

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

CWP No. 6845 of 2022(O&M)

Date of decision: October 28, 2022.

Raman Bakshi

..... **Petitioner**

Vs

State of Punjab and others

.....**Respondents**

CORAM HON'BLE JUSTICE MS.RITU BAHRI

HON'BLE JUSTICE MS. NIDHI GUPTA

Present:- Mr. ML Saggar, Senior Advocate assisted by
Mr. Armaan Saggar, Advocate and
Mr. Rohit Joshi, Advocate for the petitioner.

Mr. Ferry Sofat, Additional Advocate General, Punjab
For respondent nos. 1 and 2

Mr. Puneet Jindal, Senior Advocate assisted by
Mr.Gautam Goyal, Advocate for respondent no.3.

Mr. Sandeep Khunger, Advocate with
Mr.Saksham Khunger,Advocate for respondent no.4.

Nidhi Gupta,J.

Prayer in this writ petition is for issuance of a writ in the nature of certiorari to quash the order dated 7.7.2022 (Annexure P-7) passed by respondent no.1 - State of Punjab, whereby the proceedings of the meeting dated 21.3.2022 (Annexure P-6) vide which 52 Councillors are stated to have passed a unanimous resolution expressing no-confidence against respondent no.4-Mayor of the Respondent no.3-

Municipal Corporation, Amritsar (hereinafter referred to as the ‘respondent Corporation’), have been annulled; and for issuance of a writ in the nature of mandamus seeking a direction to the official respondents “*to convene a special meeting of the House of respondent No. 3 Municipal Corporation, Amritsar at Chandigarh under the supervision of an Observer...*”.

Brief sequence of events in chronological order leading up to the filing of the present writ petition may be noticed as under:

17.12.2017- The Respondent Corporation is constituted under Section 4 of the Punjab Municipal Corporation Act, 1976 (hereinafter referred to as ‘the Act’). Section 5 of the Act provides for composition of the Corporation as under:

[5. Composition of Corporation.—(1) Every Corporation constituted under section 3 shall consist of,-

(i) elected Councillors chosen by direct election;
and

(ii) ex officio members comprising the members of the Punjab Legislative Assembly representing the constituencies in which the city or any part thereof falls.

(2) A person who is elected as Councillor of a Corporation shall not be considered to be an ex office member, if he is a member of the Punjab Legislative Assembly at the time of his election or becomes such member at any time thereafter and such person shall have

all the rights and be subject to all the liabilities of an elected Councillor.

(3) The Government shall, from time to time, by notification in the Official Gazette, determine the number of elected Councillors for a Corporation:

Provided that the total number of elected Councillors for a Corporation shall in no case be less than ²{fifty} and more than ³{hundred}:

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Explanation-(1) If the constituency of a member of the Punjab Legislative Assembly comprises more than one city, he shall be an ex officio member of the Corporation of such city.

Explanation-(2) If any City falls in more than one constituency the members of the Punjab Legislative Assembly representing each such constituency shall be ex officio members of the Corporation of such city.]

Elections to the respondent Corporation were held on 17.12.2017. The respondent Corporation presently consists of 85 elected Councillors, and five MLAs of the Amritsar North, Amritsar South, Amritsar East, Amritsar West, and Amritsar Central constituencies. Respondent no.4 was elected as Mayor, and the petitioner was elected as Senior Deputy Mayor. The Corporation has a term of five years from the date of its first meeting. Accordingly, the term of the respondent Corporation is due to end in December 2022/ January 2023. It is stated before us that majority of the Councillors belong to Indian National Congress.

January 2022- General elections of the Punjab Legislative Assembly were to be held in 2022 prior to which respondent no.4-Mayor of the respondent Corporation joined the Aam Aadmi Party. Due to this he is stated to have lost the confidence of majority of the Councillors of the respondent Corporation.

24/25.2.2022-A requisition dated 25.2.2022 was submitted by the petitioner and 42 other Councillors to the respondent No. 4 Mayor, and The Commissioner, Municipal Corporation, Amritsar, to convene a 'special' meeting of the House to consider the motion for the removal of respondent no.4-Mayor of the Corporation. The said requisition is attached with the petition as Annexure P-1.

28.2.2022- In pursuance of the above said requisition the Mayor-respondent no.4 herein, vide his letter dated 28.2.2022 directed the Secretary, Agenda Branch of the Corporation to convene a special meeting.

2.3.2022 - Vide communication no.888 dated 2.3.2022 the Secretary, Agenda Branch of the respondent Corporation informed all the Councillors that as per the orders of the Respondent No. 4 Mayor, a special meeting of the House had been convened for 21.3.2022 at 4 pm in the Meeting Hall of the respondent Corporation. A copy of this communication dated 2.3.2022 is appended with the petition as Annexure P-2.

17.3.2022 – It has come on record that 40 of the above-mentioned Councillors who had submitted the aforementioned requisition dated 24/25.2.2022 seeking to bring a No-confidence motion against the Mayor, subsequently reneged on the same, and vide communication

dated 17.3.2022 wrote to the respondent No. 4-Mayor through The Commissioner, Municipal Corporation, stating therein that they had been forced to sign the requisition dated 24/25.2.2022 against their will, and that they did not wish to convene any such special meeting as they had full confidence in the working and ability of the present Mayor. A copy of this communication dated 17.3.2022 has been appended with the paper book as Annexure R3/1.

19.3.2022 – Consequentially, the Secretary, Agenda Branch of the respondent Corporation vide communication no. 892 dated 19.3.2022 informed all the Councillors that the special meeting to be held on 21.3.2022 has been cancelled “*in light of the letter no. M/162 dated 17.3.2022 sent by the Commissioner to the Hon’ble Mayor, Municipal Corporation, Amritsar which was sent to the undersigned on 17.3.2022 by the Commissioner.*” This communication dated 19.3.2022 is with the petition at Annexure P-3.

21.3.2022- However, despite the above cancellation of the meeting scheduled for 21.3.2022, 52 Councillors including the petitioner are stated to have come present and held a meeting and expressed that respondent no. 4 had lost the confidence of the Councillors. Copy of the proceedings of the meeting dated 21.3.2022 is appended with the petition as Annexure P4; and the attendance sheet of the meeting dated 21.3.2022 is attached as Annexure P-6.

29.3.2022 - Aggrieved by the said action of the respondent no.4-Mayor in cancelling the meeting scheduled on 21.3.2022 for his removal, the petitioner, who is Senior Deputy Mayor of the respondent Corporation, approached this Court by way of present writ petition with the primary

prayer “*to convene a special meeting of the House of respondent No. 3 Municipal Corporation, Amritsar at Chandigarh under the supervision of an Observer to be appointed by the Court to consider removal of Mayor of respondent No. 3 Corporation as the special meeting convened on 21.3.2022 at 4 PM in the Meeting Hall of respondent No. 3 Corporation had been cancelled by the respondent No. 4 Mayor vide communication dated 19.3.2022 issued by the Secretary, agenda branch of respondent Corporation in view of letter dated 17.3.2022 of the respondent No. 4 Mayor of the Municipal Corporation, Amritsar.*”

7.7.2022 – In the meantime, during the pendency of this writ petition, vide order dated 7.7.2022 (Annexure P-7) respondent State through Principal Secretary, Punjab Govt., Local Govt. Department, annulled the meeting held on 21.3.2022 whereby no-confidence motion had been stated to have been passed against respondent no.4-Mayor. Proceedings dated 21.3.2022 were annulled under Section 423 of the Act on the ground that “*the meeting held by the Councillors of Municipal Corporation, Amritsar on 21.3.2022 is not in accordance with the provisions of the Punjab Municipal Corporation Act, 1976*”. It is further stated in this order that “*the same have been issued with the approval of the competent authority*”.

18.7.2022/ 23.8.2022 - Subsequent to the above said development, petitioner filed CM No. 10430 of 2022 on 18.7.2022 seeking to amend present writ petition in order to incorporate challenge to the above-mentioned order dated 7.7.2022 passed by the respondent State. Reply and replication thereto were duly filed by the respondents and petitioner respectively to the above said application; whereafter vide order dated

23.8.2022 this Court allowed the applicant-petitioner's application for amendment of the writ petition.

16.9.2022/ 22.9.2022/ 23.9.2022 - Reply by way of short affidavit has been filed to the main writ petition by respondent No.1, the respondent No. 3 Corporation, as also by respondent no.4-Mayor of the respondent Corporation, in that order.

It is in the conspectus of the abovesaid factual matrix that the Ld. Senior Counsel for the petitioner has very vehemently and ably inter-alia argued before us that the Order dated 7.7.2022 is illegal, unlawful, malafide, and a capricious and colourful exercise of power as the respondent no.1-State had no authority to pass the said order dated 7.7.2022. Learned Senior Counsel referred to Section 423 of the Act whereunder the impugned order has been passed; and stated that the meeting dated 21.3.2022 had been convened to consider the No-Confidence motion against the Mayor, and as such said meeting was neither ordinary nor a special meeting as it did not relate to the transaction of business of the respondent Corporation, and that no-confidence motion is in the nature of a floor test. As such, ld. Sr. Counsel argued, while holding meeting dated 21.3.2022, no provisions of the Act were violated, and also, Section 423 did not apply to the said meeting. Said Section 423 of the Act relied upon by the petitioner is reproduced hereunder:

“423. Government's power to annul or modify illegal proceedings. - The Government may, by written order, annul or omit from the records any proceedings of the corporation which it considers not to be in conformity

with this Act, or any rules or bye-laws made thereunder and may do all things necessary to secure such conformity.

Provided that, unless in the opinion of the Government the immediate making of such order is necessary, it shall before making an order under this section, give the Corporation an opportunity of showing cause why such an order should not be made.”

Ld. Sr. Counsel further contended that the meeting had been held on 21.3.2022, whereas the impugned order had been passed only on 7.7.2022 that is, after considerable delay. Accordingly, it was argued, that the impugned order had been passed only to favour respondent no. 4 – Mayor, and to delay the decision of the present writ petition.

Ld. Sr. Counsel further contended that impugned action of the respondent No. 4 – Mayor in cancelling the special meeting to be held on 21.3.2022, was not just an arbitrary and capricious exercise of power, it was also in violation of the provisions of Section 39 of the Act.

In support, Learned Senior Counsel for the petitioner has relied upon **Babu Lal Aggarwal v Commissioner & Secretary to Govt. of Hry., Local Bodies Department, 1994(1) PLR 653; Kala Ram v The State of Punjab, 1994(3) PLR 501; and Ram Singh v State of Punjab 1998(2) PLR 124.**

Per contra, learned Senior Counsel for respondent Corporation has inter-alia, argued that the Mayor had rightly cancelled the meeting because requisite numbers of members were not present. It

was contended that it is a House of 85 members and as per petitioner's own case only 43 Councillors had called for the meeting. It is accordingly stated that the said meeting had no legal authority and is hit by Section 39 of the Act whereunder for removal of Mayor a resolution to such effect has to be passed by not less than two-thirds of the members of the House present and voting in a meeting called for this purpose in the prescribed manner.

Learned Senior Counsel has further relied upon Section 19 of the Punjab General Clauses Act and submitted that as per said provision, if the respondent Corporation had the power to call a meeting it would also include power to cancel the meeting. Counsel for respondent Corporation has also placed reliance upon **Prabhakar Narayan Kelkar & others vs. State of MP & others 1999 (2) MPLJ 608.**

Learned Additional Advocate General representing the respondent No. 1 State has pointed out that petitioner's own prayer in the petition is that the official respondents be directed to convene a special meeting of the House of the respondent Corporation to consider the removal of the Mayor in the Meeting Hall of the respondent Corporation. However, ld. Sr. Counsel for the petitioner states that at this belated stage this prayer is not sufficient.

We have heard learned counsel for the parties at great length and perused the record. In our view the summary issues to be adjudicated upon by this Court are:

- 1) Whether the No-confidence motion expressed on 21.3.2022 to remove the Mayor is as per the Act; and
- 2) Whether the meeting dated 21.3.2022 is as per the Act; and

3) Whether the cancellation of said meeting dated 21.3.2022 is as per the Act?

Issue no. 1:

Process for removal of the Mayor is contained in Section 39 of the Act. Said Section 39 is as follows:

“39. Removal of Mayor, Senior Deputy Mayor and Deputy Mayor.—A councilor holding office as a Mayor or Senior Deputy Mayor or Deputy Mayor may be removed from his office by a resolution of the Corporation passed by a majority of the total membership of the Corporation and by majority of not less than two-third of the members of the Corporation present and voting in a meeting of the Corporation in a prescribed manner.”

A perusal of the above said provision shows that resolution seeking removal of the Mayor has to be passed *‘by majority of not less than two-third of the members of the Corporation’*. Even assuming the meeting dated 21.3.2022 was held as prescribed under the Act, admittedly in the present case, only 52 of the 85 members of the Corporation had passed/ ‘expressed’ the resolution of No-confidence/ removal of the Mayor; whereas as per the provision at least 56 were required to do so.

Even otherwise, a perusal of the ‘resolution’/ proceedings of the meeting dated 21.3.2022 Annexure P4, whereby respondent no. 4-Mayor is stated to have been removed, reveals that it has been signed

only by the petitioner. Said 52 members are not signatory to the proceedings at all. Their signatures are not appended on the proceedings of the meeting dated 21.3.2022. Annexure P6 is merely the attendance sheet of the members purported to have attended the meeting dated 21.3.2022 without there being any indication as to what resolution was passed. Thus, by no stretch of imagination can it be said that the requirement of two-thirds majority is met.

Moreover, any No-confidence motion against the Mayor can only be passed in/ before the House. It has come on record vide report of Commissioner, Municipal Corporation, Amritsar, dated 22.3.2022 Annexure R3/4, that *'about 50 Councillors accompanied by media'*, had come into the office of the Commissioner, Municipal Corporation, Amritsar, and raised slogan and agitation and *'on its own level by announcing No-confidence motion in the presence of media in the room of the undersigned, announced to remove the mayor from the post of Municipal Corporation, Amritsar, which was done illegal process, because it can be done only in the meeting of the house'*. It therefore follows that the No-confidence resolution passed by the 52 Councillors is not in accordance with law as it is required to be passed in/ before the House, on the floor of the House; whereas admittedly, it has been passed in the office/ room of the Commissioner, Municipal Corporation.

Thus, in view of the above facts, Issue No. 1 is decided against the petitioner.

Issue No. 2:

Furthermore, Sections 55 and 57 of the Act deal with the meetings of the Corporation. Said Sections 55 and 57 are as follows:

“55. Transaction of business by the Corporation

meetings.—(1) The Corporation shall ordinarily hold at least one meeting in every month for the transaction of business.

(2) The mayor or in his absence the Senior Deputy Mayor, and in the absence of both, the Deputy Mayor may, wherever he thinks fit, and shall upon a requisition in writing by not less than one-fourth of the total number of councilors, convene a special meeting of the Corporation.

(3) Any meeting may be adjourned until the next or any subsequent date, and an adjourned meeting may be further adjourned in like manner.”

“57. Notice of meetings and business.—A list of the business to be transacted at every meeting except at an adjourned meeting shall be sent to the registered address of each councilor at least seventy-two hours before the time fixed for such meeting; and no business shall be brought before, or transacted at, any meeting other than the business of which a notice has been so given.”

A plain reading of the above provision S. 55 shows that if any meeting, other than any meeting for transaction of ordinary business of the respondent Corporation, is called, then such meeting convened for any special purpose, is called a ‘Special Meeting’ of the respondent Corporation. Further, a special meeting may be called, upon a requisition in writing by not less than one-fourth of the total number of councillors.

It is under this provision that the petitioner along with 42 other Councillors had requisitioned a 'special meeting' for removal of the Mayor, vide their requisition dated 24/25.2.2022 Annexure P1, which is replete with their repeated assertion seeking a 'special meeting' for removal of the Mayor. In this view of the situation, the petitioner's argument that S. 423 of the Act is not applicable to the meeting dated 21.3.2022, is a contradiction in terms and cannot be accepted. Even petitioner can derive no benefit from the relied upon judgments as the facts and circumstances of the cited judgments are different and distinguishable from the facts of the present case.

Further, u/s 57, the list of business to be transacted at any meeting has to be sent to the registered address of each councillor at least 72 hours before the time fixed for such meeting; and no business of which such notice has not been given can be brought before the House or transacted upon by them. Admittedly, in the present case neither any such notice as required u/s 57 had been given regarding the meeting held on 21.3.2022; nor any such agenda as stipulated u/s 57 had been circulated. Thus, the meeting dated 21.3.2022 cannot be said to have been held in prescribed manner. Needless to say if the petitioner, after cancellation of meeting dated 21.3.2022, still wanted to hold a meeting on 21.3.2022 along with Councillors who supported him, then a fresh requisition needed to be issued, as no No-confidence motion, including the one submitted on 25.2.2022, survived as on 21.3.2022.

Issue No. 3:

Furthermore, the communication dated 17.3.2022 whereby 40 councillors had withdrawn their consent to the requisition dated

24/25.2.2022 as the same had been obtained coercively, does not form part of the writ petition. However, said letter dated 17.3.2022 has been placed on record by the respondent as Annexure R3/1. The same has not been denied by the petitioner, nor is it his case that the said communication dated 17.3.2022 on behalf of 40 Councillors is forged or fabricated. On the contrary, the record reveals that vide letter dated 21.3.2022 (at Annexure R3/3), the petitioner had sought a copy of the letter dated 17.3.2022 from the Commissioner, Municipal Corporation, Amritsar, to verify if the '*signatures on this letter are false or forged*'. A copy of the said letter was duly supplied to the petitioner on 21.3.2022 itself. Therefore, the petitioner was aware of the communication dated 17.3.2022. However, as stated above, nothing has been placed on record by the petitioner to suggest that signatures of the Councillors on the said letter dated 17.3.2022 are false or forged. In our view, the only inference that can be drawn from this admitted factual position is that the respondent Mayor had the support of the majority of the Councillors; and therefore, the respondent Corporation committed no error in cancelling the meeting scheduled for 21.3.2022 in pursuance to communication to this effect from 40 councillors vide their letter dated 17.3.2022.

That the cancellation of the meeting scheduled for 21.3.2022 is legal and valid is further buttressed by Section 19 of the Punjab General Clauses Act, which has been relied upon by the Ld. Senior Counsel for the respondent No.3-Municipal Corporation, Amritsar, and which reads as under:-

“19. Where, by any Punjab Act [***] a power to
issue notifications or make orders, rules or bye-laws is

conferred, then that power includes a power exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any [notifications], orders, rules or bye-laws so [issued or] made.”

Verily we find merit in this submission of the Id. Sr. Counsel for the respondent Corporation, that power to make, will include power to add to, amend, vary or rescind orders, rules, or bylaws; And applying the above said provision to the present case will imply that power to call a meeting will necessarily include the power to cancel a meeting also. Thus, there is no legal infirmity in the impugned action.

Ld. Sr. Counsel for the respondent Corporation has also relied upon judgment passed by the Hon’ble High Court of Madhya Pradesh in case ‘**Prabhakar Narayan Kelkar & others vs. State of MP & others 1999 (2) MPLJ 608**’ in particular para 13 thereof, which reads as follows:

“13. Considering the facts and circumstances of the present case, I am of the considered opinion that the laches on the part of the petitioners in challenging the orders of the Commissioner dated 7-10-1996 cannot be ignored. The proposer and the seconder of the requisition had withdrawn the requisition. No fresh requisition had been submitted and there was no grievance by any of the electorate (councilors) representing the general body at least till 4-8-1997 indicating the Deputy Mayor had lost their confidence. None of the signatories to the

requisition had tried to submit any fresh requisition indicating that the respondent no.5 had lost their confidence upto 4-8-1997. The other requisition for holding the meeting for consideration of no-confidence motion was submitted on 4-8-1997. It is a clear indication of the fact that at least upto that date there was no grievance against the respondent, Deputy Mayor, and he could be safely taken to have continued to retain the confidence of the electorate reposed in him.”

In our view, the above said pronouncement covers the facts of the present case.

Accordingly, in view of the narration above, and the reasons recorded hereinabove, this writ petition is hereby dismissed. Pending application(s), if any, stand(s) disposed of.

(Nidhi Gupta)
Judge

(Ritu Bahri)
Judge

October 28, 2022.
Joshi

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