

*Before Satish Kumar Mittal and Inderjit Singh, JJ.*

**PREET MOHINDER SINGH AND OTHERS—Appellants**

*versus*

**STATE OF PUNJAB AND OTHERS—Respondents**

**LPA No. 1260 of 2012**

September 3, 2012

*Letters Patent, 1919 - Cl. X - Punjab Municipal Act, 1911 - S. 22 - Constitution of India, 1950 - Art. 94(c) & 179(c) - No confidence motion - Two-thirds members of the Committee/Council - President of the Municipal Council consisting of 14 members removed by resolution passing no confidence motion - Resolution passed by 9 members - One seat was lying vacant due to death of one of its elected members - Two-third is to be counted on basis of total members of Committee/Council i.e. composition of the Committee/Council - Cannot be taken as two-third of existing members of the Committee/Council - If one of the seat is vacant due to any reason, the said factor cannot be taken into consideration while calculating the figure of two-third - Expression "two-thirds of the members" means number of elected members determined by the State Government and one ex-officio member not confined to the members who were existing on the date of consideration of no confidence motion - Setting aside of the impugned resolution by the writ Court upheld.*

*Held*, that as far as the requirement of passing of resolution for removal of the President by two-third of the members of the Committee/Council is concerned, that two-third is to be counted on the basis of total members of the Committee/Council, i.e. composition of the Committee/Council. It cannot be taken as the two-third of the existing members of the Committee/Council. If that would have been the intention of the Legislation, then it should have been clearly mentioned as "two-third of the existing members of the Committee" or "two-third of all the then members of the Committee". The expression "two-thirds of the members of the committee" is clear. It means total number of elected members, as provided in clause

(i) of Section 12 (3) of the Act and the ex-officio member, as provided in clause (ii) of Section 12 (3) of the Act. If one of the seat is vacant due to any reason, it is of no consequence and while calculating the figure of two-third, the said factor cannot be taken into consideration. Such exclusion of member will go contrary to the plain meaning of Section 22 of the Act.

(Para 11)

*Further held*, that reliance made by learned counsel for the appellants on certain debates of the Constitutional Assembly with regard to Articles 94 (c) and 179 (c) of the Constitution of India, providing that Speaker or the Deputy Speaker of the House of the People and of an Assembly may be removed from his office by a resolution of the House and the Assembly passed by a majority of all the then members of the House and the Assembly, as the case may be, is of no help, because in both the Articles, the expression used is "by a majority of all the then members", but here in Section 22 of the Act, the expression used is "by two-thirds of the members". The words 'the then members' have changed the entire dimension. The words 'the then members' mean the existing members of the House of the People or the Assembly, at the relevant time. But such words have not been used in Section 22 of the Act. Therefore, the contention of learned counsel for the appellants that the vacant seat of the deceased member of the Council is to be excluded, cannot be accepted. Thus, in our view, the expression "two-thirds of the members" appearing in Section 22 of the Act, means the number of elected members determined by the State Government and one ex-officio member, and it is not confined to the members who were existing on the date of consideration of no confidence motion.

(Para 12)

Agam Jund Mullanpur, Advocate, *for the appellants*.

**SATISH KUMAR MITTAL, J.**

(1) The appellants, who are eight elected members of Municipal Council, Kurali, District Mohali, and moved no confidence motion for removal against respondent No.5 Harmesh Rana, President of the Municipal Council, Kurali, have filed the instant Letters Patent Appeal against the order

(Satish Kumar Mittal, J.)

dated July 16, 2012, passed by the learned Single Judge, whereby Civil Writ Petition No. 22496 of 2011, filed by respondent No.5, has been allowed and the resolution dated 28.11.2011 (Annexure P-3) passing the no confidence motion against him has been set aside, being illegal, as it was not passed by two-third of the members of the Municipal Council, as required by Section 22 of the Punjab Municipal Act, 1911 (hereinafter referred to as 'the Act').

(2) Undisputedly, Municipal Council, Kurali, consists of 14 members, i.e. 13 elected members and 1 ex-officio member being Member of the Legislative Assembly of the area. On 26.7.2008, respondent No.5 was duly elected as President of the Municipal Council. As per Section 21 of the Act, tenure of the President is 5 years, until and unless he is removed from the office in accordance with the provision contained in Section 22 of the Act. Section 22 provides that whenever a President vacates his seat or tenders his resignation in writing to the Committee/Council, he shall be deemed to have vacated his office. This provision further provides that the President may be removed from his office by the State Government on the ground of abuse of his powers or of habitual failure to perform his duties. He can also be removed in pursuance of a resolution requesting his removal passed by two-third of the members of the Committee/Council.

(3) In the present case, the appellants moved a requisition for calling a meeting to consider no confidence motion against respondent No.5, the President, as he was not discharging his duties in the interest of the Municipal Council. The meeting was called on 28.11.2011 and in that meeting, nine members, including eight elected members and one ex-officio member, supported the no confidence motion against respondent No.5 and the resolution for his removal (Annexure P-3) was passed. After passing of the said resolution, in view of the proviso to Section 22 of the Act, respondent No.5 was not allowed to function as President of the Council, as he was deemed to be placed under suspension, and the resolution was sent to the Government for further action.

(4) Respondent No.5 filed the writ petition for quashing of the said resolution on the ground that it was not passed by two-third of the members of the Municipal Council, which is a mandatory requirement for passing such resolution under Section 22 of the Act. According to the learned counsel,

two-third of the members of the Municipal Council comes to ten, whereas the resolution was passed by nine members. The appellants contested the said writ petition on two grounds, firstly that when the resolution was moved and passed in the meeting on 28.11.2011, one seat of the Municipal Council was lying vacant due to the death of one of its elected members. Therefore, the two-third of the members of the Municipal Council is to be calculated out of 13 members, i.e. 12 elected members and 1 ex-officio member, which comes out to be less than 9. Thus, the resolution was rightly passed. Secondly, it was contended that even if it is taken that two-third of the members of the Municipal Council is to be calculated on the basis of strength of the Municipal Council, then it works out to be 9.33 and fraction of .33 being less than .50 is to be ignored and cannot be rounded off and taken as one whole. Therefore, the resolution supported by 9 members has to be considered as passed by two-third of the members of the Municipal Council.

(5) The learned Single Judge, after considering both these contentions raised by learned counsel for the appellants, allowed the writ petition and quashed the resolution dated 28.11.2011, being not passed by two-third of the members of the Municipal Council, after observing that both the issues raised by learned counsel for the appellants have already been settled by various precedents of this Court and the other High Courts.

(6) We have heard learned counsel for the appellants in detail, and have gone through the impugned order passed by the learned Single Judge. In this case, the following two issues are involved :

(i) Whether the expression 'two-thirds members of the committee' appearing in Section 22 of the Act refers to the existing members of the Committee/Council, or the total composition of the Committee/Council ?

(ii) While calculating two-third of the members of the Committee/Council, whether the fraction being less than .50 is to be ignored or it is to be rounded off and treated as one whole ?

The learned Single Judge has decided both these issues against the appellants.

(7) Learned counsel for the appellants does not press the second issue, in view of the law, laid down by this Court in *Ram Narain Sharma and another versus The State of Haryana and others (1)*, *Vijay Kumar Saluja versus The Deputy Commissioner, Karnal and others (2)* and *Jardar Khan versus State of Haryana and others (3)* and a Single Bench decision of this Court in *Jai Chand versus The Haryana State Agricultural Marketing Board (4)*. In *Vijay Kumar Saluja's case* (supra), the identical question came for consideration before this Court. In that case, Municipal Committee, Gharaunda, consisted of 14 members and the resolution of no confidence motion was supported by 9 members. It was held that two-third of the members of the Committee comes to 9.33 and no confidence motion was passed by only 9 members, which was not in conformity with Section 21 (3) of the Haryana Municipal Act, which requires that no confidence motion could be passed by two-third of the members of the Committee.

(8) Learned counsel for the appellants put much emphasis on the first issue. He vehemently argued that the expression 'two-thirds of the members of the committee' contained in Section 22 of the Act must be taken and read as 'two-thirds of the existing members of the committee'. According to him, in the instant case, on the day of passing of no confidence motion, the strength of the members of the Municipal Council was 13, including one ex-officio member, as one elected member had already expired and his seat was lying vacant. Therefore, the two-third of the members of the Municipal Council on that day came to be 8.66. Since no confidence motion was passed by 9 members of the Municipal Council, therefore, it should be treated as valid and proper. Learned counsel referred to Article 94 (c) of the Constitution of India, which provides that Speaker or the Deputy Speaker of the House of the People may be removed from his office by a resolution of the House of the People passed by a majority of **all the then members of the House**. Similarly, he referred to Article 179 (c) of the Constitution of India, which provides that Speaker or the Deputy Speaker of an Assembly may be removed from his office by a resolution of the Assembly passed by a majority of **all the then members of the Assembly**. Further, while referring to certain debates of the Constitutional

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- (1) 1973 PLJ 550
  - (2) 1991 PLJ 635
  - (3) AIR 1998 P&H 249
  - (4) 1973 PLJ 704

Assembly, learned counsel argued that seat of the member, which had become vacant due to some reason at the time of considering the motion of no confidence, cannot be taken into account for calculating two-third of the members of the Committee/Council.

(9) In our opinion, the contention raised by learned counsel for the appellants is not sustainable. This issue is not *res integra*. A Division Bench of this Court in *Chaman Lal v. State of Punjab* (CWP No. 16877 of 1999, decided on 12.7.2000) considered this issue and held that the expression "two-third members of the council" appearing in Section 22 of the Act 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. It is not confined to the members who are existing on the date of consideration of no confidence motion. In that case, there were nine elected members and one ex-officio member of Municipal Council, Sham Chaurasi. Out of nine elected members, one member had died. The motion of no confidence was passed against the President by six members. It was held by the Division Bench of this Court that the resolution of no confidence motion passed by six members, out of ten members, cannot be treated as valid for the purpose of removing the President, as the said number does not constitute two-third members of the Council. A contention was raised that the total number of members of the Council be taken as nine, after excluding the vacant seat of the deceased member, but this contention was not accepted and it was held that the total members of the Council should be taken as constituted under Section 12 of the Act and not by taking the existing members of the Council on the day of passing of no confidence motion. In that case, the Division Bench had taken into consideration the provision of Section 12 of the Act which provides for composition of Municipalities; Section 17 of the Act which provides for filling of casual vacancies of members; Section 22 of the Act; and various other precedents, including a Division Bench decision of this Court in *Ranjit Singh versus State of Punjab* (5), *Samiruddin Ahmed versus S.D.O., Mangaldoi and others* (6),

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(5) 1964 (66) P.L.R 631

(6) AIR 1971 Assam & Nagaland 163

*S. Shivashankarappa and others versus The Davangere City Municipality, Davangere and others (7), Pritam Singh and others versus State of Punjab and others (8) and Rajpal Chhabra versus State of Haryana (9).* The learned Single Judge, while relying upon the said Division Bench decision of this Court, has rejected the contention of the appellants.

(10) Learned counsel for the appellants half heartedly argued that the Division Bench decision of this Court in *Chaman Lal's case* (supra) does not lay down the correct law. After going through the Division Bench decision of this Court and various provisions of the Act as well as the contention raised by learned counsel for the appellants with reference to Articles 94 (c) and 179 (c) of the Constitution of India, we are in agreement with the view taken in the Division Bench decision in *Chaman Lal's case* (supra). In our view, the language of Section 22 of the Act is clear. It provides that a President of the Municipal Committee/Council may be removed from office in pursuance of a resolution passed by two-thirds of the members of the Committee/ Council. The composition of the Committee/ Council has been provided under Section 12 of the Act. Subsection (3) of Section 12 provides that the Municipal Council constituted under subsection (1) shall consist of the following members, namely :-

- (i) such number of elected members as may be determined from time to time by the State Government in accordance with the prescribed principles; and
- (ii) all members of the Legislative Assembly of the State representing constituencies comprising wholly or partly the Municipal area.

(11) Here, in the case of Municipal Council, Kurali, the State Government has determined the number of members of the Council as 14, i.e. 13 elected members and one local MLA. It is true that a seat of the member of the Committee/Council can become vacant due to death, resignation or removal, but as per Section 17 of the Act, the same shall be filled up by way of election. However, in case the remaining period of the Committee/Council is less than six months, in that situation, the vacant seat is not to be filled up by election. But as far as the requirement of passing of resolution for removal of the President by two-third of the members of

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(7) AIR 1978 Karnataka 140

(8) AIR 1995 P&H 341

(9) 1998 (3) PLR 1

the Committee/Council is concerned, that two-third is to be counted on the basis of total members of the Committee/Council, i.e. composition of the Committee/Council. It cannot be taken as the two-third of the existing members of the Committee/Council. If that would have been the intention of the Legislation, then it should have been clearly mentioned as “two-third of the existing members of the Committee” or “two-third of all the then members of the Committee”. The expression “two-thirds of the members of the committee” is clear. It means total number of elected members, as provided in clause (i) of Section 12 (3) of the Act and the ex-officio member, as provided in clause (ii) of Section 12 (3) of the Act. If one of the seat is vacant due to any reason, it is of no consequence and while calculating the figure of two-third, the said factor cannot be taken into consideration. Such exclusion of member will go contrary to the plain meaning of Section 22 of the Act.

(12) Reliance made by learned counsel for the appellants on certain debates of the Constitutional Assembly with regard to Articles 94 (c) and 179 (c) of the Constitution of India, providing that Speaker or the Deputy Speaker of the House of the People and of an Assembly may be removed from his office by a resolution of the House and the Assembly passed by a majority of all the then members of the House and the Assembly, as the case may be, is of no help, because in both the Articles, the expression used is “by a majority of all the then members”, but here in Section 22 of the Act, the expression used is “by two-thirds of the members”. The words ‘the then members’ have changed the entire dimension. The words ‘the then members’ mean the existing members of the House of the People or the Assembly, at the relevant time. But such words have not been used in Section 22 of the Act. Therefore, the contention of learned counsel for the appellants that the vacant seat of the deceased member of the Council is to be excluded, cannot be accepted. Thus, in our view, the expression “two-thirds of the members” appearing in Section 22 of the Act, means the number of elected members determined by the State Government and one ex-officio member, and it is not confined to the members who were existing on the date of consideration of no confidence motion.

(13) In view of the above, we do not find any illegality in the order passed by the learned Single Judge.

(14) No merit. Dismissed.