

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-9497-2022

Date of decision: 09.05.2022

Kuldeep Singh

...Petitioner

Vs.

State of Punjab and others

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. S.K.Arora, Advocate for the petitioner.

Mr. S.P.S.Tinna, Addl.A.G., Punjab,
for respondents No. 1 to 6.

Mr. Navjot Singh, Advocate for
respondents No. 7 to 15.

Ritu Bahri, J.

The petitioner is seeking writ of certiorari for quashing requisition dated 22.04.2022 (Annexure P-7) and the resolution dated 25.04.2022 (Annexure P-8) issued by the Executive Officer, Nagar Panchayat, Kot Ise Khan and the same have been passed in violation of the provisions of the Punjab Municipal Act, 1911 (hereinafter referred to as 'the Act, 1911). However, the meeting for the said purpose had already been fixed by the petitioner (President) for 13.09.2022 vide letter dated 18.04.2022 (Annexure P-4). Hence, no meeting could have been fixed for the purpose for which the meeting had been fixed by the petitioner as per the provisions of Section 25 of the Act, 1911.

The brief facts of the case are that recently elections were held for the legislative assembly in the State of Punjab on 20.02.2022 and the result of the said elections was declared on 10.03.2022. Aam Aadmi Party

(AAP) came into power and respondent No. 16 has been declared as MLA from Dharamkot Constituency. The petitioner belongs to Congress Party and after the elections, the local administration at the instance of Aam Aadmi Party (AAP) is bent upon to remove the petitioner from the post of the President. After the declaration of the result of the elections of legislative assembly, 4 Municipal Councillors namely Smt. Chhinder Kaur, Smt. Simranjit Kaur, Shri Sumit Kumar Malhotra and Shri Gurpreet Singh submitted an application to the Executive Officer, Nagar Panchayat, Kot Ise Khan that they have lost faith in the President and that the meeting be convened for considering no-confidence motion against the petitioner. Consequently, the Executive Officer vide letter No. 504 dated 05.04.2022 (Annexure P-1) requested the President to immediately convene the meeting to consider the no-confidence motion as per the provisions of Section 22 and 25 of the Act, 1911. Vide letter dated 06.04.2022 (Annexure P-2), sent by the petitioner, the Executive Officer was requested to send the letter again after making amendment. The Executive Officer amended his letter and vide letter dated 06.04.2022 (Annexure P-3), the petitioner was requested to fix the meeting of the Nagar Panchayat according to the provisions of Section 22 of the Act, 1911. The petitioner, being the President, fixed the meeting of the Nagar Panchayat to consider 'No Confidence Motion' on 13.09.2022 at 11:30 a.m. vide letter dated 18.04.2022 (Annexure P-4) and accordingly the Executive Officer was requested to issue the agenda of the said meeting.

The grievance of the petitioner is that the Executive Officer at the behest of some of the Municipal Councillors issued a letter dated 19.04.2022 (Annexure P-5) and circulated the agenda dated 22.04.2022 for

convening the meeting of Nagar Panchayat on 25.04.2022. A copy of the proceedings of the meeting dated 25.04.2022 has been placed on record as Annexure P-8.

Mr. Sanjeev Kumar Arora, learned counsel for the petitioner has argued that the meeting dated 25.04.2022 has been wrongly fixed by the Executive Officer as he had no power to do so. It was the President who can fix and call the meeting under the Act, 1911. The petitioner vide detailed letter/memo dated 20.04.2022 (Annexure P-6) informed the Executive Officer to withdraw his letter No. 569 dated 19.04.2022 as it was against the provisions of Section 25 of the Act, 1911. The Executive Officer circulated the agenda dated 22.04.2022 for convening a meeting of the Nagar Panchayat on 25.04.2022 (Annexure P-7). He further stated that the letter dated 19.04.2022 is in violation of Sections 22 and 25 of the Act, 1911.

At this stage, learned counsel for respondent No. 5 puts in appearance and has filed a short reply by way of affidavit of Devinder Singh Toor, Executive Officer, Nagar Panchayat, Kot Ise Khan, District Moga dated 09.05.2022 in Court today and the same is taken on record. As per the said reply, 4 elected Municipal Councillors of Nagar Panchayat, Kot Ise Khan submitted a requisition dated 05.04.2022 to the Executive Officer to convene the special meeting for bringing no confidence motion against the petitioner. Requisition dated 05.04.2022 has been annexed as Annexure R-5/1. In response to requisition dated 05.04.2022, the petitioner submitted letter dated 06.04.2022 (Annexure P-2). The Executive Officer replied to the letter dated 06.04.2022 by way of written communication dated 06.04.2022 (Annexure P-3).

Learned counsel for respondent No. 5 has argued that as per Section 22 of the Act, 1911, the petitioner was to convene the meeting within a period of fourteen days from the date of requisition i.e. 05.04.2022 (Annexure R-5/1). When the petitioner, being President, failed to convene special meeting with regard to no-confidence motion within stipulated period, the Municipal Councillors submitted representation/letter dated 22.04.2022 to the Executive Officer for convening special meeting on 25.04.2022. A copy of representation/letter dated 22.04.2022 is placed on record as Annexure R-5/2. In this backdrop, the Executive Officer on the letter dated 22.04.2022 (Annexure R-5/2) issued notice alongwith agenda of the meeting to all the Municipal Councillors vide Agenda Notice dated 22.04.2022 pursuant to which special meeting was convened on 25.04.2022. All the Municipal Councillors alongwith the local MLA being the Ex-officio Member participated in the meeting and the no-confidence motion was passed against the petitioner by 2/3rd majority. The meeting called by the petitioner for 13.09.2022 was against the provisions of Sections 22 and 25 of the Act, 1911. This aspect has been considered by this Court in **CWP-4782-1983** titled as ***Baldev Mittar Khullar and others vs. State of Punjab and others, decided on 23.03.1984.*** A perusal of the said judgment shows that the Deputy Commissioner is not to interfere with day to day functioning of Municipal Committee and has no jurisdiction to prohibit convening of a meeting of Municipal Committee. As per Section 25(3) of the Punjab Municipal Act, the President or Vice President has to hold a meeting within a period of fourteen days from the date of receipt of requisition as the word “convene” cannot be equated with mere issue of direction for calling a meeting but means holding of a meeting within prescribed period. Holding

a meeting beyond prescribed period violates provisions of Section 25(3) of the Act and the persons/requisitionists are competent to hold a meeting on their own within thirty days of making of requisition. In para Nos. 3 and 4, following observation has been made:-

“3. The first point which arose for consideration is regarding the validity of the convening of the special meeting by the requisitionists on September 16, 1983. It is argued by the learned respondents counsel that a meeting having been already called for October 17, 1983 in pursuance of the requisition, the requisitionists were not competent to themselves convene a meeting on September 16, 1983. This objection has no merit and is, therefore, unacceptable. Section 25(2) of the Act provides that on a requisition made in writing by not less than the 1/5th of the members of the Committee the President or in his absence of Vice-President has to convene an ordinary or a special meeting. Sub-section (3) of Section 25 which is relevant for our purpose is reproduced below:-

“If the President or the Vice-President, as the case may be, fails to call a meeting of the Committee within a period of fourteen days from the date of receipt of requisition, the members who had signed the requisition may convene a meeting of the Committee in accordance with the bye-laws of the Committee within a period of thirty day of the making of such requisition and notwithstanding anything contained in this Act such meeting shall be deemed to be validly convened meeting.”

Sub-section (3) makes it clear that if the President or the Vice-President, as the case may be, fails to call a meeting of the Committee within a period of 14 days from the date of receipt of requisition, the requisitionists are competent to convene a meeting of the Committee within a period of thirty days of the making of such requisition and such meeting shall be deemed to be validly convened meeting. In the present case, the requisition was received by the President, respondent No. 2, on August 24, 1983. It was, therefore, incumbent upon him to

hold a meeting of the Committee within a period of fourteen days from the date of receipt of requisition. This statutory period of fourteen days expired on September 7, 1983. Admittedly, respondent No. 2 fixed the date of the holding of the meeting as October 17, 1983 which is much beyond the expiry of fourteen days. The requisitionists were, therefore, competent under sub-section (3) to hold a meeting within a period of thirty days of the making of the requisition. In conformity with sub-section (3) the requisitionists held a meeting on September 16, 1983 which was within thirty days of the making of the requisition. This meeting has, therefore, to be deemed to be a validly convened meeting in terms of section 25(3) of the Act.

4. The argument of the learned respondents counsel is that on interpretation of section 25(3) of the Act the respondent No.2, was only duty bound to issue a direction for the holding of the meeting within a period of fourteen days from the date of the receipt of requisition and that it was not necessary that the meeting should have been held within those fourteen days. This interpretation is erroneous. The word 'convene' used in sub-section (3) cannot be equated with mere issue of direction for calling a meeting. On the contrary it means the fixing of a meeting or holding of a meeting within the prescribed period. In this context a reference to section 9 of the Gram Panchayat Act will make the position clear. Sub-section (3) of this section provides that an application regarding intention to move a motion of no confidence against a Sarpanch may be made to the Block Development and Panchayat Officer by a simple majority of the total number of Panches of the Gram Panchayat concerned. Sub-section (4) lays down that the Block Development and Panchayat Officer shall, then, within a period of fifteen days of the receipt of application under sub-section (3) convene a meeting of the Gram Panchayat. In sub-section (4) also the word 'convene' has been used. A Division Bench of this Court in ***Harbans Lal v. Director Gram Panchayats***

and Development, Punjab and another, 1981 P.L.J. 538, equated the words 'convening of meeting' with 'holding of meeting'. In that case a notice of no confidence 'against the Sarpanch was delivered to the Block Development and Panchayat Officer on October 15, 1980. The Block Development and Panchayat Officer directed for holding meeting of the Gram Panchayat to consider the 'no confidence' motion for November 5, 1980 which was beyond fifteen days of the receipt of notice of 'no confidence'. In such circumstances it was clearly held that according to sub section (4) of section 9 of the Gram Panchayat Act, 1952, the Block Development and Panchayat Officer has to fix the meeting within the period of fifteen days on the receipt of such an application. As the date of the fixation of the meeting was beyond fifteen days it was considered to have violated section 9(4) and consequently the entire action was quashed. In the present case on the same analogy as the date of the fixation of the meeting was beyond fourteen days of the receipt of requisition it was in violation of the mandatory provisions of section 25(3) of the Act and as such the requisitionists were competent to hold a meeting on their own within a period of thirty days of the making of the requisition. Manifestly, therefore, the meeting held by the petitioners on September 16, 1983 must be held to be a validly convened meeting.

The next point for determination is whether the Deputy Commissioner, Gurdaspur, had the requisite jurisdiction under section 232 of the Act to prohibit the holding of the meeting on September 16, 1983 convened by the requisitionists. A copy of the order passed by the Deputy Commissioner is Annexure Rule 1. The Deputy Commissioner formed an opinion that if the meeting was held on September 16, 1983 it was likely to lead to breach of peace. He, therefore passed an order prohibiting the holding of meeting in exercise of powers which he thought were conferred upon him under section 232 of the Act. To ascertain the validity of the order Annexure Rule 1 it is

essential to understand the scope of section 232 which is reproduced as follows:

"232. Powers to suspend any resolution or order of Committee -The Deputy Commissioner may by order in writing, suspend the execution of any resolution or order of a Committee or joint Committee or prohibit the doing of any act which is about to be done or is being done in pursuance of or under cover of this Act, or in pursuance of any sanction or permission granted by the Committee in the exercise of its powers under the Act, if, in his opinion the resolution, order or act is in excess of the powers conferred by law or contrary to the interests of the public or likely, to cause waste or damage of municipal funds or property, or the execution of the resolution or order, or the doing of the act, is likely to lead to a breach of the peace, to encourage lawlessness or to cause injury or annoyance to the public or to any class or body of persons."

This section gives very wide powers of supervision and control to the Deputy Commissioner but requires a careful reading. It enables the Deputy Commissioner to suspend the execution of resolution or order of a Committee or to prohibit the doing of an act which is being done or is about to be done in pursuance of a sanction given by the Committee under this Act. The vital question to be answered is of the convening of the meeting by the requisitionists under section 25(3) of the Act is to be considered as "act" as envisaged by section 232. In my considered opinion the answer must be in the negative. The suspension of a resolution and the prohibition of the doing of an act must be taken to be similar things bound by similar limitations. If the Municipal Committee passes a resolution its execution can be suspended by the Deputy Commissioner. Similarly, if some order is passed by the Municipal Committee

its implementation can prohibited by the Deputy Commissioner. However, the statutory right of the requisitionists under section 25(3) of the Act to convene a meeting to consider a 'no confidence' motion against the President cannot be deemed to be an act of the Municipal Committee as understood by section 232. The order of the Deputy Commissioner must be encompassed within the four corners of the section and it would not include power to prohibit the convening of a meeting of the Municipal Committee by the requisitionists under section 25(3) of the Act. Convening of a meeting under section 25 of the Act and passing of a resolution in the meeting so convened are facts of the same transaction. It is a statutory right of the Municipal Committee to call a meeting and pass a particular resolution. This function pertains to the day-to-day affairs of the Committee. Section 232 of the Act does not authorise the Deputy Commissioner to interfere in such day-to-day affairs of the Committee. Supreme Court in *Shri Subhash Chandra and others v. Municipal Corporation of Delhi and another*, AIR 1965 Supreme Court 1275, has held in unambiguous terms that section 232 does not empower the Deputy Commissioner to prohibit the Municipal Committee from passing a resolution. In other words the Deputy Commissioner has no authority to forbid the Municipal Committee to call a meeting for passing a particular kind of resolution. Thus, upon its true construction of section 232 of the Act the Deputy Commissioner cannot be deemed to have jurisdiction to prohibit the convening of a meeting of the Municipal Committee either under sub-section (2) or sub section (3) of the section 25 of the Act. In this view of the matter the order of the Deputy Commissioner (Annexure Rule 1) is without jurisdiction and the petitioners were competent to ignore the same. By this order the resolution of no confidence passed by the petitioners against respondent No. 2 in the meeting held on September 16, 1983 is not affected and this resolution cannot be considered illegal and void.”

The judgment of *Baldev Mittar Khullar's case (supra)* is directly applicable to the facts of the present case.

In the present case, the petitioner being President after receiving requisition dated 05.04.2022 was bound to hold meeting within 14 days from the date of receipt of requisition. However, he fixed the meeting for 13.09.2022 which was not as per Section 25(3) of the Act, 1911. In this backdrop, Municipal Councillors submitted representation/letter dated 22.04.2022 to the Executive Officer for convening special meeting on 25.04.2022 pursuant to which special meeting was convened on 25.04.2022 i.e. within thirty day of making requisition. All the Municipal Councillors alongwith the local MLA being the Ex-officio Member participated in the said meeting and the no-confidence motion was passed against the petitioner by 2/3rd majority.

Keeping in view of the above observations, no ground to quash requisition dated 22.04.2022 (Annexure P-7) and the resolution dated 25.04.2022 (Annexure P-8) is made out.

Writ petition is hereby dismissed.

(RITU BAHRI)
JUDGE

09.05.2022
Divyanshi

(ASHOK KUMAR VERMA)
JUDGE

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