

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

(1) CWP No. 3439 of 2020 (O&M)

Sandeep Kumar

.... Petitioner

Versus

State of Haryana and others

... Respondents

(2) CWP No. 4346 of 2020

Rama Kheterpal

.... Petitioner

Versus

State of Haryana and others

... Respondents

Date of decision : 20.02.2020

**CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present : Ms. Kiran Bala Jain, Advocate
for the petitioner in CWP No.3439 of 2020.

Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Shiv Kumar Sharma, Advocate
for the petitioner in CWP No.4346 of 2020.

Mr. S. S. Pannu, DAG, Haryana.

Mr. Sandeep Verma, Advocate
for respondents No. 5 to 16 in CWP No. 3439 of 2020 and
for respondents No.5 to 8, 10, 11 and 13 to 15
in CWP No. 4346 of 2020.

Mr. Vimal Kumar Gupta, Advocate
for the respondents No. 9 & 12 in CWP No. 4346 of 2020.

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DAYA CHAUDHARY, J.

This judgment of ours shall dispose of both the writ petitions mentioned above, as common questions of law and facts are involved for adjudication in both these cases. However, for the sake of convenience, the facts are being extracted from CWP No.3439 of 2020.

Briefly, the facts of the case as made out in the present petition are that the General Elections of Municipal Committee, Barara, Distt. Ambala were held on 24.09.2017. Petitioner was elected as Member from Ward No.14 as he got the majority of votes. Respondents No.5 to 17 were also elected as Members from different wards. However, one Member has not been arrayed as party-respondent in the present petition as he has been suspended due to involvement in a criminal case. The first meeting of the members of the Municipal Committee was held on 04.01.2018. Thereafter, vide letter dated 17.12.2019 respondent No.3 *i.e.* Sub Divisional Officer (Civil) Barara called a special meeting for 03.01.2020. However, on 03.01.2020, the meeting could not be convened and vide letter dated 07.01.2020, it was postponed to 24.01.2020. Thereafter, again it was postponed to 31.01.2020 on some administrative ground. A number of writ petitions bearing CWP Nos. 2169 and 1414 of 2020 were filed by different Members with the grievance that neither the copy of the requisition was supplied to each and every Member nor notice of 15 days was given. The present petitioner is also having the same grievance that neither any notice was issued nor any requisition was supplied as copy of the notice was pasted/affixed at the door of his house without annexing the copy of the requisition. During pendency of the petition, CM No.2975 of 2020 was also

filed for setting aside the proceedings dated 07.02.2020.

Learned counsel for the petitioner submits that 'No Confidence Motion' has been passed without following the provisions of Haryana Municipal Act, 1973 (hereinafter referred to as the "Act 1973") and Haryana Municipal Elections Rules, 1978 (hereinafter referred to as the "Rules 1978"). The meeting was convened with ulterior motive without giving clear notice of 15 days, whereas 15 days prior notice was required to be given in case the meeting was to be adjourned for some date. The affixation of notice on the door of the house of the petitioner does not amount service as per provisions of Code of Civil Procedure, 1908. Learned counsel further submits that second meeting can be called after the expiry of period of six months and as such all the proceedings of 'No Confidence Motion' are bad in law, illegal and unlawful. In support of her arguments, learned counsel has relied upon judgment of Hon'ble the Apex Court rendered in case ***Kiran Pal Singh Vs. State of Uttar Pradesh and others 2018 (7) SCC 521*** and judgment of this Court rendered in case ***Smt. Budho Devi and another Vs. Deputy Commissioner, Gurgaon and others 1998(1) PLJ 393***.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner on the ground that the meeting of 'No Confidence Motion' was convened after giving/issuing clear notice of 15 days and thereafter the meeting was postponed under the orders of this Court where both the parties agreed. It cannot be said to be a second meeting of 'No Confidence Motion' and 15 days clear notice was not required to be given. Learned State counsel also submits that the message

was to be given by telephone but it was not picked up intentionally as is apparent from the proceedings. The mother of the petitioner did not accept notice by saying that she was asked by her son not to accept any notice. Thereafter it was affixed at the main door, which amounts to service. The house was found to be locked whereas mother was inside the house. Learned State counsel further submits that petitioner Rama Kheterpal was present at her house but a message was sent by her through her son to deliver the notice first to the remaining Members and later on it was received by her husband after the notices were delivered to the remaining Members.

Heard arguments of learned counsel for the parties. We have also perused the documents available on the file including the impugned notice and the proceedings as well as outcome of 'No Confidence Motion'.

Facts relating to election of Municipal Committee, Members elected from different wards and thereafter election to the office of President by the elected Members of the Committee, are not disputed.

Rule 72-A of the Rules, 1978 is relevant for the controversy in hand, which is reproduced as under : -

72-A. No confidence motion against President or Vice-President.-

(1) A motion of no confidence against the President or Vice-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.

Explanation. - Any fraction under this rule shall be taken as a whole.

(2) The Deputy Commissioner or such other officer not below the rank of an Extra Assistant Commissioner, as the Deputy Commissioner may

authorise, shall circulate to each member a copy of the requisition for the use of the members.

(3) The Deputy Commissioner or such other 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 before the expiry of one year from the date on which the election of the President or Vice President, as the case may be, was notified, and after the expiry of such period, whenever any such 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 six months intervenes between the last failure and the date on which such further meeting is convened.

(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.

Section 21 of the Act, 1973 is also relevant which is reproduced as under : -

21. Motion of no-confidence against President or Vice-President.-

(1) A motion of no-confidence against the President or Vice-President may be made in accordance with the procedure laid down in the rules.

(2) The Deputy Commissioner or such other officer not below the rank of an Extra Assistant Commissioner, as the Deputy Commissioner may authorise, shall convene a meeting for the consideration of the motion referred to in sub- section (1), in the manner laid down in the rules, and shall preside at such meeting.

(3) If the motion is carried with the support of not less than two-thirds of the elected members of the committee, the President or Vice-President, as the case may be, shall be deemed to have vacated his office.

(4) If a no-confidence motion is passed against the President and the Vice-President, simultaneously or otherwise, the Sub-Divisional Officer

(Civil) of the area in which the municipality is situated or any other officer not below the rank of an Extra Assistant Commissioner authorized by the Deputy Commissioner shall henceforth exercise the powers and discharge the functions of the President till the election of a President is notified or a Vice-President is elected.

(5) A meeting referred to in sub-section (2) shall be presided over by the Deputy Commissioner or the officer authorised by him, but neither he nor such officer shall have the right to vote at such meeting.

A perusal of provisions of Section 21 of the Act, 1973 shows that in case of 'No Confidence Motion' against the President, the Deputy Commissioner or the officer not below the rank of Extra Asstt. Commissioner is authorised to convene a meeting for consideration of the motion. In case the 'No Confidence Motion' is passed with the support of not less than 2/3rd of the elected Members of the Committee, the President shall be deemed to have vacated his office. It is not disputed that the requisite number of the Members was there for moving the 'No Confidence Motion' as it was passed by majority of 2/3rd of the elected Members. However, the petitioner is aggrieved only on the ground that there was no proper service and for calling second meeting, 15 days clear notice was required to be given which has not been provided.

Now the question for consideration by this Court is whether postponing the meeting for 'No Confidence Motion' amounts to calling of 2nd 'No Confidence Motion' or not. Admittedly, the date was extended in furtherance of first meeting and it cannot be said to be 2nd 'No Confidence Motion'. Moreover, the matter was pending before this Court and the grievance of some of the Members was that along with the copy of notice, the copy of the requisition was not supplied to them. During arguments,

learned counsel for the petitioners have agreed that in case the copy of the requisition is supplied to them then they would be satisfied. Accordingly, the respondents were directed not to proceed before supplying the copy of the requisition and accordingly the meeting was postponed. It is also not disputed that the voting was done by casting the votes in favour or against the 'No Confidence Motion' by observing secrecy as it was not done by raising hands or otherwise.

The purpose of secrecy of votes is that the Members may actively participate in the process and independently exercise their rights of vote, so that it may not be said that the votes were cast under the influence of any authority or Members.

Moreover, there is no provision in the Statute or under the Rules for giving clear notice of 15 days in case the meeting is adjourned for sufficient reason. It can also not be termed to be the 2nd Meeting where separate notice of 15 days is required to be given. The subsequent meeting was in furtherance of the earlier meeting and no notice of 15 days was required to be given. 'No Confidence Motion' moved by the Members is a **Special Meeting** which is required to be convened for that purpose after giving notice to all the Members in accordance with law.

Admittedly, the notice of the **Special Meeting** on the basis of requisition submitted by 1/3rd members was given to each and every Member. The petitioners are aggrieved by the action of the respondent-authorities in non-supplying the copies of the requisition along with the notices. The copies of the requisition were supplied to all the Members under the orders of this Court, except present petitioner Sandeep Kumar,

who asked his family members not to accept any notice. Petitioner Rama Khetarpal asked to supply the copy of the requisition first to all the Members but later on her husband accepted the notice in spite of the fact that she was present at her house.

The notice of meeting was pasted at the main door of the house of the petitioner and he was well aware about the date of the next meeting and it cannot be said that he was not aware about the proceedings. It appears that intentionally he avoided the service as he did not pick up his mobile to show that copy of the requisition was not supplied to him. Moreover, there is no provision under the Act and Rules to supply the copy of the requisition. The mandatory requirement is of giving notice for a period of not less than 15 days for calling a Special Meeting on the basis of requisition submitted by not less than 1/3rd Members of the total strength against the President/Member. In the present case, 'No Confidence Motion' has been moved against the President by 2/3rd Members of the total strength, whereas the requisite requirement is of 1/3rd of the total Members for moving 'No Confidence Motion' and thereafter, passing by 2/3rd of the total strength. It is also relevant to mention here that for removal of the President, a Special Meeting of the elected Members is required to be called and for that purpose the requisition is required to be sent by not less than 1/3rd of the total elected members. Thereafter, notice is required to be issued for convening the special meeting by giving period of 15 days from the date of issuance of such notice. There is no provision that the notice is required to be delivered to each Member personally. It can be received by any member of his/her family on his or her behalf or by affixing the notice at the

residence in case any Member is not available. The requirement of serving of requisition personally is otherwise also not possible as the person against whom no-confidence is proposed always can go hiding or otherwise delay the receipt of requisition defeating the purpose of sending the requisition itself. The Division Bench of the Patna High Court in case titled ***Rajeshwar Prasad Vs. The State of Bihar and others, LPA No.1077 of 2014*** decided on 04.08.2014, has held as under:-

“18. While answering the question, posed above, it needs to be borne in mind that it is the fundamental rule of the interpretation of statutes that a word, appearing in the statute, shall be given its ordinary meaning and nothing shall be added to the statutory provisions or subtracted therefrom. When the word "personally" does not appear in the statutory provisions embodied in Rule 2 (i) of 2010 Rules, it will be wholly unreasonable to insist that a requisition under Rule 2 (i) of 2010 Rules shall be given 'personally' to the Chief Councillor demanding holding of special meeting.

19. When Rule 2 (i) of 2010 Rules, nowhere, makes it obligatory, on the part of requisitionists, to give a Chief Councillor requisition for special meeting 'personally', Rule 2 (i) of 2010 Rules cannot be interpreted to either impose an obligation on the elected members, as requisitionists, to present 'personally' to the Chief Councillor the requisition nor can it be said that the Chief Councillor shall be given requisition 'personally'. If Rule 2 (i) of 2010 Rules is interpreted to convey what Mr. Giri attributes to the provisions contained in Rule 2 (i) of 2010 Rules, the consequences may be disastrous inasmuch as a Chief Councillor can always avoid personal service of a requisition and would, thus, not call for any special meeting and thereby frustrate the whole purpose of no confidence motion and bring, as a sequel thereto, a complete collapse of a democratic institution, such as, Panchayat.”

In view of the above discussion, it can safely be said that there

is neither violation of the provisions of the Act, 1973 nor of the Rules, 1978 as notice was given for convening the special meeting by issuing notice to all the concerned and subsequent meeting was only in continuation to the earlier meeting which cannot be termed as 2nd Meeting. The judgments relied by learned counsel for the petitioners are not relevant in the present context.

Accordingly, finding no merits in the arguments raised by learned counsel for the petitioners, both the writ petitions are dismissed.

**(DAYA CHAUDHARY)
JUDGE**

Dated : 20.02.2020
sunil yadav

**(MEENAKSHI I. MEHTA)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No