(2008) 11 P&H CK 0060

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Harbans Lal		APPELLANT
	Vs	
State of Punjab and Others		RESPONDENT

Date of Decision: Nov. 26, 2008

Acts Referred:

- Punjab Municipal Act, 1911 - Section 24(2)

Citation: AIR 2009 P&H 76 : (2009) 1 ILR (P&H) 1096 : (2009) 153 PLR 69 : (2010) 2 RCR(Civil) 69 : (2009) 2 RCR(Civil) 224 : (2009) 1 RCR(Rent) 292

Hon'ble Judges: Satish Kumar Mittal, J; Jaswant Singh, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Satish Kumar Mittal, J.

(1) Whether u/s 24(2) of the Punjab Municipal Act, 1911 (hereinafter referred to as'' ''the Act''), the Government can decline to notify in the Official Gazette the election of President of a Municipal Councilor, who has been declared elected as such in the first meeting of the Municipal Council, convened under Rule 3 of the Punjab Municipal (President and Vice-President) Election Rules, 1994 (hereinafter referred to as ''the 1994 Rules'') read with Section 20 of the Act, on the ground that quorum of the said meeting was not ''complete and the President elect, being a Scheduled Caste Councilor, was not eligible to be elected to the office of the President, which is reserved for the General category.?

(2) Whether there is any quorum prescribed for the first meeting of the members of the Municipal Council convened under Rule 3 of the 1994 Rules read with Section 20 of the Act, for the purpose of administering oath and election of the President and Vice-President of the Municipal Council?

These are the two questions, which are to be answered in this petition.

2. The brief facts of the case are that the Municipal Council, Sangrur, as per the composition of Municipalities u/s 12 of the Act, consists of 21 elected members and one Member of the Legislative Assembly of Sangrur constituency (the ex-officio member). The election of the members of the Municipal Council, Sangrur, was held on 30.6.2008 along with the election of various Municipalities in Punjab and 21 members were elected from different Wards. The petitioner was elected as Municipal Councilor from Ward No.13, which was reserved for a Scheduled Caste. After the election, names of the petitioner and other members elected were duly notified by the Government vide Gazette Notification dated 9.7.2008. Therefore, as required under Rule 3 of the 1994 Rules, the Deputy Commissioner, Sangrur, authorized Sub Divisional Magistrate, Sangrur as convener to convene the first meeting of the members of the Municipal Council, Sangrur to administer oath to the newly elected members and to conduct the election to the office of President and Vice-President. Consequently, Sub Divisional Magistrate, Sangrur, convened the said meeting on 23.7.2008 and due notice of the said meeting was given to all the 22 members (21 elected members and one ex-officio member), which was to be held at 11.00 A.M., in the office of Municipal Council, Sangrur.

3. On 23.7.2008, 11 members (10 elected members and one ex-officio member) attended the said meeting. 11 other members allegedly belonging to Shiromani Akali Dal and Bhartiya Janta Party did not come present at the time of the meeting. The meeting started at 11.00 A.M. the oath was administered to the 10 elected members, who attended the meeting. Thereafter, proceedings with regard to the election to the office of President and Vice-President were started. It has been stated in the proceedings that the quorum was complete, as out of 22 members, 11 were present (10 elected + 1 M.L.A.). Name of the petitioner was proposed and seconded for the office of President. There was no other candidate for the office of the President. Therefore, the petitioner was elected as President of the Municipal Council. Subsequently, Shri Jaswinder Singh and Shri Ravi Kumar were elected as Senior Vice-President and Vice-President, respectively. After the election process of the office of President and the Vice-President was over, the remaining 11 members came to the convener and stated that they could not come present in the court due to the ''Punjab Bundh''. They further stated that the fresh elections of President and Vice-President be conducted. The convener did not accept their request and observed that their presence cannot be marked at that stage, because meeting with regard to the election had already been completed. He has recorded this fact at the end of the proceedings, while specifically observing that the same could not be treated as part of the proceedings. The State Government is required to notify the name of the elected President in the Official Gazette u/s 24(2) of the Act.

4. On 25.7.2008, members belonging to the opposite group made a complaint to the Deputy Commissioner and a representation to the Government that in the meeting held on 23.7.2008, President was illegally elected by minority as even quorum of the said meeting was not complete. It was also alleged that the petitioner, who was

elected as a Councilor from the seat reserved for Scheduled Caste, could not contest the election of the office of President, which was meant for the General category. The said complaint was referred by the Deputy Commissioner to the Government. Thereupon, vide order dated 14.8.2008 (Annexure P-2), the Government, after having the advise of the Advocate General, Punjab, declined to notify the name of the petitioner as President of the Municipal Council, Sangrur, in the Official Gazette u/s 24(2) of the Act, on the ground that the quorum of the first meeting, as required u/s 27 of the Act, was not complete, as out of 21 elected members, only 10 were present; and secondly that in view of the Division Bench decision of this Court in Anil Jain (Tinu) v. State of Haryana and Ors. L.P.A. No. 66 of 2007, decided on 31.7.2008, the petitioner, who was elected as Municipal Councilor from the seat reserved for Scheduled Caste, was not eligible to contest the election of the office of President, meant for General category. While declining to notify the name of the petitioner as President of Municipal Council, Sangrur, the State Government further directed the Sub Divisional Magistrate, Sangrur, to immediately convene a fresh meeting of the Municipal councillors for administering the oath of allegiance to the remaining elected members and also for holding the election to the offices of President and Vice-President in accordance with the procedure laid down in the 1994 Rules. The said order has been challenged in this petition.

5. It is the case of the petitioner that the aforesaid impugned order is wholly illegal, arbitrary and contrary to the provisions of the Act and the 1994 Rules and the same is liable to be quashed with a direction to the State Government to notify the name of the petitioner as elected President of Municipal Council, Sangrur.

6. Learned Counsel for the petitioner submitted that under Rule 3 of the 1994 Rules, no quorum has been prescribed. The requirement of quorum for the special meeting, as prescribed u/s 27 of the Act, which is one-half of the members of the committee actually serving at the time, is not applicable to the first meeting, which is to be convened under Rule 3 of the 1994 rules. The first meeting of a Municipality required to be convened under Rule 3 of the 1994 Rules for the purpose of administering oath of allegiance and electing the President and the Vice-President is not a special meeting, as contemplated u/s 27 of the Act. Learned Counsel submitted that the said first meeting is a statutory meeting, which is to be convened by the convener, authorized by the Deputy Commissioner, within a period of fourteen days of the publication of the notification of the election of members of a newly constituted Municipality, whereas the special meeting, as referred in Sections 26 and 27 of the Act, is convened by the Secretary or other officer for the transaction of business of the Municipal Council. Therefore, the requirement of quorum, as prescribed in Section 27 of the. Act cannot be imported into Rule 3 of the 1994 Rules. Learned Counsel further submitted that even if it is assumed that there is a quorum for the first meeting i.e. one-half of the number of the committee actually serving at that time, even then the quorum of the first meeting was complete on 23.7.2008, as out of 22 members (21 elected + 1 MLA) of the Municipal Council,

Sangrur, 11 members, including the MLA, were present. Learned Counsel submitted that the respondents have wrongly come to the conclusion that one-half of the number is to be taken from the elected member only. While referring to Sections 12 and 20(3) of the Act, he submitted that the Member of the Legislative Assembly of the constituency falling in the Municipal Area is also a member of the Municipal Council and he is to be included in the total number of members, while calculating the alleged quorum. Merely because in view of Sub-section (3) of Section 20 of the Act, a member of the Legislative Assembly is not eligible to contest the office of President or Vice-President, it cannot be said that he is not a member of the Municipality, particularly when he is permitted to attend the meeting of the Municipality and to participate in the election of the offices of the President and the Vice-President of the Municipality. Therefore, the first reason given in the impugned order that the quorum of the meeting dated 23.7.2008 was not complete is not at all correct.

7. Learned Counsel for the petitioner submitted that the second reason given in the impugned order is also wholly untenable. He submitted that as far as the General category is concerned, there is no reservation. After the reservation of the seats for the categories of the Scheduled Caste, Backward Class and Women, all the. remaining seats left are treated as General. Therefore, any person, whether he is a Scheduled Caste, Backward Class or Woman, is eligible to contest the election of a seat or an office, meant for General Category. So far as the decision of this Court in Anil Jain (Tinu ''s) case (supra), relied upon by the Government, is concerned, the operation of the same has been stayed by the Hon''ble Supreme Court vide its order dated 5.8.2008, passed in SLP. Therefore, on the basis of the said decision, the respondents cannot decline to notify the name of the petitioner as President of Municipal Council, Sangrur.

8. Learned Counsel for the petitioner submitted that u/s 24(2) of the Act, the Government is duty bound to notify the name of the elected President of a Municipality in the Official Gazette, as no President shall enter upon his duties as such until his election is so notified. Learned Counsel submitted that only on one ground, which has been given under proviso to this sub-section, the Government can refuse to notify the election, that too after providing an opportunity of hearing to the concerned person. The said ground is that if the President elect has incurred a disqualification under this Act or under any other law for the time being in force, subsequent to his election as member of the Municipality, his name cannot be notified. He submitted that except on that ground, the Government has no jurisdiction to refuse to notify the election of a President, who has been elected as such in the first meeting of the members of the Municipal Council, duly convened and held under Rule 3 of the 1994 Rules. In support of his contention, learned Counsel for the petitioner relied upon decision of the Supreme Court in State of Punjab and Others Vs. Bhajan Singh and Another, and a Division Bench decision of this Court in Ashok Kumar Gupta Vs. State of Punjab, .

9. On the other hand, learned Counsel for the respondents supported the impugned order on the same reasonings, as given in the said order. Learned Counsel submitted that if a person has been illegally elected as a President in a meeting, which was not conducted in accordance with the 1994 Rules, the Government cannot be silent spectator and it can refuse to notify such an election in the Official Gazette u/s 24(2) of the Act, if the Government is satisfied that the election was not legally and properly conducted or an ineligible person has been elected. The only requirement is that the Government should exercise this power in a reasonable and honest manner, keeping in view the public interest. In support of their contention, learned Counsel for the respondents have relied upon a Division Bench decision of this Court in Sohan Lal Ahuja v. State of Punjab 1986 RRR 509. Learned Counsel submitted that in the facts and circumstances of the case, the Government was fully justified in not notifying the election of the petitioner as President of the Municipal Council, as he was elected in the meeting, in which 11 more elected members of the Municipal Council did not participate, as they could not reach in time at the venue of the meeting, due to the Punjab Bundh.

10. After hearing counsel for the parties, we are of the opinion that both the questions, which have been posed in the beginning of this order, are to be answered in favour of the petitioner.

11. Section 20(1) of the Act provides that every Municipality shall, from time to time, elect one of its members to be its President, and the member so elected shall, on being notified by the State Government, become President of the Municipality. Sub-section (2) further provides that every Municipality may also from time to time, elect one or two of its members to be Vice-President or Vice-Presidents and when two Vice-Presidents are elected on the same date, the Municipality shall declare which of them shall be deemed to be the senior. The election of the Vice-President is not required to be notified by the State Government. Sub-section (3) further provides that notwithstanding anything contained in this section an ex officio member shall not be eligible for election as President or Vice-President of the Municipality. Rule 3 of the 1994 Rules provides the manner, in which elections of the offices of President and Vice-President are to be held. This Rule is being reproduced hereunder:

3. Manner of election.- (1) The Deputy Commissioner or any other officer authorized by him in this behalf (hereinafter referred to as the Convener) shall, within a period of fourteen days, of the publication of die notification of the election of members of a newly constituted Municipality, fix, by giving not less than forty-eight hours notice to be served at the ordinary place of residence of all the elected members, a date for convening the first meeting of the elected members of such Municipality by stating in the notice that at such meeting, the oath of allegiance will be administered to the members present and also stating that the President and Vice-President or Vice-Presidents as the case may be, shall be elected:

Provided mat all subsequent meetings to fill casual vacancies of the offices of President and Vice-President or Vice-Presidents as the case may be, shall be convened by the Convener.

(2) If due to any reason, the elected member is unable or refuses to take oath of allegiance as required by Sub-rule (1) within die stipulated period, then he will be allowed to take such oath of allegiance in the subsequent meeting unless he is debarred from taking the same by the Government for any reason. In case any such member does not take the oath of allegiance as aforesaid, then a fresh election to the constituency to which that member represents, shall be held

From the reading of the aforesaid Rule, it is clear that oath of allegiance is to be administered to the newly elected members, who come present in the meeting so convened and after the administering of oath, it is mandatory that the President and Vice-President shall be elected. The aforesaid provision does not provide that for the said meeting, any quorum is required. Though in this provision, it has been stated that forty-eight hours notice is to be served at the ordinary place of residence of all the elected members, but the Member of the Legislative Assembly of the area, who is also a member of the Municipality, is also required to attend the said meeting for electing the President and the Vice-President. Therefore, in the instant case, notice of the first meeting was also issued to the Member of the Legislative Assembly of the area, in addition to the 21 elected members of the Municipal Council. Section 20 of the Act provides that every Municipality shall elect one of its members to be its President, and Sub-section (3) further provides that an ex-officio member is nut eligible for election as President or Vice-President. Thus, the Member of the Legislative Assembly of the area, though not eligible to contest the election of the office of President and Vice-president is eligible to participate in the election of the President and Vice President and to caste his vote in favour of a candidate. Therefore, a Member of the Legislative Assembly, who is member of the Municipality, is entitled to a notice for the purpose of participation in the election of the office of President and V tee-President of the Municipality. This Court in Kewal Krishan Jindal and Ors. v. State of Punjab and Ors. C.W.P. No. 17697 of 2008, decided on 4.10.2008 has held that the convener of the first meeting is well within his rights to invite all the members of the Municipal Council, including the Member of the Legislative Assembly of the area, to attend the first meeting, because in the said meeting, election of the office of President and. Vice-President is also to be held.

12. Section 12 of the Act provides for composition of the Municipalities. Sub-section (3) provides that a Municipal Council constituted under Sub-section (1) shall consist of (i) such number of elected members as may be determined from time to time by the State Government and (ii) all members of the Legislative Assembly of the State representing constituencies comprising wholly or partly the Municipal area. Thus, from the bare reading of. Section 12 of the Act, it is clear that all the elected members and the Member of the Legislative Assembly of the area of the Municipal

Council constitutes the Municipality. In the present case, there are 22 members of the Municipal Council, Sangrur i.e. 21 elected members u/s 123(i) and one Member of the Legislative Assembly u/s 12(3)(ii) of the Act. All the members are entitled to elect one of them, not the member of the Legislative Assembly, as president of the Municipal Council.

13. In the present case, within a period of fourteen days of the publication of the notification of die election of the members of the newly constituted Municipality on 23.7.2008, a meeting was duly convened by the convener, authorized by the Deputy Commissioner, for the purpose of administering the oath of allegiance to the newly elected members and for the purpose of election of the office of President and Vice-President of the Municipal Council. Notices were given to all the elected members as well as the Member of the Legislative Assembly of the area to attend the said meeting. Undisputedly, the said meeting was attended by 11 members i.e. 10 elected members and one ex officio member. The remaining 11 elected members did not attend the said meeting in time. After administering oath of allegiance to the 10 elected members, who came present in the meeting, the process of election of the office of President and Vice President was started and in that process the petitioner was unanimously elected as President, where as Shri Jaswinder Singh and Shri Ravi Kumar were elected as Senior Vice President and Vice-President respectively. Admittedly, after the election process was over and the petitioner was elected as President of the Municipal Council, 11 members came and asked the convener to administer them oath and held the fresh meeting for the purpose of electing the President and the Vice-President. The convener declined their prayer on the ground that election of the President and the Vice-President had already taken place. In view of these facts, it is clear that in the meeting held on 23.7.2008 the petitioner was elected as President.

14. Section 24(2) of the Act clearly provides that the State Government shall notify, in the Official Gazette, the election of President of a Municipality, because no such President shall enter upon his duties as such until his election is so notified. But in the instant case, the Government has refused to notify the name of the petitioner as President of the Municipal Council, Sangrur, on two grounds, namely (i) that the meeting, in which he was elected as a President, was not validly conducted, as there was no quorum; and (ii) that the petitioner, who was elected as a Councilor from the seat, reserved for the Scheduled Caste category, was not eligible to be elected as a President of the Municipal Council, which is meant for General category. In our opinion, the Government has no jurisdiction to refuse to notify the name of the elected President of a Municipality on the aforesaid grounds. The Government can refuse to notify the election of a person as President only on one ground, as mentioned in the proviso to Sub-section (2) of Section 24 of the Act i.e. if that person has incurred a disqualification under the Act or under any other law for the time being in force, subsequent to his election as member of the Municipality and that too, after providing an opportunity of hearing to the concerned person. This is not

the case here. As far as the petitioner is concerned, he has not incurred any disqualification either under the Act or under any other law for the time being in force, subsequent to his election as member of the Municipality. The Supreme Court in State of Punjab v. Bhajan Singh (supra), while explaining the scope of Section 24(2) of the Act held that the State Government does not have an unbridled power or option to notify or not to notify the election of the President in the Official Gazette. In this regard, the Supreme Court observed as under:

It is not disputed that despite the election of respondent No. 1 as President on 6.4.1998, a notification in terms of Sub-section (2) of Section 24 of the Act was not issued forcing the respondent No. 1 to file Writ Petition No.7105 of 1998 in the High Court on 15.5.1998.We do not agree with the argument of Mr. Dutta that the State Government or the said Secretary had an unbridled power or option to notify or not to notify the election of the President in the Official Gazette. Such an argument will not only be contrary to the concept of democracy and the rule of the law but in fact flagrant violation of the mandate of the Act as incorporated in Sub-section (2) of Section 24 of the Act.

A duty is cast upon the Government to notify in the Official Gazette every election of President of Municipality as is evident from the words "shall notify in the Official Gazette" used in the sub-section. The State Government has the authority to refuse to notify the election of a President, or any person who has incurred a disqualification under the Act or under any other law for the time being in force, subsequent to his election as Member of the Municipality provided that before refusing to notify the elections the State Government gives as opportunity of being heard to the failed concerned person. Admittedly, the State Government has failed to notify the election of the President in the Official Gazette without assigning any reason, much less "giving an opportunity" to the respondent No. l. The omission and inaction of the said Secretary cannot be made a basis for frustrating die provisions of law and thereby nullifying the peoples'' verdict returned in an election conducted in accordance with the provisions of law applicable in the case. Even if the respondent No. l had allegedly incurred some disqualification, the State Government was obliged to inform him that his election as President of the Municipality could not be notified for the aforesaid reason. In the absence of such intimation, the omission to notify cannot be justified on such ground.

Thus, in view of the aforesaid judgment, the Government can refuse to notify the name of a person elected as President, only on the ground that such person has incurred a disqualification under the Act or under any other law for the time being in force, subsequent to his election as Member of the Municipality. A Division Bench of this Court in Ashok Kumar Gupta''s case (supra) has also held that the Government can refuse to notify the name of a person elected as a President only on the ground of disqualification, as mentioned in the first proviso to Section 24(2) of the Act and no other ground. In this case, it was held that once the process of election is set in

motion, it has to be allowed to complete its course and such meeting cannot be adjourned. It was also observed that the convener of the meeting has no power under the Act to postpone the meeting of the members of the Municipality. In that case, the contention was raised by the State that since the Deputy Commissioner did not recommend the election of the petitioner, therefore, the Government refused to notify the same. It was held that for notifying the name of an elected person as President of the Municipality u/s 24(2) of the Act, no recommendation of the Deputy Commissioner is required. Therefore, in our opinion, u/s 24(2) of the Act, the State Government cannot refuse to notify the election of a member, elected as President, on the aforesaid two grounds. However, on the aforesaid two grounds, election of the elected President can be questioned by filing an election petition. But the Government cannot refuse to notify his name u/s 24(2) of the Act.

15. A contention has been raised by learned Counsel for the respondents that the Government has ample power under Sections 232 arid 236 of the Act to suspend any resolution and to set aside any proceeding of a Committee, if the same is not in conformity with law and rule in force under any enactment for the time being applicable to Punjab generally or the area over which the Committee have authority. In our opinion, those powers of the Government cannot be exercised to nullify the mandatory duty imposed upon the Government u/s 24(2) of the Act to notify the name of the elected President in the Official Gazette, because without such notification, the elected President can not enter upon his duties as such. A Division Bench of this Court in Joginder Singh v. The State of Punjab and Ors. (1962) 64 P.L.R. 638 has held that the State Government which is not empowered to set aside an election directly cannot be competent to do so indirectly by having resort to Section 236 of the Act under the mask of setting aside the proceedings of the committee so far as they relate to the election of the President. Similarly, this Court in Ashok Kumar Gupta''s case (supra) has also held that Section 232 of the Act empowers the Deputy Commissioner to suspend any resolution or order of the committee, but no provision of the Act or the Rules requires the recommendation of Deputy Commissioner for the purpose of notification of the election of the President u/s 24(2) of the Act. As far as Section 24(2) of the Act is concerned, it does not require the recommendation of the Deputy Commissioner and the Government cannot refuse to notify the election of a President on the ground that the Deputy Commissioner has not recommended the same.

16. One of the grounds on which the Government has refused to notify the election of the petitioner as President of the Municipal Council is that the quorum of the first meeting on 23.7.2008, in which the petitioner was elected, was not complete, therefore, his election to the office of President was not valid. In our opinion, from the bare reading of Section 20 of the Act and Rule 3 of the 1994 Rules, there is no requirement of quorum for the first meeting, in which the President and Vice-President of the Municipality are to be elected. A stand has been taken by the respondents that since the first meeting is a special meeting for the purpose of

election of the President and Vice-President, therefore, as per Section 27 of the Act, one-half of the number of the committee actually serving at the time shall be the quorum. Learned Counsel for the respondents have also referred the Business bye-laws, which were formulated u/s 31 of the Act. Clause (e) of these bye-laws requires that a special or emergent meeting of the committee shall be called by the Secretary, when required to do so by the President or in his absence by the Vice-President or on a requisition in writing signed by at least one fifth of the members of the Committee. Clause 3 of these bye-laws further provides that the quorum for a special and emergent meeting should be one-half of the members of the Committee. In view of these 2 clauses, it has been argued that the first meeting was a special meeting, for which quorum was one-half of the member of the committee actually serving at the time, and since there were only 21 elected members and the said meeting was attended by 10 elected members, therefore, the quorum was not complete. This contention of learned Counsel for the respondents cannot be accepted for two reasons. Firstly, the requirement of quorum of a special meeting, as provided u/s 27 of the Act and Business bye-laws cannot be imported as requirement in the first meeting of the Municipal Council, which is to be held under Rule 3 of the 1994 Rules for the purpose of administering oath of allegiance and electing President and Vice-President.

17. Section 26 of the Act, which provides for ordinary and special meeting is being re-produced hereunder:

26. Ordinary and special meeting.- (1) Every meeting of committee shall be either ordinary or special.

2 Any business may be transacted at an ordinary meeting unless required by his Act or the rules to be transacted at a special meeting.

3 When a special and an ordinary meeting are called for the same day the special meeting shall be held as soon as the necessary quorum is present.

Section 27 of the Act, which provides for quorum is being re-produced hereunder:

27. Quorum.- (1) The quorum necessary for the transaction of business at a special meeting of a committee shall be one-half of the number of the committee actually serving at the time, but shall not be less than three.

(2) The quorum necessary for the transaction of business at an ordinary meeting of a committee shall be such number or proportion of the members of the committee as may, from time to time, be fixed by the bye-laws, but shall not less than three:

Provided, that, if at any ordinary or special meeting of a committee a quorum is not present, the chairman shall adjourn the meeting to such other day as he may think fit, and the business which would have been brought before the original meeting if there had been a quorum present shall be brought before, and transaction at, the adjourned meeting, whether there be a quorum present thereat or not.

A perusal of the aforesaid provisions reveals that the ordinary or special meeting is being called only for the transaction of the business of the committee, whereas the first meeting of the committee, which is to be convened under Rule 3 of the 1994 Rules, is not for the purpose of the business of the committee, but for the purpose of administering oath of allegiance to the newly elected members and for electing the President and Vice-President. Therefore, the said meeting, in our opinion, cannot be termed either an ordinary or a special meeting, but the said meeting is a statutory meeting, which the convener is duty bound to convene within fourteen days of the publication of the notification of the election of members of a newly constituted Municipality. A Division Bench of this Court in Babu Lal Aggarwal Vs. The Commissioner and Secretary to Govt. of Haryana, Local Bodies Department and Others, has considered the similar contention raised as to whether for a meeting convened for the consideration of no confidence motion, a quorum is required as required for the special meeting. In that case, the meeting for consideration of no confidence motion was adjourned, on the ground of quorum, as only two members out of 21 members attended the meeting. In these circumstances, this Court observed that a meeting called for consideration of no confidence motion cannot be said as ordinary or special meeting, as provided u/s 21 of the Haryana Municipal Act, 1973 This judgment supports aforesaid view taken by us.

18. Even otherwise, out of 22 members of the Municipal Council, Sangrur, 11 were present, in which the petitioner was elected as President. Therefore, it cannot be said that one-half of the members were not present and the quorum was not complete. In this regard, learned Counsel for the respondents has raised an objection that Member of the Legislative Assembly, who is an ex-officio members, cannot be taken as member of the Municipal Council and he cannot be counted for the purpose of determining the one-half quorum of the committee. In our opinion, this contention cannot be accepted. Section 12 of the Act provides that a Municipal Council consists of elected members as well as the ex-officio member. Section 20 of the Act further provides that all the members of the committee will elect one of its members as President. As far as ex-officio members concerned, he can participate in the proceedings of the Municipal Council, even in the proceedings, where President and Vice-President are to be elected. But only embargo is that he cannot contest the election of the President or Vice-President of the Municipality, as provided under Sub-section (3) of Section 20 of the Act. Therefore, vide the impugned order, the government has wrongly held that one-half of the members were not present in the meeting, therefore, quorum was not complete.

19. As far as the second ground, on which the Government has refused to notify the name of the petitioner as President of the Municipal Council, is that the petitioner belongs to the Scheduled Caste category and elected as Municipal Councilor from the seat reserved for that category, therefore, he cannot be held to be eligible to contest the election of the office of President, which is meant for General category. In our opinion, the Government is not justify to decline to notify the name of the

petitioner on this ground also. The second reason given in the impugned order is also wholly untenable. Section 55 of the Punjab State Election Commission Act, 1994 (hereinafter referred to as ''the Election Commission Act'') declares mat a member of the Scheduled Caste shall not be disqualified to hold a seat not reserved for members of those castes, if he is otherwise qualified to hold such seat under the Constitution of India and the Election Commission Act. Therefore, the petitioner, who belongs to the Scheduled Caste category and elected as Municipal Councilor from the seat reserved for that category, cannot be held to be ineligible to contest the election of the office of President, which is meant for General category. As far as the General category is concerned, there is no reservation. After the reservation of the seats for the categories of the Scheduled Caste, Backward Class and Women, all the remaining seats left are treated as General. Therefore, any person, whether he is a Scheduled Caste, Backward or Woman, is eligible to contest the election of a seat or an office, meant for General category. In this regard, reference can be made to a decision of the Supreme Court in Kasambhai F. Ghanchi Vs. Chandubhai D. Rajput and Others, . So far as the decision of this Court in Anil Jain (Tinu)''s case (supra) is concerned, SLP has been filed against the same and the Hon''ble Supreme Court vide its order dated 5.8.2008 has stayed the operation of the aforesaid decision of this Court. Therefore, on the basis of the said decision, the respondents cannot decline to notify the name of the petitioner as President of Municipal Council, Sangrur. In case, it is alleged that a person was not eligible to contest the election to the office of President on the ground of reservation or that he was illegally elected on any other ground, then the election of such a person to the office of President can only be questioned by filing an election petition, but the State Government has no authority to decline to notify the name of such person on the aforesaid grounds. Even otherwise, if it is the case of the respondents that the petitioner was not eligible to contest the election to the office of President on the ground of reservation or that he was illegally elected on any other ground, then his election should have been challenged by filing an election petition, but the State Government has no authority to decline to notify his name on the aforesaid ground.

20. In view of the above, the impugned order dated 14.8.2008 (Annexure P-2), passed by the Special Secretary, Local Government Department, Punjab, refusing to notify the name of the petitioner as President of Municipal Council, Sangrur, is set aside and the respondents are directed to notify the name of the petitioner as elected President of Municipal Council, Sangrur The writ petition is, thus, allowed.

Sd/- Jaswant Singh, J.