

123 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-19361-2024 (O/M)

Date of decision : 12.08.2024

Krishan Lal

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. A.D.S. Jattana, Advocate
for the petitioner.

Mr. Saurav Verma, Additional A.G. Punjab.

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HARSH BUNGER, J.

1. Petitioner (Krishan Lal) has filed the instant civil writ petition under Articles 226/227 of Constitution of India, seeking a writ in the nature of certiorari for setting aside the notice dated 02.07.2024 (Annexure P-10), issued by the Government of Punjab, through Principal Secretary, Local Government Department, Punjab under Section 16(1)(e) of the Punjab Municipal Act, 1911, whereby the petitioner has been called upon to show cause in respect of the proposal to remove him from the post of membership of Municipal Council, Urmur Tanda, District Hoshiarpur.

2. Briefly, as per the petitioner, he belongs to the Indian National Congress and was elected as a Councilor for Municipal Council, Urmur Tanda in the elections held on 14.02.2021, wherein the results were declared on 17.02.2021 and the petitioner being the returned candidate, took the oath of office.

2.1 It transpires that the Government of Punjab issued notice dated 02.07.2024 (Annexure P-10) under Section 16 (1)(e) of the Punjab Municipal Act, 1911, whereby the petitioner has been called upon to show cause in respect of the proposal to remove him from the post of membership of Municipal Council, Urmur Tanda, District Hoshiarpur; for misusing his powers during his term as Municipal Councillor. Alongwith the aforesaid notice dated 02.07.2024, the details of charges against the petitioner were also served upon him, which reads as under :-

“1. As mentioned in the above complaint, Smt. Rajinder Kaur wife of the deceased got entered a report in Police Station, Tanda vide G.D. No. 20-A dated 23.06.2009 about missing of Amarjit Singh son of Kewal Singh because according to the provisions made in Birth & Deaths Registration Act, 1969 and Rules 2004, the entry in respect of death of a missing person is made on the basis of available proofs and the date mentioned in the orders issued by the Court if up to 7 years no information could be known in respect of the missing person and the date of issuance of the orders issued by the Court is considered as the date of death of the person. During the course of enquiry it was found that Smt. Rajinder Kaur has mentioned the date of death of deceased Amarjit Singh as 22.12.2022 and cause of death has not mentioned as natural and this information has been given to the Municipal Council, Urmur Tanda by concealing the actual facts and you (Councillor Shri Krishan Lal) has got made the forged entry in connivance with the family members.

From the above, it is clear that while misusing your powers during your term as Municipal Councillor, Municipal Council, Urmur Tanda, you have made yourself liable for the charges under Section 16(1)(e) of the Punjab Municipal Act, 1911 and for these charges you are

responsible. Therefore, due to the above mentioned reasons, there is a proposal to remove you from the Councillorship/Membership of Municipal Council, Urmur Tanda under Section 16(1)(e) of the Municipal Act, 1911.”

2.2 A perusal of the notice dated 02.07.2024 (Annexure P-10) would indicate that the petitioner was called upon to submit his reply within twenty one days from the date of issuance of the notice and it has also been indicated to him that in case for preparation of reply, any record connected to the case is required to be seen by him then the petitioner can do so on any working day in the office of the department.

2.3 It appears that in response to the aforesaid notice dated 02.07.2024, the petitioner herein submitted a representation dated 18.07.2024 (Annexure P-12) indicating that his counsel wants to see the whole record for which an opportunity be provided and more time be afforded for submission of reply.

2.4 It appears that in response to the aforesaid representation dated 18.07.2024 (Annexure P-12), the petitioner was called upon, vide memo dated 23.07.2024 (Annexure P-13) to see the records upto 24.07.2024 by coming to the office and that the reply be submitted within one week thereafter.

2.5 It further transpires that in pursuance to the aforesaid memo dated 23.07.2024, the petitioner had seen the record and vide his representation (Annexure P-14), he sought certain documents. Similar request for providing documents was submitted by the petitioner, vide his letter dated 30.07.2024 (Annexure P-15) and thereafter, the petitioner submitted an incomplete/partial reply dated 31.07.2024 to the show cause notice.

3. Concededly, the matter is under consideration before the competent authority and now the present writ petition has been filed seeking setting aside of the impugned notice dated 02.07.2024 (Annexure P-10).

4. The only argument raised on behalf of the petitioner is that there is no occasion for the State Government to remove the petitioner from the post of Municipal Councillor in terms of Section 16 (1) (e) of the Punjab Municipal Act, 1911; as the petitioner has not caused any loss or mis-application of any money or property of the committee, through his negligence or mis-conduct.

5. I have considered the aforesaid submissions raised on behalf of the petitioner, however, in my considered view, the aforesaid argument is totally mis-placed. The charge against the petitioner is regarding mis-use of his power during his term as Municipal Councillor. Section 16 (1) (e) of the Punjab Municipal Act, 1911 reads as under :-

“Section 16. Powers of the State Government as to removal of members.

(1) The State Government may by notification remove any member of a committee other than an associate member;

(a) to (d) xxxxxx xxxxx

(e) if, in the opinion of the State Government, he has flagrantly abused his position as a member of the committee or has through negligence or mis-conduct been responsible for the loss, or mis-application of any money or property of the committee.”

5.1 From a bare perusal of the above extracted provision, it is evident that the State Government may by notification remove any member of a committee other than an associate member, if in the opinion of the

State Government, he has flagrantly abused his position as a member of the committee or has through negligence or mis-conduct been responsible for the loss or mis-application of any money or property of the committee. Evidently, the aforesaid provision is in two parts. The first part clearly deals with the power of the State Government to remove any member of the committee by notification, if he has flagrantly abused his position as a member of the committee.

5.2 Although, in relation to the charge made against the petitioner, he has tried to justify his stand, however, at this stage, considering the fact that the matter is pending consideration before the competent authority, therefore, I refrain from opining on the stand taken by the petitioner in the writ petition and leave it to the wisdom of the competent authority to proceed in the matter, purely in accordance with law.

6. With the aforesaid observations, the present petition is dismissed.

7. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

12.08.2024
sjks

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