

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

CWP-9434-2020

Date of Decision: 13th July, 2020

Seema Rani

Petitioner

Versus

State of Haryana and others

Respondents

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE AVNEESH JHINGAN**

Present: Mr. Deepinder Patwalia, Senior Advocate with
Mr. Lakhwinder Singh Sidhu, Advocate for the Petitioner.

Mr. Ankur Mittal, Addl. Advocate General, Haryana.
Mr. Amit Jhanji, Advocate for Respondent Nos. 7 to 15.

Dr. S. Muralidhar, J.

1. The Petitioner was elected as President of the Municipal Committee, Jakhal Mandi in District Fatehabad, Haryana, at a meeting held on 2nd February, 2019 of the elected members of the Municipal Committee. The 13 members, including the Petitioner, were declared elected from Ward 13 of Jakhal Mandi on 19th December, 2018. A notification dated 22nd February, 2019 was issued whereby the Petitioner was notified as President of the Municipal Committee, Jakhal Mandi, District Fatehabad.

2. Nearly seven months after the above notification was issued, the Haryana

Municipal (Second Amendment) Act, 2019 (hereafter, 'HMSA') amending the Haryana Municipal Act, 1973 (hereafter, 'HMA'), was notified on 4th September, 2019. In other words, the HMSA amended the HMA with effect from that date. A significant change brought about by the HMSA was the amendment to Section 21 HMA, whereby it was no longer possible to resort to a 'No-Confidence Motion' for the removal of the President of a Municipal Committee. Correspondingly, amendments were made by the HMSA to Section 13 I and 13 J of the HMA to provide for other modes of removal of the elected President of the Municipal Committee. This was consistent with another significant change whereby the President was to be directly elected and not indirectly from among the elected members of the Municipal Committee.

3. It must be mentioned at this stage that Rule 72-A of the Haryana Municipal Elections Rules, 1978 (hereafter, 'HME Rules'), which laid down the procedure for moving a no-confidence motion against the President or the Vice-President, was not correspondingly amended to reflect the above amendment to the HMA. It continued to reflect the pre-amended position. This was despite the fact that Section 257 of the HMA, as amended, provided that the “State Government shall make rules pertaining to the matters of elections, in consultation with State Election Commission”.

4. What is significant about the above amendments made to the HMA with effect from 4th September, 2019 is that there is no 'savings' clause in the

HMSA which would have dealt with the status of persons like the Petitioner who already stood elected as President prior thereto under the pre-amended provisions.

5. It appears that some of the members of the Municipal Committee, i.e. Respondent Nos. 7 to 15 herein, made a representation to the Deputy Commissioner, Fatehabad, purportedly under Rule 72-A (1) of the HME Rules, for bringing a no-confidence motion against the Petitioner for her removal as the President of the Municipal Committee. On the basis of the above representation, the Deputy Commissioner, Fatehabad, in purported exercise of powers conferred on him by Section 21 (2) of HMA authorised the Sub-Divisional Officer (Civil) ['SDO'], Tohana to convene a special meeting for considering the no-confidence motion. As a result of the above order dated 18th June, 2018, the SDO (Civil), Tohana issued a notice dated 25th June, 2020 for convening a special meeting on 14th July, 2020 to consider the no-confidence motion.

6. The Petitioner has accordingly in the present petition sought the quashing of the aforesaid order dated 18th June, 2020 of Deputy Commissioner, Fatehabad and the consequent notice dated 25th June, 2020 of SDO (Civil), Tohana.

7. Mr. Deepinder Patwalia, learned Senior Counsel appearing for the Petitioner submits that on the date that the impugned order came to be issued

by the Deputy Commissioner under Section 21 (2) of HMA, the provision itself stood amended and that in terms of the amended Section 21 HMA, the Deputy Commissioner did not have the power to issue any order to consider any no- confidence motion for the removal of the President. In other words, there was no statutory power vested in the Deputy Commissioner as on 18th June, 2020 to issue any such order. Mr. Patwalia submitted that while there may be other modes available, in terms of the amended HMA, to seek the removal of the President, the provision for removal of the President through a no-confidence motion was no longer available after 4th September, 2019. He further submitted that in the absence of a savings clause, there was no question of not applying Section 21 as it stood on 18th June, 2020 when it came to seeking the removal of the Petitioner as President of the Municipal Committee through a motion of no confidence.

8. Mr. Amit Jhanji, learned Counsel appearing for Respondents Nos. 7 to 15, tendered a reply on their behalf and submitted, on the strength of the decision of the Supreme Court in *S.L.Srinivasa Jute Twine Mills (P) Ltd. v. Union of India (2006) 2 SCC 740*, that even in the absence a savings clause it is possible to interpret the HMSA as not taking away the entitlement of the elected members of the Municipal Committee to resort to the removal of President through a no-confidence-motion. According to him, on a collective reading of Rules 70, 71 and 72-A of the HME Rules, and Section 18 A of the HMA, as amended, the legal position was that the Petitioner having been elected as President prior to the amendment to Section 21 of the HMA, she

continued to be governed by the un-amended provision and could be removed through a no-confidence-motion.

9. Mr. Ankur Mittal, Additional AG, Haryana tendered the reply of the State of Haryana. While he did not dispute that there was no repeal and savings clause in the HMA as amended by HMSA, he supported the impugned order of the Deputy Commissioner and the notice issued by the SDO. He contended that notwithstanding the amendment to Section 21 HMA with effect from 4th September, 2019, the Petitioner, who was elected President of the Municipal Committee prior thereto could be removed through a no-confidence-motion.

10. The above submissions have been considered. Certain facts are not in dispute. The Petitioner was elected as President of the Municipal Committee, Jakhal Mandi, on 2nd February, 2019 i.e. prior to the amendment to HMA by the HMSA which was notified on 4th September, 2019.

11. It is also not in dispute that in terms of the amended Section 21 of the HMA, with effect from 4th September, 2019, the President of a Municipal Committee cannot be removed by resorting to a no-confidence motion. If the intention of the Legislature was not to make available the above protection provided to Presidents of Municipal Committees against removal through a no-confidence motion, to such of those Presidents who were already elected prior to that date, then there ought to have been a 'savings clause' to that effect. When the corresponding amendments carried out to Sections 13 I and

13 J of HMA are examined, it appears that the procedure for removal of an elected President has been made more cumbersome by making it contingent upon an enquiry by the State Election Commission. It is obvious that there is a greater degree of protection available to Presidents under the HMA as amended by the HMSA against removal. In that sense, from the perspective of an elected President, the amended Section 21 is more beneficial as compared with the un-amended Section 21 HMA. As already noted, the greater degree of protection against removal provided to the elected President under the HMA, as amended by the HMSA, is consistent with the other change, whereby the President is directly elected and not through an indirect method of being elected by the elected members of the Municipal Committee. Resultantly, after 4th September, 2019, the elected President of a Municipal Committee cannot be removed by a no-confidence motion. In the absence of any further express provision to the effect that the amendment to the procedure for removal will not apply to incumbent Presidents who may have been elected by the indirect method, it cannot be presumed that to them the unamended provision would continue to apply.

12. The decision in *S.L. Srinivasa Jute Twine Mills Private Limited (supra)*, does not advance the Respondents' contention that the benefit of HMA, as amended, when it comes to the removal of an elected President would not be available to those Presidents who were elected prior to the amendment. The observation in the said decision relying on the earlier decisions in *Jayantilal Amrathlal v. Union of India (1972) 4 SCC 174* and *Govind Das v. ITO*

(1976) 1 SCC 906, that even in the absence of a repeal and savings clause, a statute that “takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have a retrospective effect” has to be understood in the context of 'impairing vested rights' on 'creating a new duty or obligation'. It is not to be understood as denying the advantage of a beneficial provision to incumbents.

13. In the context of the present case, the legal position is that the procedure under the unamended Section 21 HMA for the removal of an elected President through a no-confidence motion stands statutorily repealed with effect from 4th September, 2019. In the absence of any 'savings' clause, or words to that effect, the unamended Section 21 cannot be presumed to continue in the case of removal of Presidents elected prior thereto. As explained in *S.L. Srinivasa Jute Twine Mills (supra)*, the presumption is that every statute is *prima facie* prospective, unless by necessary implication it is to have retrospective operation. This is in the context where the object of the statute as amended is to affect vested rights, to impose new burdens or impair existing obligations. If it was intended that those Presidents elected prior to 4th September 2019 would continue to be governed by the unamended Section 21 HMA that ought to have been made explicit in the language of the amendment. For instance, in *Vijay v. State of Maharashtra (2006) 6 SCC 286* the amendment to sub-clause (J2) of Section 14 (1) of the Bombay

Village Panchayats Act 1958 introduced a disqualification for being a member of a Panchayat. The language of the amended provision made it explicit that it applied to incumbent members too. The amended provision read thus:

"14. Disqualifications - (1) No person shall be a member of a Panchayat, *or continue as such*, who :

* * * * (J-2) has been elected as Councillor of the Zilla Parishad or as a member of the Panchayat Samiti." (emphasis supplied)."

Thus, the words "or continue as such" was clearly intended to make the disqualification also apply to incumbent members. As explained by the Supreme court in the aforementioned decision, in the absence of such clear words, the amendment could not have been applied retrospectively. The Supreme Court explained:

"7. The said Act is a disqualifying statute. A plain reading of the amended provision clearly shows that it was intended by legislature to have retrospective effect.

8. The general rule that a statute shall be construed to be prospective has two exceptions: it should be expressly so stated in the enactment or inference in relation thereto becomes evident by necessary implication.

9. In the instant case it is stated expressly that the amendment would apply also to a case where the elected candidate had been elected as a member of Panchayat earlier thereto. It not only incorporates within its purview all persons who would be members of the Panchayat in future, but also those who were sitting members. In other words, the bar created to hold the post of member of Panchayat would bring within its purview also those who were continuing to hold post."

14. In *Commissioner of Income Tax v. Vatika Township Pvt. Ltd. (2015) 1 SCC 1* the Constitution Bench of the Supreme Court while holding that Section 113 C of the income tax Act 1961 was a clarificatory provision and therefore had retrospective effect explained the general principles concerning interpretation of statutes in the following words:

"31. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary

intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as *lex prospicit non respicit*: law looks forward not backward. As was observed in *Phillips vs. Eyre (1870) LR 6 QB 1*, a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

32. The obvious basis of the principle against retrospectivity is the principle of 'fairness', which must be the basis of every legal rule as was observed in the decision reported in *L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co.Ltd (1994) 1 AC 486*. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation."

15. Importantly, and relevant to the present context, the Supreme Court in the aforementioned decision explained the legal position in the case of a beneficial legislation, in the following words:

"33. We would also like to point out, for the sake of completeness, that where a benefit is conferred by a legislation, the rule against a retrospective construction is different. If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospective. In *Government of India & Ors. v. Indian Tobacco Association (2005) 7 SCC 396*, the doctrine of fairness was held to be relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation. The same doctrine of fairness, to hold that a statute was retrospective in nature, was applied in the case of *Vijay v. State of Maharashtra*

& Ors. (2006) 6 SCC 289. It was held that where a law is enacted for the benefit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature.

34. In such cases, retrospectively is attached to benefit the persons in contradistinction to the provision imposing some burden or liability where the presumption attaches towards prospectivity. In the instant case, the proviso added to Section 113 of the Act is not beneficial to the assessee. On the contrary, it is a provision which is onerous to the assessee. Therefore, in a case like this, we have to proceed with the normal rule of presumption against retrospective operation. Thus, the rule against retrospective operation is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. Dogmatically framed, the rule is no more than a presumption, and thus could be displaced by out weighing factors.”

16. In the context of the present amendments, by which a more beneficial provision in so far as the removal of the elected President of a Municipal Committee is concerned has been introduced with effect from 4th September, 2019, it is not possible to interpret the amendment to Section 21 HMA in the manner suggested by the Respondents, that is to say that a President of a Municipal Committee elected prior to 4th September, 2019, would continue to be governed by the unamended Section 21 and can be removed through a no-confidence motion. Such a procedure of removal *qua* the President stands expressly deleted by the amended Section 21 with effect from 4th September, 2019.

17. The net result of the above discussion is that in the considered view of this Court, the Deputy Commissioner could not have on 18th June, 2020 exercised powers under Section 21 (2) of the HMA to authorise the SDO (Civil), Tohana to convene a special meeting to consider the no-confidence

motion moved by Respondent Nos. 7 to 15 for removal of the Petitioner as President of the Municipal Committee.

18. The Court accordingly quashes the order dated 18th June, 2020 of the Deputy Commissioner, Fatehabad and the notice dated 25th June, 2020 of the SDO (Civil), Tohana consequent thereto for consideration of a no-confidence motion for removal of Petitioner as President of the Municipal Committee. It is made clear that the impugned order and notice stand quashed *qua* the Petitioner of the Municipal Committee alone and not its Vice-President.

19. The writ petition is allowed in the above terms.

[S. MURALIDHAR]
JUDGE

[AVNEESH JHINGAN]
JUDGE

July 13, 2020
shabha

1. Whether speaking/ reasoned	:	Yes
2. Whether reportable	:	Yes