

(2009) 09 P&H CK 0149

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 11377 of 2009 (O&M)

Ravinder Kumar Rawal

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision: Sept. 23, 2009

Citation: (2009) 4 PLR 641 : (2009) 4 RCR(Civil) 619 : (2010) 2 RCR(Civil) 328

Hon'ble Judges: M.M.Kumar, J and Jaswant Singh, J

Advocate: Mr. Sanjay Bansal, Sr. Advocate with Mr. M.S. Sindhu, Advocate. For the Respondent Nos. 1 to 4, Ms. Ritu Bahri, DAG, Haryana, Mr. Rameshwar Malik, Advocate, Mr. O.P. Goyal, Sr. Advocate with Ms. Anjana and Mr. Varun Sharma, Advocate., Advocates for appearing Parties

Judgement

Jaswant Singh, J.

Petitioner, whose election as President of Municipal Council, Panchkula was set aside by the learned Election Tribunal, has filed the present writ petition with twofold prayers; i) to declare Byelaws 36 of the Haryana Municipal Business Byelaws 1981 (for brevity "1981 Byelaws") as ultra vires to the provisions of the Haryana Municipal Act, 1973 (for brevity "1973 Act") and further to quash the impugned order dated 3.7.2009 (Annexure P.12) passed by respondent No. 2 Financial Commissioner and Principal Secretary to Government of Haryana Urban Local Bodies Department whereby it has been ordered that respondent No. 6 Vice President shall perform all the duties and exercise all the powers of the President, being wholly without jurisdiction.

2. Brief facts, which are undisputed, may be noticed :

As a result of general elections of 31 wards of Municipal Council, Panchkula (for brevity "M.C Panchkula"), names of 31 elected members were notified by State Election Commission vide notification dated 31.3.2008 (Annexure P.1). One V.K. Sood was elected as member from ward No. 4, Bharat Bhushan Singh respondent No. 6 from ward No. 12 and Ravinder Kumar Rawal, present petitioner from ward No. 14 respectively. Thereafter, as per the provisions of Section 18 of 1973 Act, election for

the post of President and Vice President of M.C Panchkula was held on 14.5.2008, wherein the petitioner was elected as President and respondent No. 6 was elected as Vice President. In exercise of the powers conferred by Subsection (1) and (2) of Section 24 of 1973 Act and all other powers enabling him in that behalf, the Government of Haryana notified name of the petitioner Ravinder Kumar Rawal as President of M.C. Panchkula, District Panchkula in Haryana Gazette Notification dated 15.5.2008 (Annexure P.4).

3. Election of the petitioner as President of M.C Panchkula was challenged by the aforesaid V.K. Sood by filing election petition dated 2.6.2008 under rule 75 of the Haryana Municipal Election Rules 1978 before the learned Election Tribunal, Panchkula. Said election petition was allowed by learned Election Tribunal vide judgment dated 4.5.2009 (Annexure P.5) on the premise that the secrecy of the votes in the election had not been maintained and thus the voters/members were unable to exercise their free and independent right of choosing a candidate of their choice. Accordingly, the election of the present petitioner as President of M.C. Panchkula were declared illegal, null and void and the same was set aside. Learned Tribunal further ordered that respondent Nos. 2 & 3 i.e Deputy Commissioner, Panchkula and SDO (Civil), Panchkula respectively shall be at liberty to conduct fresh elections.

4. Two appeals were filed against judgment dated 4.5.2009 (Annexure P.5) passed by the learned Tribunal, one by the petitioner bearing Civil Appeal No. 20 of 2009 and the other by Deputy Commissioner, Panchkula and SDO (Civil) Panchkula bearing Civil Appeal No. 22 of 2009 before the learned District Judge, Panchkula. Learned District Judge, Panchkula vide its judgment dated 8.6.2009 (Annexure P.6) dismissed both the aforesaid appeals.

5. Aggrieved against both the judgments dated 4.5.2009 and 8.6.2009 passed by the learned Tribunal and the learned District Judge, respectively, the present petitioner filed CWP No. 9227 of 2009 before this Court, which came up for hearing on 11.6.2009, wherein learned Single Judge of this Court issued notice of motion for 1.7.2009 and also issued notice regarding stay. It is also relevant to mention here that State of Haryana through D.C, Panchkula and SDO (Civil), Panchkula also challenged the aforesaid two judgments by filing CWP No. 9452 of 2009. We have been informed that both the writ petitions are pending for hearing on a date in September 2009 before the learned Single Judge. It has come on record that part of the judgment dated 4.5.2009 (Annexure P.5) passed by the learned Tribunal regarding fresh elections has been stayed by the learned Single Judge in CWP No. 9227 of 2009 vide order dated 14.7.2009 (Annexure P.13), which, for ready reference, is reproduced as under :

"Notice of the C.M. Application.

Mr. R.S. Kundu, Addl. A.G, Haryana, has been asked to accept notice on behalf of the respondent State.

List on 22.7.2009.

In the meantime, respondents will not proceed to fill up the vacancies of President and Vice President.

Objections be filed in the meantime."

6. It is on the record of the case that after the decision of the appeal, filed by the present petitioner, by the learned District Judge by way of judgment dated 8.6.2009 (Annexure P.6), respondent No. 4 D.C Panchkula wrote a letter dated 10.6.2009 (Annexure P.7/T) to respondent No. 5 Executive Officer, M.C Panchkula to ensure compliance of order dated 8.6.2009 as per the provisions of Rule 91 of the Haryana Municipal Election Rules 1978 (for brevity "1978 Rules") read with Section 273(4) of 1973 Act and Byelaw 36 of 1981 Byelaws. Feeling aggrieved by the abovesaid letter dated 10.6.2009 (P.7/T), petitioner approached respondent No. 3 Director, Urban Local Bodies, Haryana by way of representation dated 15.6.2009 (Annexure P.8) and requested that Bharat Bhushan Singhal, Vice President, M.C Panchkula (respondent No.6) be not directed to use the office of President as the matter is subjudice before the Hon"ble High Court in CWP No. 9227 of 2009 in which notice regarding stay has also been issued.

7. It appears that the petitioner had also made a representation before the Minister in charge regarding his case. Petitioner has so pleaded by filing a Civil Miscellaneous No.13507 of 2009 that the said Minister by taking note of the representation of the petitioner has passed an order on file that as the matter of President, M.C, Panchkula is pending before the Hon"ble High Court and his name has not been denotified by the Government, therefore, the petitioner be allowed to continue as President till the decision of the Hon"ble High Court.

Relevant para 8 of C.M. No. 13507 of 2009 is reproduced as under :

"That it is necessary to mention here that now the petitioner has come to know that on the representation made by the petitioner, the Minister of Urban Development and Local Bodies, Govt. of Haryana had passed the following order on 14.6.2009 :

"I am enclosing herewith a representation given by Shri Ravinder Rawal, President, Municipal Council, Panchkula. Shri Rawal appeared before me and explained the factual position of his case. The matter of President, MC, Panchkula is pending in the Honourable Punjab and Haryana High Court and his name has not been denotified by the government. Therefore, I would like that Shri Ravinder Rawal be allowed to continue as President, MC, Panchkula till the decision of Honourable High Court."

D.U.L.B

Sd/14/6

U.L.B.M

8. The representation of the petitioner was considered by the Director, Urban Development Local Bodies, Haryana respondent No. 3. He directed the Deputy Commissioner, Panchkula respondent No. 4 to withdraw his letter dated 10.6.2007 (Annexure P.7/T) vide letter dated 17.6.2009 (Annexure P.9) in view of the fact that the matter is subjudice in the High Court and listed for 1.7.2009 regarding stay and the matter had been referred to Advocate General for his legal opinion.

9. It is apparent from the record that on the request of Executive Officer, Municipal Council, Panchkula respondent No. 5 that in the absence of the President and nonworking of the Vice President, the Municipal Council was facing financial difficulties in payment of its liabilities. The Deputy Commissioner, Panchkula respondent No.4 passed order dated 26.6.2009 (Annexure P.10/T) in view of the provisions contained in Section 247 of 1973 Act thereby directing that all the cheques proposed by M.C., Panchkula for payment of electricity bills, bills of diesel, petrol and salaries of officers/officials were to be signed jointly by respondent No. 5 City Magistrate, Panchkula. With regard to cheques relating to development works, it was ordered that respondent No. 5 was to prepare a list thereof and will issue cheques after getting approval from respondent No.4 D.C, Panchkula.

10. It is further borne out from the record that respondent No.6 B.B. Singhal being aggrieved against order dated 17.6.2009 passed by the Director, Urban Local Bodies Haryana, filed an appeal before respondent No.2 Financial Commissioner, which was entertained by him and the impugned order dated 3.7.2009 (Annexure P.12) was passed without the same being numbered or notice given to the official respondents or even impleadment of the petitioner.

11. It is, in these circumstances that the present writ petition has been filed by the petitioner impugning the order dated 3.7.2009 (Annexure P.12) and challenging the provisions of Byelaws 36 of Byelaws 1981.

12. Notice of motion was issued on 31.7.2009 for 13.8.2009. In the meantime, petitioner filed a Civil Misc. Application No.13507II of 2009 thereby detailing the misuse of powers conferred on Vice President respondent No. 6 vide the impugned order dated 3.7.2009 (Annexure P.12) and on 13.8.2009, the following order was passed by this Bench :

C.M. No. 13507 of 2009

Notice of the application.

Ms. Ritu Bahri, learned State counsel accepts notice on behalf of respondent Nos. 1 to 4.

Mr. R.S. Malik, Advocate, accepts notice on behalf of respondent No. 5.

Mr. Anjana, Advocate, accepts notice on behalf of respondent No. 6.

CWP No. 11377 of 2009

On request made by Mr. O.P. Goyal, learned Senior counsel appearing for respondent No. 6, hearing is deferred to 18.8.2009. However, he further states that respondent No. 6, in pursuance of impugned order (P.12), would not convene any meeting for passing of any resolution till the adjourned date.

We, however, direct Shri S.C. Chaudhary, Financial Commissioner, who has passed order dated 3.7.2009 (P.12) to file an affidavit indicating the provision under which he has entertained the appeal and has acquired jurisdiction. He shall also explain that how Byelaw 36 of the Haryana Municipal Business Byelaws, 1981, contemplating the VicePresident in contradistinction to Senior VicePresident to function as President."

13. In pursuance of notice of motion issued by this Court, reply dated 18.8.2009 has been filed on behalf of respondent No.6 and affidavit dated 17.8.2009 has been filed by Sh. S.C. Chaudhary, Financial Commissioner and Principal Secretary to Government of Haryana, Urban Local Bodies. In para 5 of the affidavit, the Financial Commissioner has stated that the order dated 3.7.2009 was passed while exercising the powers under Section 253 of 1973 Act. In para 6, it is stated that although Byelaw 36 of 1981 Byelaws provides "that in the absence of the President, Senior Vice President shall perform all the duties of the President and shall exercise the same powers" but there is no post of Senior Vice President in any Municipal Council in Haryana and the word "Senior Vice President" does not now occur anywhere in 1973 Act as vide Act No. 3 of 1984, the word "senior" was omitted from Section 28 of 1973 Act and as there exists only one post of Vice President in Municipal Council, Panchkula and there is no Senior Vice President, therefore, there was no question of giving responsibility to any one except the Vice President respondent No. 6.

14. Respondent No.6 has also filed a separate reply to the Civil Miscellaneous No.13507 of 2009 besides written statement to the main petition taking a similar stand.

15. Learned counsel for the petitioner, at the very outset, stated that he did not wish to press the plea of Byelaw 36 being ultra vires and confined his challenge to the impugned order dated 3.7.2009 (Annexure P.12) as it was urged that the matter could be adjudicated without declaring the byelaw 36 to be ultra vires.

16. Learned counsel for the petitioner has argued at length that the Financial Commissioner has no jurisdiction or authority to pass the impugned order dated 3.7.2009 under the garb of entertaining an appeal filed by respondent No.6 under the 1973 Act as no such provision exist in 1973 Act. He has further contended that in view of the settled preposition of law that right to appeal is always a statutory right and no appeal can be entertained in the absence of any provisions under the Act or the statute, therefore, the impugned order dated 3.7.2009 is wholly without jurisdiction and thus liable to be set aside. He has further argued that the petitioner

was not impleaded as party in the appeal wherein the order/letter dated 17.6.2009 passed by the Director, Urban Local Bodies, Haryana has been set aside, which was in turn initially passed on the representation made by the petitioner, therefore, the petitioner was a necessary party and hence the impugned order dated 3.7.2009 (Annexure P.12) is violative of principles of natural justice as well, since the law is well settled that no one should be condemned unheard. It was further contended that in the impugned order in appeal no opportunity whatsoever to explain/defend has been granted as the same was disposed of without notice to even the official respondents (who have also filed writ petition before this Court challenging orders of the learned Election Tribunal and the District Judge) and on the very first date of hearing itself without the appeal being numbered.

17. Per contra, learned counsel for respondent No.6 has, by referring the provisions of Sections 18, 20, 21, 22, 22A, 25, 28, 35, 50, 253 and 273 (4) of 1973 Act, argued with vehemence that respondent No.6 being the Vice President and in view of various provisions of 1973 Act read with Rules and byelaws framed thereunder in the absence of President, he i.e Vice President is otherwise entitled to act as President of the Municipal Council, M.C, Panchkula and, therefore, no significance should be attached to the passing of the impugned order. He further argued that the impugned order dated 3.7.2009 (Annexure P.12) was also placed on record and challenged by way of filing Civil Misc.No.11109 of 2009 in CWP No.9227 of 2009 filed by the present petitioner wherein a challenge has been made to the order passed by the learned Tribunal setting aside his election and the appellate order passed by the District Judge confirming the findings of the learned Tribunal. It was, thus, contended that the present writ petition being a second writ petition challenging order dated 3.7.2009 is not liable to be entertained.

18. In response to the pleaded case but not argued and stressed that the petitioner is entitled to continue as President of the M.C, Panchkula despite his elections having been set aside by the Election Tribunal in view of the fact that the proceedings of the Election Tribunal are in the nature of an inquiry, which are forwarded to the State Government and further in the absence of any notifications issued by the State Government denotifying the election of the petitioner as President of M.C, Panchkula, learned counsel also contended that there is no need to denotify the name of the petitioner as President of M.C, Panchkula on account of the fact that his election has already been declared as void and set aside by two courts below and the provisions of Section 24 of 1973 Act are only meant for notifying the elected President and not to denotify the person, whose election has been set aside.

19. Learned counsel further argued that the term "Senior Vice President" contained in Byelaw 36 of 1981 Byelaws, which office/post existed in the various municipalities in the State prior to 1994, be read down to mean and be read as "Vice President" to give full effect to the provisions of the Act.

20. We have thoughtfully considered the arguments addressed by the learned senior counsel and also perused the original record, which has been produced in the Court by the official respondents.

21. The short issue for determination in this case is whether respondent No.2 Financial Commissioner has the jurisdiction to entertain the appeal filed by respondent No.6 and pass the impugned order dated 3.7.2009 (P.12) under the scheme and provisions of 1973 Act read with Rules and Regulations.

22. In order to appreciate the matter in controversy, it is necessary to first examine Section 253 of 1973 Act and Byelaw 36 of 1981 Byelaws, which read as under :

" 253. General powers of State Government over officers :

Notwithstanding anything in this Act, the State Government shall have the power of reversing or modifying any order of any officer of the State Government passed or purporting to have been passed under this Act, if it considers it to be not in accordance with the said Act or the rules or to be for any reason inexpedient, and generally for carrying out the purpose of this Act the State Government shall exercise over its officers all powers of superintendence, direction and control."

"36. Powers of VicePresident) [Section 31(f)] In the absence of the president the senior vice president shall perform all the duties of the president and shall exercise the same powers."

23. A bare perusal of provisions of Section 253 reproduced hereinabove reveals that the State Government has been vested with the general powers of reversing or modifying any order of any officer of the State Government passed or purporting to have been passed under this Act, if the State Government feels that the same is not in accordance with the Act or the Rules or to be for any reason inexpedient. It further envisages that generally for carrying purposes of this Act, the State Government shall exercise over its officers all powers of superintendence, direction and control. Further Sub clause (12B) of Section 2 of 1973 Act defines the phrase "State Government", which reads as under :

"State Government means Government of State of Haryana".

24. The stand of the respondents that the impugned order dated 3.7.2009 (Annexure P.12) passed in appeal has been passed in exercise of the powers under Section 253 cannot be countenanced as Section 253 provides for conferring of general powers with the State Government and respondent No.2 Financial Commissioner cannot be termed as the State Government until and unless he is so authorized under the Rules of Business of the Government of Haryana, 1977. Under the Rules of Business of the Government of Haryana, 1977, it is the Minister incharge, who has the general powers as the State Government and not the Financial Commissioner. Still further, it is lucidly clear that this Section does not provide for the remedy of appeal/Appellate Jurisdiction as it only vests the general

powers of superintendence, direction and control with the State Government. The Governor of Haryana has in exercise of its powers under clause 2 & 3 of Article 166 of the Constitution of India framed rules of Business of the Government of Haryana 1977 and Rule 18 of the same provides as under:

"18. Except as otherwise provided by any other rule, cases shall ordinarily be disposed of by or under the authority of the Minister in charge who may, by means of standing orders, give such directions as he thinks fit for the disposal of cases in the Department. Copies of such standing orders shall be sent to the Chief Minister and the Governor."

25. During the course of hearing, counsel for respondent No.6 tried to justify and sustain the impugned order dated 3.7.2009 by placing reliance on clause 2 of Schedule B of the Standing orders dated 2.3.2008 issued under Rule 18 & 19 of the Rules of Business of Government of Haryana 1977, which was produced at the time of hearing. A perusal of standing order dated 2.3.2008 reveals that Urban Local Bodies Minister, Haryana has issued orders delegating certain powers, relevant part of which reads as under:

"HARYANA GOVERNMENT

URBAN LOCAL BODIES DEPARTMENT

STANDING ORDERS

In pursuance of the provisions of rule 18 and 19 of the Rules of Business of the Government of Haryana, 1977, I hereby order that all cases pertaining to the Urban Local Bodies, Department, Municipal Corporation, Faridabad, Kurukshetra Development Board, Shree Mata Mansa Devi Board Shree Sitla Mata Shrine Board, Gurgaon and cases relating to take over of religious places under the Administrative control of FCULB is mentioned in Annexure "A" shall be submitted to me routed through Parliamentary Secretary for final orders.

1. The cases mentioned in Annexure B.C.D & E shall be disposed of by the FCULB/CLUB/SSULB/JJULB/OSD (R)/USULB & Supdt/Dy. Supdt respectively at their level.

2 to 5. xx xx

Dated Chandigarh A.C, CHAUDHARY

the Urban Local Bodies Minister, Haryana

No. 25/1/964CI Dated, Chandigarh, the 2.3.2008

xx xxx

xx xx

SCHEDULE "A"

List of cases routed through Parliamentary Secretary to the Minister in Charge Urban Local Bodies Department, for final order

LEGISLATIVE MATTERS

xxx xxx xxx xxxx

1 TO 6. xxx xxx

II ADMINISTRATIVE MATTERS (PERSONNEL)

1 TO 13. xxx xxx

III (FINANCIAL MATTERS)

1 TO 11. xxx xxx

GENERAL MATTERS

1 TO 5. xxx xxx

List of cases routed through parliamentary Secretary to Minister in Charge for submission to Chief Minister/Governor.

1 to 11. xxx xxx

SCHEDULE "B"

List of cases to be disposed of by the Financial Commissioner & Principal Secy Urban Local Bodies/CLUB

ADMINISTRATIVE MATTERS

1. xxx xxx xx

2. All statutory appeals/revisions which lie to Govt. than those mentioned at Sr. No.28 of Schedule "C" of this standing order.

3 to 6. xx xxx

FINANCIAL MATTERS

1 TO 4 xxx xxx

GENERAL MATTER

1 TO 10. xxx xxx

SCHEDULE C

List of cases to be disposed of by SSULB/Joint Secy/Dy. Secy.

1 to 27. xxx xxx

28. The appeal cases to be heard on behalf of the Govt other than those which are statutory to be heard by the secretary.

29 to 37. xx xxx

SCHEDULED

xxx xxxxx

1 to 4. xx xxx"

26. A perusal of the above extracted standing order reveals that clause 2 of Schedule "B" on which reliance has been placed, envisages that all statutory appeals/revisions, which lie to the Government can be disposed by the Financial Commissioner and Principal Secretary/Commissioner Urban Local Bodies whereas Item No. 28 of Schedule "C" empowers the Special Secretary/Joint Secy/Deputy Secy i.e lower/higher authority to hear appeals cases on behalf of the Government other than which are statutory.

27. In the instant case, no appeal against the order dated 17.6.2009 (Annexure P.9) passed by the Director, Urban Local Bodies, Haryana is maintainable under the provisions of Section 253 of the 1973 Act. Assuming the appeal was non statutory and maintainable, even then the same could be disposed of by the Special Secretary/Joint Secretary/Deputy Secretary i.e lower authorities as per clause No. 28 of Schedule "C" reproduced hereinabove. Therefore, the impugned order dated 3.7.2009 entertaining an appeal by the Financial Commissioner and Principal Secretary against order dated 17.6.2009 (Annexure P.9) is wholly without jurisdiction, which can neither be conferred merely by the presentation of appeal nor even with the consent of the parties or even by an order of the Court. In this regard, reliance is placed on para 21 of a judgment of Hon"ble the Supreme Court reported as Rajasthan State Road Transport Corporation and others v. Zakir Hussain, 2005(4) SCT 107 : (2005)7 SCC 447. Relevant para 21 of the aforesaid judgment is reproduced hereunder :

"21. It is a wellsettled principle of law as laid down by this Court that if the court has no jurisdiction, the jurisdiction cannot be conferred by any order of court. This Court in the case of A.R. Antulay v. R.S. Nayak¹¹, AIR paras 40 to 42 wherein it is, inter alia, held and observed as under : (SCC pp. 65051, paras 3840)

"38[40]. ... This Court, by its directions could not confer jurisdiction on the High Court of Bombay to try any case which it did not possess such jurisdiction....

39[41]. ... The power to create or enlarge jurisdiction is legislative in character.... Parliament alone can do it by law and no court, whether superior or inferior or both combined can enlarge the jurisdiction of a court or divest a person of his rights of revision and appeal. ...

40[42]. ... But the superior court can always correct its own error brought to its notice either by way of petition or ex debito justitiae. See Rubinstein's Jurisdiction and Illegality."

28. With regard to the other contention of the learned counsel for the respondents that the impugned order dated 3.7.2009 was also challenged in CWP No. 9227 of 2009 filed by the petitioner and, therefore, instant petition is not maintainable, the petitioner has, by way of filing, C.M. No. 13996 of 2009 in the present case, placed on record a copy of C.M. No. 11109 of 2009 moved in CWP No.9227 of 2009 as Annexure P.14, which has been taken on record. A perusal of Annexure P.14 reveals that after passing of the order dated 3.7.2009 impugned herein, an application dated 8.7.2009 bearing C.M. No. 11109 of 2009 had been moved by the petitioners in CWP No. 9227 of 2009 praying for preponement of hearing of the case and stay of the operation of the orders passed by the learned Tribunal and the District Judge Panchkula respectively. Thus, it is clear that the order dated 3.7.2009 was only placed on record with a revival of the prayer for stay of operation of order dated 4.5.2009 and 8.6.2009. In the present writ petition, since respondent No.6 Vice President has been permitted to perform and exercise all the duties and powers of the President of M.C, Panchkula vide impugned order dated 3.7.2009, hence it has given a rise to the fresh cause of action in favour of the petitioner and the petitioner has rightly filed the present writ petition and therefore, it cannot be accepted that the present writ petition is not maintainable.

29. It is apparent from the reading of letter dated 17.6.2009 (Annexure P.9) issued by respondent No.3 Director, Urban Local Bodies to respondent No.4 Deputy Commissioner, Panchkula that after examining the facts with regard to the matter being subjudice before the Hon"ble High Court in the pending writ petition wherein notice regarding stay had been issued, the matter was ordered to be put on hold till the receipt of the advice of the Advocate General, Haryana. Thereafter, respondent No.4 exercising his powers under Section 247 of 1973 Act had passed a statutory order dated 26.6.2009 whereby the method/manner of payment of electricity bills, bills of diesel/petrol, payment of salary of officers/officials etc and for all the development works was provided. It cannot be disputed that there is no appeal provided for any order passed by the Deputy Commissioner in exercise of his emergent powers under Section 247 of 1973 Act. It is also not in dispute that factually no challenge was made to order dated 26.6.2009 (Annexure P.10). We find that however, the Financial Commissioner while passing the impugned order dated 3.7.2009 has totally negated the effect/impact of the statutory order passed by the competent authority dated 26.6.2009 (Annexure P.10).

30. It is also not in dispute that as per the wording of Byelaw 36 of 1981 Byelaws, in the absence of the President, it is the Senior Vice President, who shall perform all the duties and exercise the powers of the President. It is also an admitted case of the parties that respondent No. 6 Mr. B.B. Singal is the Vice President of M.C.

Panchkula, who was elected as such along with the petitioner as President in the election held on 14.5.2008 involving an identical election process. It is a different matter that the election of the Vice President was not challenged. We are unable to fathom as to how the Vice President could be directed to exercise the powers in terms of Byelaw 36 of 1981 Byelaws, which permits conferring such power only on a Senior Vice President.

31. From the above discussion, no doubt is left that the impugned order dated 3.7.2009 (Annexure P.12) has been passed by respondent No.2 without jurisdiction and by exercise of powers not vested in him. Thus it can safely be concluded that the aforesaid order is "Coram nonjudice" and liable to be set aside..

32. We further find that assuming the appeal was maintainable, it is very strange that the petitioner was not impleaded as party as the appeal was directed against order dated 17.6.2009, which was passed by the Director, Urban Local Bodies, Haryana on the representation filed by the petitioner. Still further, the appeal was entertained without it being numbered and without issuing any notice to even official respondents. It appears to have been disposed of on the first hearing by respondent No. 2 Financial Commissioner itself as no next date has been fixed. A perusal of the record further reveals that one Mahinder Singh on 2.7.2009 has put up the appeal for consideration and forwarded the same to one Bansi Ram, who has signed on 3.7.2009. It further appears that the appeal has been received in the office of Under Secretary, Department of Urban Local Bodies on 6.7.2009 vide dairy No. 597 and Savita Malik, HCS, Under Secretary has recorded as under :

"May like to fix the date and time in the above mentioned case"

The Under Secretary forwarded the case to F.C, Urban Local Bodies. Thereafter, a note has been appended by Vinod Kumar, Private Secretary to Financial Commissioner, Urban Local Bodies on 8.7.2009 that "worthy FCULP" has already passed orders in the given case".

It is well settled principle that no person should be condemned unheard and we find that the impugned order dated 3.7.2009 is also against the bare principles of natural justice.

33. It is thus evident that respondent No.2 by/while passing the impugned order dated 3.7.2009 has grossly misused and abused his position by assuming the powers not vested in him and, we strongly deprecate the course adopted by the Financial Commissioner.

34. In view of the above discussion, present petition is allowed and the impugned order dated 3.7.2009 is set aside.