

(2012) 07 P&H CK 0259

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 22496 of 2011

Harmesh Rana

APPELLANT

Vs

State of Punjab and
Others

RESPONDENT

Date of Decision: July 16, 2012

Acts Referred:

- Haryana Municipal Act, 1973 - Section 21, 21(3)
- Punjab Agricultural Produce Markets Act, 1961 - Section 16(2), 18, 27(1)(b)
- Punjab Municipal Act, 1999 - Section 10, 12, 12(3)(i), 12(3)(ii), 22

Hon'ble Judges: Ranjit Singh, J

Bench: Single Bench

Advocate: H.S. Sethi, for the Appellant; Yatinder Sharma, DAG, Punjab, for the State, Mr. Jaspreet Singh, Advocate and Mr. J.S. Yadav, Advocate, For Respondent Nos. 5 to 13, for the Respondent

Final Decision: Allowed

Judgement

Ranjit Singh, J.

How many would constitute two-third majority if the Municipal Council consists of 14 members in all, one of which is dead is the short and crisp question arising for consideration in this case. Incidental issue would also be to see what will be the position when exact two-third comes more than the whole number by fraction in which case whether it has to be rounded off to lower or higher whole number. Both the questions as marshaled above are apparently covered by earlier precedents but still the issue had unnecessarily been debated by the counsel appearing for the respondents, who were movers of this 'No Confidence Motion'.

2. The issue has been raised by the petitioner, who is President of Municipal Council, Kuraril and has faced a no confidence motion, which, as per the stand of the respondents is stated to have been carried by two-third majority of the members

constituting the Municipal Council.

3. Eight members (respondent Nos.5 to 13) moved a resolution for no confidence against the petitioner, who was the President of the Council u/s 22 of the Punjab Municipal Act (for short "the Act"). As per this section, President or Vice President may be removed from the office by the State Government on the ground of abuse of his power or of habitual failure to perform his duty or pursuance of a resolution requesting his removal passed by two-third of the members of the committee. As averred in the petition, there are 13 elected members of Municipal Council, Kurali, besides the Member Legislative Assembly (MLA) being the ex-officio member of this Council. Thus, as per the petitioner, Municipal Council, Kurali comprised of 14 members. According to him, two-third majority of 14 members would come to 9.33 (numerically) and, thus, 10 members would be the requirement to pass a "no confidence motion" to constitute two-third of the members constituting this Council. The impugned resolution, in fact, has been passed by 9 members, 8 of which are elected and 9th one is the MLA. 9 members have passed this resolution unanimously but according to the petitioner, this will not constitute two-third majority as required u/s 22 of the Act. The petitioner thereafter was not being allowed to work as a President on this ground. It was also made out that the petitioner would be under suspension in terms of Section 22 of the Act, which indeed is so provided by way of proviso contained in the Section, which is as under: Provided that if a resolution requesting the removal of the President of the Vice-President is passed by two third 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.

4. Petitioner would term that this resolution having not been passed by two-third members of the total number of members is no resolution in the eyes of law and, thus, the action of the official respondents in not permitting the petitioner to work as President to be totally arbitrary and illegal. The petitioner accordingly has approached this court to challenge this resolution through the present petition.

5. Election to the Municipal Council, Kurali were held in May 2008. The petitioner was elected as Municipal Council from Ward No. 4. As per Section 12(3)(i) of the Act, Municipal Council, Kurali consisted of 13 members, which were directly elected. In terms of Section 12(3)(ii) of the Act, local MLA is to be taken as ex-officio member and, thus, the Municipal Council consisted of 14 members. On 26.7.2008, petitioner was duly elected as President of the Municipal Council and since then he has been working as such. The tenure of the President under the Act is five years. In February, 2011, one member named, Jagir Singh elected from Ward No. 8, died. No by-election in this ward has been held so far. On 1.11.2011, 8 members of the Council gave a requisition for calling a meeting for consideration of no confidence motion against the petitioner.

6. Once such requisition is received, then the meeting is to be fixed within next 14 days and is to be held within a period of 30 days. The meeting was accordingly fixed on 28.11.2011. As per the petitioner, 8 members did not have the requisite strength to carry no confidence motion against the petitioner. Ten members came present in this meeting on 28.11.2011. MLA also came present. Three members did not come present. No confidence motion was supported by 8 elected members and the MLA. The petitioner objected to the same and accordingly has urged that the resolution could not be treated as passed by two-third majority, which, as per him would be 10 members. Still, the members being from a ruling party of the State said that the resolution stood passed. No resolution otherwise was written and no signatures of the petitioner were obtained. The objection raised by the petitioner was not noted.

7. The petitioner would also point out that the resolution, which has been sent to the Director, Local Government, does not make a mention that it was passed by two-third majority. The Advisor has only said that the resolution is self-explanatory and forwarded the same to the Director. Even prior to the start of this meeting, the petitioner had sent a representation to the Executive Officer that 10 members would constitute the majority as per Section 22 of the Act and in this regard has made reference to decision passed by Division Bench of this Court. As per the petitioner, the Executive Officer did not receive the said representation and the same was then forwarded to the Principal Secretary, Local government on 28.11.2011 itself. Left with no alternative, the petitioner has invoked the jurisdiction of this Court and has placed reliance on a Division Bench judgment passed by this court, copy of which is annexed with the petition.

8. While issuing notice of motion, this Court stayed the operation of the impugned resolution till further orders. Reply has been filed by respondent No. 4 and separate combined reply on behalf of respondent Nos.5 to 13 has also been filed. Respondent No. 4 by way of preliminary objection has challenged the maintainability of the writ petition on the ground that the impugned resolution has been passed by two-third majority in terms of Section 22 of the Act. As per respondent No. 4, the resolution having been passed by 9 members, will constitute two-third majority of 14, which has to be counted as 9, though the actual two-third may work out to be 9.33. The fraction being less than .5 is to be rounded off as 9 and cannot be taken as 10 as per respondent No. 4.

9. In contrast to above stand of respondent No. 4, respondent Nos.5 to 13 have maintained that strength of the Council is 13 as one member is dead and, thus, would say that no confidence motion has been rightly carried by two-third majority and is legal and proper. Their plea is that Section 22 of the Act does not require that the resolution is to be passed by two-third majority of the sanctioned strength but it simply states that two-third of the members of the committee and as such two-third of 13 members would be 9 and this was the number of the members, who have passed this resolution.

10. As already noticed, the issue on both counts as raised before me is covered by the judgment of this Court. The stand of private respondents that two-third is to be counted out of 13 members even is not supported by respondent No. 4, i.e., the Municipal Council. To my mind, counsel appearing for respondent Nos.5 to 13 has raised this argument despite being fully aware of the precedents, which are annexed with the petition and of which he could not have been ignorant. In CWP No. 16877 of 1999 titled Chaman Lal Versus State of Punjab, decided on 12.7.2000, this was the precise question, which arose for determination before the Division Bench of this Court and was answered against the line of submissions pursued by the learned counsel appearing for private respondent Nos.5 to 13. The submission in this case by the counsel appearing for the petitioner was that expression "two-third members of the committee" appearing in Section 22 of the Act referred to existing members of the Council and, thus, he had justified the resolution passed in the said case by 6 members out of 9. Upon due consideration of this submission and after referring number of precedents, the Division Bench culled out the question which it was called upon to decide. This can be so noticed from the following part of the judgment:

In the light of above analysis of the relevant provisions, we have to decide whether the expression two-third of the total number of members or only the existing members.

11. After making reference to number of judgments cited before the Division Bench, the Court finally concluded as under:

On the basis of above discussion, we hold that the expression occurring in Section 22 "two-third of the members" of the council takes within its fold the number of elected members determined by the State Government as well as members of the Legislative Assembly who become member of the Municipal Council by virtue of their office and it is not confined to the members who are existing on the date of consideration of no-confidence motion.

Court finally held that resolution passed by 6 out of 11 members could not be treated as validly passed and consequent order passed by the respondents was declared illegal.

12. In fact, exactly identical question in regard to counting of fraction for the purpose of determining two-third number has been considered by another Division Bench of this court in the case of Vijay Kumar Saluja Vs. The Deputy Commissioner, Karnal and others, 1991 PLJ 635. The court while dealing with Section 21(3) of the Haryana Municipal Act has observed that the committee which consisted of 14 members, two-third of which comes 9.33. In this case also, only 9 members were present at the meeting and have supported the motion of no confidence. This figure was found less by .33. Perusing Section 21, the Court opined that the impugned proceedings had not been taken by requisite number of persons. Thus, this was not

found in conformity with the provisions of Section 21(3) of the Act.

13. Another Division Bench of this Court in *Jardar Khan Vs. State of Haryana and others*, AIR 1998 Punjab and Haryana 249 reached a similar conclusion so far as counting of fraction to determine two-third majority is concerned. Here 5 members of the Gram Panchayat having 8 members in all had passed a no confidence motion. The court observed that two-third of 8 is more than 5 by a fraction and that the said fraction cannot be ignored and has to be treated as a whole. In this case also, the resolution allegedly carried by 5 members was said to have not been validly passed by the requisite majority. The relevant observations of this court in this regard are as under:

Five Panches out of eight do not constitute two third majority. Two third of eight would be more than five. The fraction cannot be ignored and the same has to be treated as one whole. The provisions of Section 10 of the Act which provide for the removal of an Up-Sarpanch in the very nature of things have to be interpreted very strictly. This being so, at least six members were required to pass a valid resolution to remove an Up-Sarpanch. Since five members have passed the resolution it cannot be said to have been passed within the requisite majority of not less than two-thirds of the total members of the Gram Panchayat and in this view of the matter also, the resolution cannot be legally sustained.

14. Long ago, in the year 1973, the question regarding computation of fraction to decide two-third majority of total members was considered by single bench of this court in *Jai Chand Vs. The Haryana State Agricultural Marketing Board and others*, 1973 P.L.J. 704. Section 16(2) of the Punjab Agricultural Produce Markets Act required that not less than two-third of the whole number of members must vote before a Chairman can be removed. The court held this section to be mandatory and that the number of votes must not be less than two-thirds in any event but it could be more. Observing that the requirement of two-third majority in the section is a condition precedent which must be fulfilled before the member can derive power or jurisdiction to remove a Chairman from office. The court held that 11 members in the committee consisting of 17 members did not constitute the requisite two-third majority. In this case also, two-third was fraction more than 11 members of total number being 17 and was held not constituted two-third majority.

15. In fact, the learned Single Judge in this case had also found it unnecessary to examine the rival arguments as on principle, this issue of counting of fraction was covered by a judgment delivered of this court. A Division Bench of this Court in *Ram Narain Sharma etc. Vs. State of Haryana & others*, 1973 PLJ 550 while construing the provision regarding quorum in rule 4 of the Punjab Panchayat Samities (Co-option of Members) Rules dealt with the question of fraction and observed as under:-

It was urged that though the words used in sub-rule (1) and sub-rule(4) are slightly different and the normal practice of drafting is that if the same idea is to be

conveyed, then the same words should be used, yet, the very idea conveyed by the word "quorum" is the "minimum number" which must be present before the members can transact any business. Therefore, when three-fourth of the total number of members is the prescribed quorum, that obviously means that three-fourth is the minimum number. It can be more but it cannot be less and again when there is no such explanation, ordinary meaning has to be attached to the word "quorum", the basic idea of which is that the number prescribed is the minimum for legally transacting any business at a meeting. When such a number comes to 14 $\frac{1}{4}$, there is no justification for holding that the intention of the Legislature was to fix the number at 14 unless that intention had been absolutely clear.

16. Reference here can also be made to a judgment of Calcutta High Court in the case of Shyamapada Ganguly Vs. Abani Mukharjee, AIR 1951 Calcutta 420, where the question of fraction apparently has been dealt by the court while dealing with the provisions of Bengal Municipal Act and which precedent had generally been referred to and followed in all the decisions referred to above. The Municipality in this case consisted of 17 persons and the relevant section provided that elected Chairman could be removed by a resolution passed by not less than two-thirds of the whole number of Commissioners. Repelling the identical argument, as is being raised, the court observed as under:

The next question is as to whether the voting by 11 Commissioners was sufficient compliance with the requirements of section 61(2). In my view the answer must be in the negative. The section requires that not less a Chairman or a Vice-Chairman can be removed. The section is mandatory. The number of votes must not be less than two-thirds in any event but it may be more. Two-thirds of 17 is 11 $\frac{1}{3}$. Mr. Sanyal's argument is that the fraction should be ignored and the next whole number below it should be accepted as the number. Mr. Sanyal argued that as compliance is impossible in the nature of things and fraction of a person capable of voting is an impossibility the compliance should be dispensed with. In my view, however, the requirement of two-third majority in section 61(2) is a condition precedent which must be fulfilled before the Commissioners, can drive power or jurisdiction to remove a Chairman or a Vice-Chairman from office. I am clearly of the opinion that voting by 11 Commissioners was not sufficient compliance with the sanction and the resolution for removal of the opposite party was ineffective and must be deemed to have been lost.

17. Despite these binding precedents, which are plenty in number, counsel for respondent Nos.5 to 13 still made an attempt to distinguish the judgment. Of course he was totally unsuccessful and rather off the track on the issue. His submission that two-third is to be counted of the existing number of members is definitely against the law laid down by Division Bench of this court in Chaman Lal's case (supra). In this regard, other precedents which were noticed by the Division Bench can be

referred, which, the counsel may carry note for his future reference.

18. Division Bench of this Court in *Ranjit Singh Vs. State of Punjab*, (1964) 66 P.L.R. 621 while interpreting expression "total number of members" held that the expression so used in Section 18 of the 1961 Act refers to all members of the Samiti, including associate members and ex-officio members. In this regard, the court has gone to the extent of holding that ex-officio members may not be entitled to vote in the meeting but they are entitled to be taken into account in determining two-third strength necessary to pass a resolution for removing a member.

19. In *Samiruddin Ahmed Versus S.D.O. Mangaldoi and others*, AIR 1971 Assam & Nagaland 163, Division Bench again considered the expression "at least a minimum of two-thirds of total number of members" held that expression cannot be equated with two-third of the existing members functioning at the time of passing of the resolution. This was also a case where one member had died and another had vacated the seat on account of election to Panchayat. No confidence motion was passed by 8 members who were present in the meeting. While rejecting the argument that expression used in Section 27(1)(b) means the two-thirds of total number of existing members, the Court held as under:

We are unable to accept the submission of the respondents. There is no warrant for adding a word "existing" in Section 27(1)(b) to qualify the words "number of members". Under this section a President immediately ceases to be a President on passing of a motion of no-confidence against him by three-fifty majority of the minimum requisite members present. Such a provision under the law resulting in deprivation of an office has to be strictly construed as it affects the right of an elected office bearer to continue for the normal span of this office.

20. A Single judge of Karnataka High Court in *S. Shivashankarappa and others Vs. The Davangere City Municipality, Davangere and others*, AIR 1978 Karnataka 140 also took a similar view in this regard as can be noted from the following view expressed by the court:-

The Legislature has thought fit to provide security of tenure in the interest of ensuring the proper discharge of duties and responsibilities of President or Vice-President as the case may be, without the fear of being removed from the respective offices by the change of loyalties of a few municipal councilors. It is with this object in view that the majority of two-thirds of the total number of councilors has been prescribed for the validity of a resolution expressing want of confidence against a President or a Vice-President, as the case may be, under S.42(9) of the Act. Therefore, this provision has to be construed strictly. When it is so construed, the conclusion is inevitable that the requisite majority of two-thirds of the councilors for the purpose of sub-sec. (9) of S.42 of the Act, has to be calculated on the basis of the "total number of councilors" and not on the basis of the "number of existing councilors."

21. Even this Court in *Pritam Singh and others Vs. State of Punjab and others*, AIR 1995 Punjab and Haryana 341, relied upon these decisions of the Karnataka and Assam High Courts to opine that two-third members has to be calculated on the basis of all members including associate members and not only the members who have a right to vote. The attempt by the counsel appearing in this case to distinguish the decision of Assam and Karnataka High Court, referred to above, was also not accepted by Single Bench of this court as can be noted from the following:-

The Legislature in its wisdom has provided for removal of President or Vice-President if the resolution requesting his removal is passed by two-third of members of the committee. The constitution of the committee is prescribed in Section 12 of the Act which not only includes elected and co-opted members but also associate members. The expression used both in Section 22 and its proviso is "two-third of members of the committee". It has not excluded associate members. If the intention of the Legislature was to exclude the associate members, it would have used the words "two-third of members of the committee other than associate members.". It is elementary that the primary duty of the court is to give effect to the intention of Legislature as expression in the words used by it and no outside consideration can be called in aid to find out that intention.

22. In view of this settled position of law, there was hardly any need to debate the issue which has unnecessarily been so raised by the counsel appearing for respondent Nos.5 to 13. It is required to be realized even by the respondent-State and the Municipal Council that such issue ought not to be raised putting the elected representative to unnecessary harassment, which finally leads to wasting the time of the court, which has to deal with such issues, which at the first place, should not arise in view of the settled position of law. The writ petition is allowed. The impugned resolution (Annexure P-3) is set-aside and quashed being illegal. Since the petitioner has unnecessarily been made to make the present approach, I would allow this writ petition with costs of Rs. 25,000/-, to be recovered from respondent No. 4 and respondent Nos.5 to 13 collectively.