

(2004) 07 P&H CK 0032

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 14057 of 2003

Sarwan Masih alias Samma,
President Nagar Panchayat

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision: July 15, 2004

Acts Referred:

- Punjab Municipal Act, 1911 - Section 25, 25(3), 27(1)

Citation: (2005) 140 PLR 258 : (2004) 4 RCR(Civil) 289

Hon'ble Judges: Swatanter Kumar, J; Amar Dutt, J

Bench: Division Bench

Advocate: R.L. Batta and Geeta Sharma, for the Appellant; C.M. Munjal, A.R. Thakkar, Ambika Luthra and S.C. Pathela, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Swatanter Kumar, J.

Sarwan Masih has filed the present petition for quashing of the notification dated 28.8.2003. Annexure P-14, issued by respondent No. 1.

2. According to the petitioner, who was President of the Nagar Panchayat, Makhu, on 27.1.2003 Sarvshri Varinder Thukral, Darshan Singh, Gurbachan Kaur, Nasib Chand, Krishna Rani, Vinod Kumar and Harjeet Kaur gave a notice to the Executive Officer for requisitioning a meeting of the Nagar Panchayat for consideration of no confidence motion against him. On the same date, ten members, which included the aforementioned seven members, gave another notice, which was received at 4.40 P.M. in the office of the Nagar Panchayat. After receipt of the requisition, the petitioner had called for a meeting of the Nagar Panchayat for the aforesaid purpose for 20.2.2003 at 10.00 A.M. in the office of the Nagar Panchayat but as notices for the meeting as well as the agenda thereof was not being circulated by

the office of the Nagar Panchayat, the petitioner had sent the same through Under Postal Certificate on 3.2.2003. An advance copy of the notice was also forwarded to the Deputy Director, Local Government, Punjab, Ferozepur, Region Ferozepur-respondent No. 3. On 6.2.2003, the petitioner wrote another letter to respondent No. 3 again informing him that pursuant to the requisition a meeting of the Nagar Panchayat had been called for 20.2.2003 at 10.00 A.M. He also complained that the officers of the Committee under the influence of respondent No. 7 were not co-operating and that is the reason why the agenda of the meeting was sent by the petitioner himself to all the Municipal Counselors. On 13.2.2003, the petitioner claims that he had addressed another, letter to the Executive Officer, Nagar Panchayat and the Deputy Director, Local Government, Ferozepur apprising them of the action taken by him on account of the fact that the Executive Officer had not taken any action for calling the meeting. He further asserts that on 11.2.2003, the Executive Officer, Nagar Panchayat, Makhu issued notice of the agenda of a meeting for 14.2.2003 wherein it was stated that the same was being issued as the petitioner had failed to convene a meeting within 14 days. While doing so, the Executive Officer has concealed and misstated the facts inasmuch as the agenda for the meeting had already been issued by the petitioner for 20.2.2003. The action of the Executive Officer, which was taken under the influence and pressure, was illegal. On account of his connivance, the agenda for the meeting of 14.2.2003 was not served on the petitioner, S/Shri Sucha Singh, Anwar and Smt. Amarjit Kaur, the result was that the rival group illegally held a meeting on 14.2.2003 and on the basis thereof passed a no confidence motion against him. The petitioner had represented to the Deputy Director, Local Government, Ferozepur against the no confidence motion and during this period of show cause notice Annexure P-12 was issued to him by the Secretary to Government of Punjab, Local Government Department to show cause as to why the petitioner should not be removed from the Presidentship of the Nagar Panchayat, Makhu on account of the no confidence motion that had been passed against him. The petitioner sent a reply to the show cause notice, after perusal whereof, the impugned order was passed by the Principal Secretary, Local Government on 25.8.2003. It is the validity of this order that the petitioner seeks to challenge by way of the present petition.

3. The stand of respondent Nos. 1 and 2 to the averments contained in the petition was that after the receipt of the requisition from 10 out of the 14 members of the Nagar Panchayat, Makhu, to convene a meeting for considering of the no confidence motion against the petitioner, the petitioner had called a meeting for 20.2.2003. The agenda notice was issued by the petitioner, but not routed through the Nagar Panchayat, Makhu's Office and it even docs not bear the office despatch number, Postal charges for despatching this communication were borne by the petitioner himself. The agenda issued by the petitioner on 3.2.2003 was also not typed in the Nagar Panchayat Makhu's office and the same was not received by Executive Officer himself. So the agenda notice dated 3.2.2003 issued by the

petitioner cannot be considered as a legally valid notice. In these circumstances, according to the State, the requisitionists were well within their rights to requisition a meeting for 14.2.2003 and pass a no confidence motion against the petitioner on the said date. Respondent Nos. 1 and 2 further assert that after receipt of resolution No. 70 dated 14.2.2003 from the Executive Officer, Nagar Panchayat, Makhu and the Deputy Commissioner, Ferozepur a show cause notice was issued to the petitioner and after considering the reply filed by him to the same, the impugned order has been passed.

4. The Regional Deputy Director, Urban Local Bodies, Ferozepur, No. 3 in his reply submitted that copies of the notices purported to have been issued by the petitioners were not received by his office from the petitioner.

5. In the reply filed by the Executive Officer, Nagar Panchayat, Makhu, on behalf of respondent Nos. 5 and 6, it was asserted that the office of the Nagar Panchayat "did not receive any notice about the holding of the said meeting on 20.2.2003". It was denied that the office of the Nagar Panchayat did not co-operate with the petitioner and surprisingly it was asserted that the averments regarding the issuance of a notice for 20th of February, 2003 is concocted and an afterthoughts as "UPCs can be procured easily" and hence no authenticity in any case can be attached to the Under Postal certificate receipts. It was also asserted that no record of any agenda for circulation exists in the Nagar Panchayat. It was also submitted that the notice for the meeting called for by the requisitionists was issued by the Nagar Panchayat and the meeting had taken place on 14.2.2003. It was further submitted that resolution passed on 14.2.2003 was endorsed on 3.3.2003 in a meeting of the Committee in which the petitioner had participated. In view of these circumstances, respondent Nos. 5 and 6 submitted that the meeting held on 14.2.2003 was valid and consequently the petition was devoid of any merit.

6. Respondent No. 7, who along with respondent Nos. 8 to 17 was impleaded as a party during the pendency of the petition, did not file any written statement.

7. In the reply filed by respondent Nos. 8 to 17, a preliminary objection has been taken asserting that the petitioner is guilty of mis-statement of material facts inasmuch as he has wrongly stated that after receiving requisition for holding a meeting of no confidence motion against him, he had sent notices on 3.2.2003 calling for the meeting on 20.2.2003. It has also been submitted that the plea taken by the petitioner that the office of the Nagar Panchayat was not co-operating with him is false and misleading inasmuch as after 27.1.2003, the petitioner has been signing various documents and issuing cheques for various payments. Photocopies of three of such cheques is attached as Annexure R8/1. According to these respondents, the Under Postal Certificates are fabricated as also the averments that the agenda for the meeting was not received by the petitioner and three other Councillors. It was also submitted that the meeting dated 14.2.2003 was video recorded in the presence of an Observer appointed by the Deputy Commissioner

and the decision taken therein was approved in the meeting taken therein was approved in the meeting held on 3.3.2003, which was attended by the petitioner as well.

8. The petitioner filed separate replications to the written statements, in which an effort was sought to be made to reiterate the assertions made in the petition as also to bring on record additional facts regarding his having approached the State Human Rights Commission with complaints against the pressure that was sought to be put upon him by the Administration on account of his having fallen foul with respondent No. 7, who is the son of the then Director General of Police, Punjab, Shri Mehal Singh Bhullar.

9. We have heard Mr. R.L. Batta, Senior Advocate, appearing on behalf of the petitioner, Mr. C.M. Munjal, Additional Advocate General, Punjab, appearing on behalf of respondent Nos. 1 to 4 Mr. A.R. Takkar, appearing on behalf of respondent Nos. 5 and 6 and Mr. S.C. Pathela, appearing on behalf of respondent Nos. 8 to 17.

10. The only point, which has been urged before this Court on behalf of the petitioner is that in view of the fact that notices had been issued by him for holding of the meeting of Nagar Panchayat, Makhu, on 20.2.2003, to consider the no confidence motion against him, the meeting held on 14.2.2003 is not legal and the decision taken therein has got to be set aside. The respondents, however, have controverted the legal submission on the basis of the factual matrix of the case, as brought out on the record, which according to them clearly shows that the petitioner had not summoned any meeting for 20.2.2003 and the story has been put forth by him to get out of the legal consequences of the no confidence motion that has been passed against him on 14.2.2003.

11. We have carefully considered the rival contentions and perused the record.

12. The facts, that are not in dispute in the present case, are that the petitioner was elected as the President of the Nagar Panchayat, Makhu on 14.7.2000. On 27.1.2003, two notices were received by the Executive Officer, "Nagar Panchayat, Makhu, one signed by seven members and the other by ten members. The first notice contained a request for calling an urgent meeting u/s 25 of the Punjab Municipal Act, 1911 (hereinafter referred to as "the Act") as the signatories had "no confidence in the working of the President Mr. Sarwan Masih, Nagar Panchayat, Makhu". The second notice which was signed by ten members was to the following effect :-

"It is requested that Sarwan Masih (President, Nagar Panchayat) has lost his majority. We the following members of Nagar Panchayat Makhu have no confidence in him. It is, therefore, requested that an immediate meeting be summoned and the President be asked to prove his majority."

13. The records of the Nagar Panchayat that have been produced before us shows that the Executive Officer directed that both the notices be put up before the

petitioner and the note of the Executive Officer has been duly signed by the petitioner. Since it is not the case of the petitioner that the requisition was not in terms of Section 25(3) of the Act, which reads as under:-

"25. Times of holding meetings:-

(1) XXX XXX XXXX

(2) XXXX XXXX XXX

(3) 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 days of the making of such requisition and notwithstanding anything contained in this Act such meeting shall be deemed to be a validly conveyed meeting:

Provided that no business other than that specified in the requisition shall be transacted in such meeting and the quorum for such a meeting shall be as provided for a special meeting under Sub-section (1) of Section 27.

14. We need not tarry any further for going into the question as to whether the requisition was valid or not. Concededly, the petitioner has the knowledge of the requisition made by 7/10 members of the Nagar Panchayat calling for a meeting to consider the motion of no confidence that they intended to pass against him. The record of the Nagar Panchayat, photocopy whereof is placed on the file of this case, clearly shows that no orders had been passed by the petitioner when the two-notices were put up before him under the directions of the Executive Officer, spelling the action which he wanted the office to take on the requisitions. The file is silent about any direction having been issued to the Executive Officer in relation to the meeting even though the petitioner had been signing cheques upto 10.2.2003 as is evident from Annexure R8/1. In spite of the fact that he has been managing the affairs of the Nagar Panchayat till 10.2.2003, the petitioner would have us to believe that the Executive Officer of the Nagar Panchayat in particular and the office in general was not abiding by his directions and it was this position that forced him to issue notices of the meeting called for by him on the asking of the requisitionists on 3.2.2003 in which he fixed the date of the meeting as 20.2.2003. He also stated that the communication about the non-cooperation as well as the action taken by him on the requisition was sent to respondent No. 3. This respondent has gone on record to say that no such communication was ever received in his office.

15. The petitioner is seeking to prove that he had sent the notices through U.P.C. which have been sent by him. The respondents have denied this fact by asserting that the U.P.Cs. have been procured by the petitioner to strengthen his stand in the petition. The respondents have also denied of having received any of the letters,

which are stated to have been posted by him on 3.2.2003. While this plea may be in the cases of respondents a plea of convenience but there is nothing on the record from which it can be inferred that the stand taken by the Deputy Director-respondent No. 3 is in any way motivated against the petitioner.

16. Faced with the situation that the President had not discharged the duty cast upon him by the Statute in cases where a requisition requiring him to call a meeting for no confidence motion against him is served on him is received, the requisitionists are given right to summon the meeting themselves. The record shows that ten of the requisitionists had sent a communication on 10.2.2003 to the Executive Officer to summon the meeting for 14.2.2003. The fact that this meeting did take place is not disputed as also the fact that on that date no confidence motion was passed against the petitioner. The plea, which is now being taken by the petitioner is that four of the members including himself were not served with a notice by which the meeting was fixed for 14.2.2003, If the stand was correct, the petitioner would have raised heaven and earth to highlight the illegality and would have the meeting set aside but what does he do even when he and other members, who are alleged to have not received the notices, got an opportunity to raise the issue in a meeting of the Nagar Panchayat, which was held on 3.3.2003. Instead of availing this opportunity to record their dissent, they confirmed the minutes of the meeting held on 14.2.2003 without any demur.

17. Confronted with this situation, the counsel for the petitioner took the plea that his client has not confirmed the minutes of the previous meeting and the signatures appended only indicate as to who all had attended the meeting of the Nagar Panchayat on 3.3.2003. On going through the proceedings book, we found that only in one meeting all the members have appended their signatures at the end of the page where the decisions taken have been incorporated. The record show that it had not been the practice of the Nagar Panchayat, Makhu to have the decisions signed on the same date when they were taken and this is clear from the fact that in all the meetings which are shown to have taken place in the proceedings book the first item on any agenda is for confirmation of the minutes of the preceding meeting. This is well established procedure, which is followed in meetings of statutory bodies and, therefore, the fact that the decisions, which were taken in the meeting of the Nagar Panchayat on 14.2.2003 have been confirmed by the petitioner without any demur or protest, which he was entitled to raise in the meeting itself, cannot be ignored, We are, therefore, constrained to hold that the failure of the petitioner to pass orders regarding the convening of the meeting on the request of the requisitionists on 27.1.2003 itself was on account of his desire to buy time so as to enable him to win the requisitionists back to his point of view and prevent the passing of a resolution of no confidence against him. It was this inaction on his part that had enable the requisitionists to exercise the power conferred on them to convene a meeting and pass a resolution. The fact that the decision, which had been taken on 14.2.2003 indicating that the meeting was being convened on

account of the failure of the President to hold the same as required u/s 25(3) of the Act, was confirmed on 3.3.2003, would show that the decision had impliedly been accepted by him. The petitioner has evidently been playing hide and seek with his colleagues with a view to prolong his tenure as President in one way or the other. He has been legally voted out of power. The petition being without any merit has to be dismissed. We order accordingly.