advocate for the petitioner.

Mr. Vivek Saini, DAG Haryana.

Dr. Anmol Rattan Singh, Senior Advocate with
Mr. Mahir Sood, Advocate for respondents No.3 to 5.

A.B. CHAUDHARI, J

By the present petition, the petitioner has sought quashing of notice dated 21.09.2018 (Annexure P-6) issued under Rule 10(2) of the Haryana Panchayati Raj Rules, 1995 (for short 'Rules') by respondent No.2-Deputy Commissioner, Jind, District Jind, by which a meeting was sought to be convened for considering the Motion of No Confidence, on 03.10.2018.

FACTS

2. The petitioner was elected as President of Zila Parishad, Jind in March 2016. Pursuant to the requisition that was received by the Deputy Commissioner, Jind, he had issued a notice dated 26.08.2018

calling for convening meeting on 04.09.2018 for considering the Motion of No Confidence against the President of Zila Parishad, Jind, i.e. the present petitioner. According to the petitioner, on 04.09.2018, none remained present in the meeting and therefore, though, the petitioner was present upto 12:15 P.M. in the meeting Hall, none appeared and as such, Motion of No Confidence failed. According to the petitioner, at no point of time, there was a quorum and therefore, as per proviso to Section 123 (2) of the Haryana Panchayati Raj Act, 1994 (for short 'Act'), the meeting lapsed. Therefore, second notice that was issued, which is impugned in the petition, within a period of one year, is liable to be quashed in view of the proviso to Section 123(2) of the Act. It prohibits calling of another meeting for considering Motion of No Confidence within one year between the last failure. It is in this context, the relief has been claimed by the petitioner.

3. Upon issuance of notice of motion, the Deputy Commissioner, Jind has filed reply in which he stated that on 04.09.2018, the meeting could not be held because he received an urgent message from Secretariat to attend an urgent meeting in relation to the strike in his area also, though, earlier to the date of meeting, he had made all the preparations for holding meeting for considering the Motion of No Confidence. He was therefore, unable to convene the meeting and had gone to Secretariat for attending the urgent meeting that was called by the Additional Chief Secretary to Government of Haryana, Home Department. That is why the meeting dated 04.09.2018 could not be held. Thus, the second notice dated

27.09.2018 for holding the alleged second meeting dated 03.12.2018 for considering the Motion of No Confidence was issued. Hence, this petition. This Court by order dated 27.09.2018 made the proposed meeting of 03.10.2018 subject to outcome of the present petition. It is not in dispute that as abundant precaution, the Presiding Officer sealed the result of meeting held on 03.10.2018.

ARGUMENTS

4. Learned Senior counsel for the petitioner vehemently argued that the meeting dated 04.09.2018 for considering the Motion of No Confidence was in fact, held in the sense that the petitioner remained present throughout and even after the time for holding and adjourning meeting, but not a single member of Zila Parishad including those who had given requisition attended the said meeting. The said meeting was, therefore, held and obviously the Motion of No Confidence had failed. He, therefore, submitted that there was no occasion for the Deputy Commissioner, Jind to issue second notice in violation of proviso to Sub-Section 2 of Section 123 of the Act within one year from the failure of the first Motion which failed. He, therefore, submitted that the second notice is liable to be quashed and set aside.

5. *Per contra*, learned State counsel as well as learned Senior counsel for the private respondents vehemently opposed the petition and submitted that the majority is against the petitioner and the will of the majority should be respected. Learned counsel submitted that the meeting was not at all held because of the reasons furnished in the reply filed by

Sh. Amit Khatri, Deputy Commissioner, Jind that he was required to attend the other emergent meeting at Secretariat. He, therefore, submitted that there was no failure of the Motion of No Confidence as contended by the petitioner. They therefore, prayed for dismissal of the writ petition.

CONSIDERATION

6. We have heard learned counsel for the rival parties at length. Section 123 (1) & (2) with proviso of the Act reads thus:-

“123. (1) The term of the office of President and Vice-President of a Zila Parishad shall be five years unless sooner removed.

(2) If by a resolution passed against the President or Vice-President, as the case may be, two-third of the total number of its elected members of the Zila Parishad decide at a meeting convened by the prescribed authority in the manner prescribed, that the President or Vice President, as the case may be, shall vacate the office and in such case the Zila Parishad shall elect the new President or Vice-President as the case may be, as specified in section 121 of this Act :

Provided that no such meeting shall be convened before the expiry of one year from the date on which the election of the President or the Vice-President, as the case may be, was notified, and after the expiry of such period, whenever such a meeting is convened during his term of office and the proposal for vacating the office fails, no further meeting shall at any time thereafter be convened for considering a similar proposal against the President or Vice-President unless a period of at least one year intervenes between the last failure and the date on which such further meeting is convened.”

7. Perusal of the above proviso in term shows that there has to be

a failure of Motion of No Confidence in the meeting that is held and if there is a failure, second meeting cannot be held within one year. There is a obvious reason for insertion of said time limit of one year that there should be no disturbance in the functioning of Zila Parishad or with the office of the President atleast for a period of one year even if the majority is against such President. It is in this context, the provision is required to be read and understood.

8. It cannot be disputed that meeting dated 04.09.2018 could not be held for the reasons furnished by the Deputy Commissioner, Jind in his reply filed in response to the present petition. We have no reason to disbelieve what the Deputy Commissioner, Jind has stated in his reply/affidavit and we accept the said stand. We reject the stand taken by the petitioner that she was present upto 12:15 P.M. and that the proposal for vacating the office by virtue of Motion of No Confidence because no member remained present in the meeting, had failed.

9. This Court is of the firm opinion that in a democratic set up, the will of the majority should be given due weight and should prevail and not in the manner as contended by the petitioner that without considering and testing the proposal for the Motion of No Confidence by mere failure to hold meeting, the same should amount to last failure. Such interpretation would not be harmonious looking to the democratic principles. The meaning of the words “last failure” in the proviso to above Section 123(2) of the Act will have to be construed not in a pedantic manner. After all, in case of Motion of No Confidence what is important is

will of the majority of the council or the members who have elected the President. When the majority has lost confidence in the President and that such a motion/proposal is not even placed and considered by the House, the will of the majority cannot be set a naught by buttressing the bar of one year.

10. The Apex Court in the case of **Kiran Pal Singh versus The State of Uttar Pradesh and others**, in Civil Appeal No.2622 of 2018 (Arising out of S.L.P. (Civil No.1724 of 2018), decided on 17.05.2018, stated thus, in Paras 16 to 20, which read thus:-

*“16. We may now note the stand that was put forth before the High Court. It was contended that during the pendency of the 1st notice, the 2nd notice could not have been issued. There was no assertion that the meeting was convened pursuant to the 1st notice in the manner in which the statute provides for the same. The words "not carried out" as aforesaid are of immense significance. The meeting has to be convened as per the provisions of the said Section. The second part relates to want of the quorum. Though the quorum has not been defined under the Act, yet in the context, it would mean the quorum that requires the number of members to be present for the purpose of voting. For example, if the notice of intention is given to the Collector by more than half of the total members in Kshettra of 40 members but on the date of the meeting, there are only 10 members, indubitably there is a lack of quorum. Similarly, when the quorum is there and voting takes place, but eventually the vote of no confidence fails then the motion is not carried out as per the provisions contained in Section 15. To understand the concept of quorum, we may refer with profit to the authority in **The Punjab University,***

Chandigarh v. Vijay Singh Lamba and Ors.
 MANU/SC/0075/1976 : (1976) 3 SCC 344, wherein while discussing about quorum, the Court had held:

“7. ...'Quorum' denotes the minimum number of members of any body of persons whose presence is necessary in order to enable that body to transact its business validly so that its acts may be lawful.

17. In **Corpus Juris Secundum, Volume 74**, the word 'quorum' has been defined as follows:

The word 'quorum', now in common use, is from the Latin and has come to signify such a number of officers or members of any body, as is competent by law or constitution to transact business;... Quorum of a body is an absolute majority of it unless the authority by which the body was created fixes it at a different number.

18. In **Black's Law Dictionary (Second Edition)**, the word 'quorum' is defined as under:

When a committee, board of directors. meeting of shareholders, legislative or other body of persons cannot act unless a certain number at least of them are present, that number is called a “quorum.” Sweet. In the absence of any law or Rule fixing the quorum, it consists of a majority of those entitled to act. See Ex parte Willcocks, 7 Cow. (N.Y.) 409, 17 Am. Dec. 525; State v. Wilkesville Tp.. 20 Ohio St. 293; Heiskell v. Baltimore, 65 Md. 125 : 4 Atl. 136 : 57 Am. Rep. 308; Snider v. Rinehart 18 Colo. 18 : 31 Pac. 716.

19. In this context, reference to Sub-section (6) of Section 15 is fruitful. It reads thus:

(6) As soon as the meeting convened under this Section commences, the Presiding Officer shall read to the Kshettra Panchayat the motion for the consideration of

which the meeting has been convened and declare it to be open for debate.

It is quite clear that only when the number of persons are present and the meeting takes place, the debate under Sub-section (6) comes into play. Thus, in the absence of quorum, the said provision will not come into play.

20. In the case at hand, there is no allegation that the meeting was convened to consider the previous notice dated 9th October, 2017, as provided in Section 15 and the motion was not challenged on any other ground or the lack of quorum. What is singularly contended is that once a notice is given under Section 15(2), another notice of no confidence shall not be received until after expiration of one year. The said submission is without any substance inasmuch as the prohibition under Section 15(12) would only come into play when there is meeting and the motion is "not carried out" as per the provisions of Section 15 or meeting could not be held for want of quorum. As the facts of the instant case would reveal that no meeting was convened to consider the previous notice dated 9th October, 2017, as per the provisions of the Act. Mere receipt of a notice by the Collector will not allow the prohibition under Section 15(12) to come into play. That is not the purpose of the provision. That being the position, the ground urged by the learned Counsel for the Appellant that Sub-Section 15(12) would come into play is sans substratum. Neither of the conditions precedent is satisfied to attract the prohibition engrafted Under Section 15(12) of the Act."

11. In our opinion, the dictum pronounced by the Apex Court in the above squarely applies to the present matter. In that view of the matter, we find no merit in the present writ petition. Thus, the same will have to be dismissed.

12. Hence, the following order is passed:-

ORDER

- (i) **CWP No.24872 of 2018** is dismissed with costs in the sum of ₹5,000/- payable by the petitioner to the State of Haryana within a period of 8 weeks from today;
- (ii) Interim order dated 27.09.2018 is vacated;
- (iii) The Deputy Commissioner, Jind is directed to declare the result of special meeting dated 03.10.2018 and thereafter, proceed according to law within fifteen days from today.

(A.B. CHAUDHARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

March 18, 2019

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Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No