



CWP-23684-2023 (O & M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-23684-2023(O & M)

Reserved on 05.09.2024

Pronounced on:16.09.2024

GURJIT SINGH AULAKH

...PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMAPresent: Mr. Pawan Kumar, Senior Advocate with
Ms. Vidushi Kumar, Advocate for the petitioner.

Mr. Anurag Chopra, Addl. AG, Punjab.

Ms. Jasleen Kaur, Advocate for
Mr. Rajesh Sehgal, Advocate for respondent No.2.

SUDEEPTI SHARMA, J.

1. The challenge in the present writ petition is to the order dated 10.10.2023 whereby the petitioner, who is elected representative of Municipal Council, Barnala has been removed from the post of President.

2. Brief facts of the case are that the petitioner was elected as Counsellor from Ward No.24 in February, 2021. He was elected as President of Municipal Council, Barnala on 15.04.2021. A letter dated 06.12.2021 from the Executive Officer (E.O.), Nagar Panchayat, Handiyaya was received by him wherein it was stated that the employees and sanitation workers have not been paid their salaries since the last 05 months due to



which there is unrest and protests ('dharna'). Therefore, a loan of Rs.10 lacs was sought. In view of the bonafide need and emergency situation in Nagar Panchayat Handiyaya, the said loan vide letter dated 07.12.2021 was extended with a noting that the Resolution in this regard shall be put up before the Council. On 09.12.2021, funds were released vide cheque number 261372. On 13.12.2021, funds were utilized by the Nagar Panchayat Handiyaya to disburse the salaries of their employees. On 06.12.2022, a letter was sent by the petitioner to Nagar Panchayat, Handiyaya to return the said amount with interest. On 29.03.2023, a general house meeting was called and Resolution No. 97 regarding extending the abovesaid loan to Nagar Panchayat, Handiyaya was passed unanimously without any single dissenting vote. Minutes of the meeting of the MC Barnala dated 31.03.2023 whereby Resolution No. 97 was passed and approval was granted unanimously by the House.

3. On 24.03.2023, a show cause notice was issued to the petitioner under Section 22 of the Punjab Municipal Act, 1911. The same is reproduced as under:-

***“Details of Charges against Shri Gurjit Singh Aulakh,
President, Municipal Council, Barnala***

*Whereas it has been written by the Additional
Deputy Commissioner (General), Barnala vide his letter
No. A.D.C. (G)-2023/103 dated 08.02.2023 that due to
the Orders issued by the President Municipal Council,
Barnala, regarding financial loss is being suffered by the
Municipal Council, Barnala, the Report received by the*



Executive Officer, Municipal Council, Barnala, has been sent for taking further action.

2. *WHEREAS as per letter No. 850 dated 06.12.2021, the Executive Officer, Nagar Panchayat, Handiyaya has written that the financial condition of Nagar Panchayat. Handiyaya is very weak and the salary of the sanitation workers of the Nagar Panchayat could not be paid for the last 05 months due to which the workers are raising protest. It has also been written by the Executive Officer, Nagar Panchayat, Handiyaya, that the financial condition of Nagar Panchayat is not so good that all the employees can be given the lump sum salary. The Executive Officer, Nagar Panchayat, Handiyaya, has requested the Executive Officer, Municipal Council, Barnala that the Nagar Panchayat, Handiyaya, should be given an interest free loan of Rs.10.00 lakhs, which will be returned by Nagar Panchayat, Handiyaya, after receipt of funds.*

3. *Whereas after this, it was ordered by you that this payment should be made immediately to Nagar Panchayat, Handiyaya. In compliance with the your orders, Municipal Council, Barnala made a payment of Rupees 10.00 Lakhs to Nagar Panchayat, Handiyaya, vide Cheque No. 261372, dated 09.12.2021. Regarding this amount, neither any resolution has been passed by Municipal Council, Barnala, nor the Nagar Panchayat,*



Handiyaya has returned this amount, due to which the Municipal Council, Barnala, has suffered a financial loss.

4. *Whereas the issue of payment of Rs. 10.00 lakhs by the Municipal Council, Barnala to the Nagar Panchayat, Handiyaya is related to financial interests of the Municipal Council and the Municipal Council Barnala was not bound to give money to the Nagar Panchayat. Handiyaya, in any manner, therefore, before releasing the money, it was appropriate to take decision after getting the Resolution approved from the House of Municipal Council, whereas through your Office Orders, you got transferred this amount to Nagar Panchayat, Handiyaya. Besides this, any Section of the Punjab Municipal Act. 1911 does not authorize you to pass such Orders.*

5. *Whereas as per the facts recorded in the Report received by the Additional Deputy Commissioner (General) Barnala, even after the amount of loan given by the Municipal Council, Barnala to the Nagar Panchayat, Handiyaya, for the amount of Rs.10.00 lakhs on dated 09.12.2021, no approval of the Competent Authority has been obtained by getting resolution passed from the House, due to which you, being posted as President of the Municipal Council, have made yourself*



liable for the allegation of misuse of your powers under Section 22 of the Punjab Municipal Act, 1911.

6. *Hence, for the afore-mentioned reasons, it has been proposed to remove you from the post of President of the Municipal Council, under Section 22 of the Punjab Municipal Act, 1911.*

*Sd/-
Vivek Pratap Singh, I.A.S..
Principal Secretary.
Government of Punjab,
Local Government Department”*

4. On 09.04.2023, petitioner made a representation to the respondents to provide a copy of the complaint, inquiry report and other relevant documents to file his defence. On 10.04.2023, another show cause notice was issued to the petitioner under section 16 (1) (e) of the Punjab Municipal Act, 1911. On 13.04.2023, the petitioner filed a writ petition i.e. **CWP-7262-2023 titled as Gurjit Singh Aulakh versus State of Punjab and another** wherein he challenged the show cause notices dated 24.03.2023 and 10.04.2023. The writ petition was disposed of with the following directions:-

“Keeping in view the above said facts and circumstances, the present petition is dismissed as withdrawn with liberty to the petitioner to take up all the points, which have been raised in the present petition, before respondent no.1 and also with the following directions:-

i) *The petitioner is permitted to file reply to the show cause notice dated 24.03.2023 within a period of 10 days*



from today i.e., upto 24.04.2023. The time period of 21 days for filing reply to the show cause notice dated 10.04.2023 would expire on 01.05.2023 and thus, the petitioner is granted liberty to file reply with respect to the show cause notice dated 10.04.2023 on or before 01.05.2023.

ii) Respondent no.1 would grant personal hearing to the petitioner with respect to both the show cause notices and after hearing the petitioner and after taking into consideration the replies filed by the petitioner, pass a speaking order, in accordance with law.

5. On 24.04.2023 and 02.05.2023, the petitioner submitted detailed replies to both the aforesaid show cause notices. On 18.09.2023, the petitioner sought permission to appear with his counsel and 15 days extension was also sought. On 10.10.2023, the impugned order was passed under Section 22 of the Punjab Municipal Council Act, 1911 whereby the petitioner was removed from the post of President of Municipal Council, Barnala. The same is impugned in the present writ petition.

SUBMISSION OF THE COUNSEL FOR THE PARTIES

6. Learned counsel for the petitioner contends that he has not benefitted or obtained any personal gain from the loan extended to the neighbouring Nagar Panchayat. He further contended that there is no misappropriation of money or fraud on the part of the petitioner, much less abuse of power. He further contended that the impugned order has been passed under Section 22 of the Punjab Municipal Council Act, 1911, which provides for “Resignation or removal of President or Vice President” on



account of "abuse of powers or habitual failure to perform his duties" whereas, the present case is not one of the abuse of power.

7. Per contra, learned State counsel has argued on the lines of the impugned order and contended that the impugned order has been rightly passed. Since the letter from Nagar Panchayat, Handiyaya was received on 06.12.2021 in response to which the petitioner immediately gave an order to release the fund to the tune of Rs.10 lacs that too within 03 days i.e. 09.12.2021 vide cheque No.261372 . The said payment was also released and this was done even without calling any meeting of the Nagar Council or seeking an approval from the competent authority for the same, which is mandatory under the law. He, therefore, prays that the present petition be dismissed.

8. We have heard learned counsel for the parties and perused the whole record of this case.

9. A perusal of the record shows that :-

(i) Petitioner received a letter No.850 dated 06.12.2021 through Executive Officer, Municipal Council, Barnala stating therein that the financial condition of Nagar Panchayat, Handiyaya is very weak because of which they are unable to pay the salary to all the employees in lumpsum. Therefore, they are requesting for a loan of Rs.10 lacs from the funds of Municipal Council, Barnala to Nagar Panchayat, Handiyaya and it was specifically written in that letter that the same would be returned back after receiving the funds by Nagar Panchayat, Handiyaya. The petitioner vide letter dated 07.12.2021 issued the order to make the payment to Nagar Panchayat, Handiyaya immediately and the Municipal Council, Barnala



made the payment of Rs.10 lacs to Nagar Panchayat, Handiyaya vide cheque No.261372 dated 09.12.2021.

(ii) On 06.12.2022, letter was sent to the Executive Officer, Nagar Panchayat, Handiyaya for the return of the loan amount taken by them of Rs.10 lacs vide cheque No.261372 dated 09.12.2021 along with interest.

(iii) On 24.03.2023, the petitioner was issued a show cause notice.

10. A bare perusal of the charges against the petitioner shows that the only ground mentioned in the charges is that no approval of the competent authority was obtained by getting the resolution passed from the house even after the amount of loan to the tune of Rs.10 lacs on 09.12.2021 was given by the Municipal Council, Barnala to Nagar Panchayat, Handiyaya, which amounts to misuse of powers under Section 22 of the Punjab Municipal Act, 1911. Therefore, proposal to remove him from the post of President of Municipal Council, Barnala under Section 22 of the Punjab Municipal Act, 1911 was issued. Thereafter vide impugned order dated 10.10.2023, the petitioner was removed from the post of President, Municipal Council, Barnala under Section 22 of the Punjab Municipal Act, 1911 by stating therein that the petitioner has misused his post and caused financial loss to the Municipal Council, Barnala.

11. Reply filed by the respondents is same on the lines of the impugned order.

12. A bare perusal of the impugned order shows that there is no denial to the fact that the petitioner paid the amount of Rs.10 lacs by way of cheque No.261372 dated 09.12.2021 to Nagar Panchayat, Handiyaya. It is further stated in the show cause notice that special meetings of Nagar/Municipal Council, Barnala were held on 21.12.2021, 25.04.2022,



28.05.2022 and 26.08.2022 but the agenda regarding payment of Rs.10 lacs on 09.12.2021 was not mentioned. It is also mentioned in the impugned order that to save himself from the decision of show cause notice after about 15 months, resolution No.97 dated 29.03.2023 was got passed from the house.

13. A bare perusal of the record shows that the approval of the house was taken on 29.03.2023. There is nothing on record to show that the petitioner has embezzled or misappropriated the amount of Rs.10 lacs. Rather the payment of Rs.10 lacs to the Nagar Panchayat, Handiyaya was made through cheque No.261372 dated 09.12.2021. The reason for the payment is that the salary of the staff was not paid since last 05 months, even the requirement of getting the approval from house was satisfied. The respondents failed to appreciate the very fact that the petitioner rather tried to help the Class IV workers, who were not getting their salaries since last 05 months by giving the loan to Nagar Panchayat, Handiyaya.

14. For proper adjudication of the present case, Section 22 of the Punjab Municipal Act, 1911 is reproduced hereunder:-

“22. {Resignation or removal of President and Vice-President}.

- Whenever a President or Vice-President vacates his seat or tenders in writing to the committee his resignation of his office, he shall vacate his office; and any president or vice-president may be removed from office by the State Government on the ground of abuse of his powers or of habitual failure to perform his duties or



in pursuance of a resolution requesting his removal passed by two-thirds of the members of the committee :

[Provided that if a resolution requesting the removal of the President or the Vice-President is passed by two-thirds of the members of the committee, the President or, as the case may be, the Vice- President shall be deemed to be under suspension immediately after such resolution is passed:

Provided further that before the [State] Government notifies his removal, the reason for his proposed removal shall be communicated to him by means of a registered letter in which he shall be called upon to tender within twenty-one days an explanation in writing, and, if no such explanation is received in the office of the appropriate Secretary to Government within twenty one days of the despatch of the said registered letter, the State Government may proceed to notify his removal.”

15. A bare perusal of Section 22 of Punjab Municipal Act, 1911 referred to above shows that any President may be removed from the office by the Government on the ground of abuse of his powers or of habitual failure to perform his duties or in pursuance of a resolution requesting his removal passed by two-thirds of the members of the committee.

16. In the case of the petitioner, the petitioner has been dismissed on the ground that he has misused his post to cause financial loss to Municipal Council, Barnala.



17. The Government is overall head of all the Municipal Councils/Nagar Panchayats and it is the responsibility of the Government to look into the financial crises in any of the council and Nagar Panchayat. The salaries of Class IV workers were not paid since last 05 months. The Government rather than appreciating the conduct of the petitioner in granting loan to the Nagar Panchayat, Handiyaya, which is again duty of the State, dismissed the petitioner for this noble act of helping the Nagar Panchayat, Handiyaya by way of issuing an amount of Rs.10 lacs as loan vide cheque No.261372 dated 09.12.2021 whereby the salary of the Class IV employees was to be paid, which was not paid since last 05 months. Rather it was the responsibility of the Government to take initiative, in this regard.

18. It is not the case of the respondents that the amount paid to Nagar Panchayat, Handiyaya from the funds of Municipal Council, Barnala was not paid as a loan. Rather a perusal of the record shows that a letter dated 06.12.2021 from the Executive Officer, Nagar Panchayat, Handiyaya which was addressed to Executive Officer, Municipal Council, Barnala was received stating therein that the employees and sanitation workers were not paid their salaries since last 05 months, due to which, unrest and protest ('dharna') are being carried out. Therefore, a loan of Rs.10 lacs was sought. The irregularity of granting loan to Nagar Panchayat, Handiyaya was rectified in the meeting dated 29.03.2023 wherein approval was granted unanimously by the House.

19. Therefore, we do not find that the petitioner has misused his powers. Even for that matter, it would not amount to financial loss to Municipal Council, Barnala since the same was a loan given by Municipal Council, Barnala to Nagar Panchayat, Handiyaya. A perusal of the record

further shows that a letter dated 06.12.2022 was issued by the petitioner to Executive Officer, Nagar Panchayat, Handiyaya to return the loan amount of Rs.10 lacs which was paid to it vide cheque No.261372 dated 09.12.2021 along with interest. The overall conduct of the petitioner does not anywhere show misuse of the powers. Rather the loan was granted on humanitarian ground which shows the sense of responsibility on the part of the petitioner. Further petitioner had no intention to cause loss to the Municipal Council, Barnala and rather once the approval has been granted by the house, it is apparent that no financial loss is caused, since it was just a loan which was to be returned by the Nagar Panchayat, Handiyaya.

20. In view of the above, the present writ petition is allowed and the impugned order dated 10.10.2023 is set aside.

21. Pending applications, if any, shall stand disposed of.

(SURESHWAR THAKUR)

JUDGE

(SUDEEPTI SHARMA)

JUDGE

16.09.2024
A.Kaundal

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No