

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-21972-2021

Date of decision:11.11.2021

Kanta Kiran

....Petitioner

V/s.

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE KARAMJIT SINGH**

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

Mr. Ankur Mittal, Addl.A.G., Haryana with
Mr. Saurabh Mago, A.A.G., Haryana and
Ms. Khushdeep K. Manchanda, Advocate
for the respondents.

Ritu Bahri, J.

The petitioner is seeking writ of Certiorari for quashing the subsequent requisition dated 19.10.2021 (Annexure P-15) on the ground that same is barred in view of earlier requisition dated 11.06.2021 (Annexure P-4) which was pending for action in view of proviso added in Rule 72A of Haryana Municipal Act, 1973 (hereinafter referred to as 'Act, 1973').

The brief facts of the case are that election programme for conducting election of all wards of Municipal Committee, Bawani Khara alongwith 17 other Municipal Committees was issued by State Election Commission, Haryana vide notification No. SEC/1ME/2018/284 dated 20.04.2018, pursuant to which elections were held on 13.05.2018. As per the notification dated 24.05.2018 (Annexure P-1), the petitioner was declared as elected Member of Municipal Committee and vide notification

dated 05.07.2018 issued by the Governor of Haryana (Annexure P-2), she was elected as President of Municipal Committee, Bawani Khera, District Bhiwani. Pursuant to this notification, the petitioner joined her duty on 06.07.2018 F.N. (Annexure P-3). The Municipal Committee, Bawani Khera consists of 15 elected members. Out of them, 10 members gave requisition on 11.06.2021 alongwith duly sworn affidavits dated 11.06.2021 to the Deputy Commissioner/Additional Deputy Commissioner Bhiwani, to convene a meeting of the Municipal Committee to consider no confidence motion against the petitioner (Annexure P-4 to P-14). The letter dated 11.06.2021 (Annexure P-4) was addressed to the Deputy Commissioner/Additional Deputy Commissioner, Bhiwani.

The grievance of the petitioner is that during the pendency of requisition dated 11.06.2021 (Annexure P-4), no meeting was convened and thereafter another requisition dated 19.10.2021 (Annexure P-15) was made for moving no-confidence motion. The Deputy Commissioner, Bhiwani, instead of rejecting requisition dated 19.10.2021 (Annexure P-15) had passed order dated 21.10.2021 by authorizing Additional Deputy Commissioner, Bhiwani to convene a meeting after checking the veracity of no-confidence motion.

On 29.10.2021 when this case was taken up for hearing learned counsel for the State Mr. Ankur Mittal, Additional Advocate General, Haryana placed reliance upon notification dated 19.09.2020 under the Haryana Municipal (Amendment) Act, 2020 whereby Section 279 of Act, 1973 was amended which is reproduced here as under:-

“279(3) Notwithstanding anything contained in the Haryana Municipal (Second Amendment) Act, 2019, appointment, removal or suspension of person elected as President of municipality before coming

into force of the Haryana Municipal (Second Amendment) Act, 2019 or filling up of any post/office vacated by such person shall continue to be governed by the respective provisions of the Haryana Municipal Act, 1973 that existed prior to the coming of the Haryana Municipal (Second Amendment) Act, 2019 into force. All the acts done/proceedings instituted or which might have been instituted or shall be instituted against any of the person elected as President of municipality prior to coming into force of the Haryana Municipal (Second Amendment) Act, 2019 shall continue to be governed by the respective provisions of the Haryana Municipal Act, 1973 that existed immediately prior to the coming of the Haryana Municipal (Second Amendment) Act, 2019 into force.”

Learned counsel for the State further submitted that since the Rules under the Act, 1973 were already in existence, there was no requirement/reason to amend the rules afresh qua those persons who have been elected prior to 2019 amendment and the petitioner has been elected as President in the year 2018. Hence, the petitioner could be removed by initiating no confidence motion under the 1973 Act.

The case was adjourned to enable learned counsel for the State to file a short affidavit in this regard.

Learned counsel for the State has filed written statement dated 08.11.2021 by the Additional Deputy Commissioner, Bhiwani on behalf of respondents No. 1 to 4. The stand taken in the written statement is that the proviso to Rule 72-A and the bar of Rule 72-A(3) are not applicable in the present case as no meeting was convened as per earlier requisition dated 11.06.2021 (Annexure P-4) which was submitted to the Additional Deputy Commissioner, Bhiwani. However, as per Section 21 of the Haryana Municipal Act, 1973 read with Rules 72A of the Haryana Municipal Election Rules, 1978, requisition is to be submitted to the Deputy Commissioner. The Additional Deputy Commissioner was informed vide

letter dated 25.06.2021 (Annexure R-4) that requisition was not presented to the office of Deputy Commissioner, which was not in consonance with the rules framed by the State Government and he was directed to rectify the procedural irregularity and intimate the officials concerned to submit the requisition to the appropriate authority. Thereafter vide letter dated 02.07.2021 (Annexure R-5), the Secretary, Municipal Committee, Bawani Khera was conveyed to get the procedural irregularity rectified and to submit the requisition to appropriate authority as per Sub Rule 1 of Rule 72-A of Haryana Municipal Election Rules, 1978. Hence, no procedure was pending for convening a meeting of no confidence motion pursuant to requisition dated 11.06.2021 (Annexure P-4). When the second requisition dated 19.10.2021 (Annexure P-15) was received in the office of Deputy Commissioner, Bhiwani in accordance with the procedure provided in Rule 72-A of Haryana Municipal Election Rules, 1978, he issued authorization letter dated 21.10.2021 in favour of Additional Deputy Commissioner, Bhiwani to convene a meeting after checking the veracity of no-confidence motion and based upon the said letter, the Additional Deputy Commissioner, Bhiwani vide order dated 25.10.2021 (Annexure R-6) fixed meeting on 12.11.2021 at 12 p.m. at DRDA Hall, Bhiwani.

Learned counsel for the petitioner has argued that initial requisition dated 11.06.2021 (Annexure P-4) for initiating no confidence motion was addressed to Deputy Commissioner/Additional Deputy Commissioner. Hence, there was no procedural irregularity in submitting this requisition in the office of Deputy Commissioner, Bhiwani. He further argued that during the pendency of requisition dated 11.06.2021 (Annexure P-4), second requisition dated 19.10.2021 (Annexure P-15) could not be

entertained. To support his contention, he referred to judgment passed in ***Tarun Bhandari vs. State of Haryana and others (2006) 143 PLR 719.***

The argument of learned counsel for the petitioner has to be examined keeping in view the first requisition dated 11.06.2021 (Annexure P-4) which was addressed to Deputy Commissioner/Additional Deputy Commissioner. However, this requisition was received in the office of Additional Deputy Commissioner as it is evident from letter dated 25.06.2021 (Annexure R-4). The Deputy Commissioner, in this letter (Annexure R-4) has specifically observed that requisition dated 11.06.2021 was received in the office of Additional Deputy Commissioner which was forwarded in the office of Deputy Commissioner on 15.06.2021. Requisition dated 11.06.2021 was never received in the office of Deputy Commissioner and while referring to Rule 72 A(1) of the Haryana Municipal Election Rules, 1978, it has been observed that a motion of no-confidence against the President or Vice President of a committee may be made through a requisition in writing addressed to the Deputy Commissioner, which is to be signed by not less than one third of the total number of the members of the Committee. Hence, for all intents and purposes, requisition dated 11.06.2021 (Annexure P-4) has not been addressed to Deputy Commissioner, as per Rule 72A(1) of Rules, 1978. The Additional Deputy Commissioner was informed to get this procedural irregularity rectified and thereafter vide letter dated 02.07.2021 (Annexure R-5), the Secretary, Municipal Committee, Bawani Khera was conveyed to get the procedural irregularity rectified and to submit the requisition to appropriate authority as per Sub Rule (1) of Rule 72-A of Haryana Municipal Election Rules, 1978. Another requisition for moving no

confidence motion was sent on 19.10.2021 (Annexure P-15) which was received in the office of Deputy Commissioner, Bhiwani in accordance with the procedure provided in Rule 72-A of Haryana Municipal Election Rules, 1978. The Deputy Commissioner issued authorization letter dated 21.10.2021 in favour of Additional Deputy Commissioner, Bhiwani to convene a meeting after checking the veracity of no-confidence motion and based upon the said letter, the Additional Deputy Commissioner, Bhiwani vide order dated 25.10.2021 (Annexure R-6) fixed meeting on 12.11.2021 at 12 p.m. at DRDA Hall, Bhiwani.

Since the requisition dated 11.06.2021 (Annexure P-4) had not been given in the office of Deputy Commissioner as per Rule 72-A(1) of the Haryana Municipal Election Rules, 1978, it was returned for removing procedural irregularity and hence when the second requisition dated 19.10.2021 (Annexure P-15) was received in the office of Deputy Commissioner, nothing was pending in the office of Deputy Commissioner with respect to requisition dated 11.06.2021 (Annexure P-4). The meeting pursuant to requisition dated 19.10.2021 (Annexure P-15) has been rightly concluded.

The facts of the judgment passed in *Tarun Bhandari's case (supra)* are not applicable to the facts of the present case as no meeting had been convened pursuant to first requisition dated 11.06.2021 (Annexure P-4).

The second ground made by the petitioner for challenging the requisition dated 19.10.2021 (Annexure P-15) is that Haryana Municipal Election Rules, 1978 was amended vide notification dated 30.10.2020 and there is no provision with respect to no confidence motion in the rules

against the President and hence requisition could not have been acted upon.

The Haryana Municipal Act, 1973 was amended vide notification dated 04.09.2019 (Annexure R-7) whereby the President of the Municipal Committee was to be elected by way of direct election and a departure was made from the earlier procedure of election of President by way of nomination and in this backdrop, amendment was carried out in the procedure for removal of the President. Under Section 13-J of the Haryana Municipal Act, 1973, the President could be removed by the State Election Commission as it may deem fit. Earlier the President who was elected by way of nomination was removed by way of no confidence motion. Thereafter vide notification dated 19.09.2020 (Annexure R-8), further amendment was made with regard to appointment, removal or suspension of person elected as President of Municipality before coming into force of Haryana Municipal (2nd amendment) Act, of 2019 or filling up of any post/office vacated by such person shall be continued to be governed by the unamended provisions of the Act, 1973 and since the petitioner was elected under the unamended provisions of the Act, 1973, she could be removed from the post of President by initiating no confidence motion against her. The unamended Section 21 of the Haryana Municipal Act, 1973 is hereby 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 vice-president 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 Extra Assistant Commissioner authorised 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.”

The requisition dated 11.06.2021 (Annexure P-4) was never acted upon because it was suffering from procedural irregularity and therefore it was returned. The second requisition dated 19.10.2021 (Annexure P-15) was presented in the office of Deputy Commissioner, Bhiwani and he authorized Additional Deputy Commissioner, Bhiwani to convene a meeting after checking the veracity of no-confidence motion. Thereafter, Additional Deputy Commissioner, Bhiwani vide order dated 25.10.2021 (Annexure R-6) fixed meeting on 12.11.2021 at 12 p.m. at DRDA Hall, Bhiwani which has been rightly concluded.

Hence, no ground to quash requisition dated 19.10.2021 (Annexure P-15) is made out.

Writ petition is dismissed.

(RITU BAHRI)
JUDGE

11.11.2021

Divyanshi

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No