

(6) The learned counsel for the appellant has further argued that the enquiry conducted on the charge-sheet framed against the plaintiff was not in accordance with the rules of natural justice. The plaintiff was in Saudi Arabia and he was not informed about the enquiry. This contention cannot be accepted in view of the evidence of DW 2 Balbir Singh, Deputy General Manager, Ordnance Cable Factory who conducted the enquiry. As per his evidence, necessary information was sent to the plaintiff on the address given by him in Saudi Arabia. From his evidence nothing was brought out to hold that the enquiry conducted was vitiated.

(7) It has been argued by the learned counsel for the appellant that on account of unavoidable circumstances, the plaintiff was unable to return to India to resume duty after receipt of the telegram cancelling his leave. It was on December 15/16, 1976 that he came to India and later on went to the office to join duty that he was informed about the order terminating his services. It is not for this court to go into these matters to mitigate the final order passed by the Punishing Authority on proof of the misconduct during the enquiry. The finding of the trial court on issue No. 1 is affirmed holding that the order terminating the services of the plaintiff was valid. The finding of the trial court on issue No. 2 is also affirmed that the present suit is barred by time. The plaintiff is not entitled to recover any amount. The finding of the trial Court on issue No. 4 is also affirmed.

(8) For the reasons stated above, this appeal fails and is dismissed with costs.

S.C.K.

Before I. S. Tiwana, A.C.J. & Jawahar Lal Gupta, J.

VIJAY KUMAR SALUJA,—Petitioner.

versus

THE DEPUTY COMMISSIONER, KARNAL AND OTHERS,—  
Respondents.

Civil Writ Petition No. 12066 of 1991.

10th September, 1991.

*Municipal Committee Act,—S. 21(3)—Motion of no-confidence against President—Motion for no-confidence to be carried with support of not less than two-third members of Committee—Committee having 14 members—9 present and supported no-confidence motion—Two-thirds of 14 is 9.33—Imagined proceedings of no-confidence motion not taken by requisite members of persons—Not valid.*

*Held*, that the President shall be deemed to have vacated his office "if the motion is carried with the support of not less than two-thirds of the members of the Committee....." (Emphasis supplied). Admittedly, the Committee has 14 members. Two-thirds of 14 is 9.33. Indisputably, only 9 persons were present at the meeting and had supported the motion of non-confidence against the petitioner. 9 is less than 9.33—On a perusal of S. 21, we are of the opinion that the impugned proceedings had not been taken by the requisite number of persons. It was not in conformity with the provisions of S. 21(3). (Para 6)

*Civil Writ Petition Under articles 226/227 of the Constitution of India praying that this Hon'ble Court may kindly be pleased to :—*

- (i) Call for the records of the case and after perusal of the same;
- (ii) issue a Writ in the nature of Certiorari quashing the impugned order/decision/declaration Annexure "P-1";
- (iii) issue a writ of Mandamus declaring Annexure "P-1" to be void and without jurisdiction;
- (iv) issue any other writ, directions or order as may be deemed fit and proper in the circumstances of the case;
- (v) filing of certified copy of Annexure "P-1" be exempted; and
- (vi) Costs of the petition be awarded to the petitioner.

*It is further prayed that during the pendency of this Writ Petition, the operation of Annexure "P-1" may kindly be stayed as the petitioner will suffer huge and irreparable loss and injury, if he is not allowed, to hold the office of the president of the Municipal Committee, due to the illegal order Annexure "P-1" which is ultimately liable to be quashed.*

Sanjeev Walia, Advocate, for the Petitioner.

V. K. Jain, Addl. Advocate General, Haryana, for the Respondents.

#### JUDGMENT

*Jawahar Lal Gupta, J.*

(1) The petitioner herein is the president of Municipal Committee, Gharaunda. He is aggrieved by the decision taken at a special meeting of the Municipal Committee on August 1, 1991. A copy of this decision is at Annexure P. 1. The relevant portion reads as under :—

"Decision : This meeting started under the Chairmanship of Shri Mohinder Kumar, FCS, SDO (N), Karnal, at 4 p.m.

and in the meeting all the 9 members expressed no confidence against Shri Vijay Kumar Saluja. All the 9 members were given ballot papers and they casted their votes. The ballot papers were counted and all the 9 votes were found against Shri Vijay Kumar Saluja. Therefore, since the members of the Municipal Committee are 14, out of which all the 9 members have expressed their view in favour of the no confidence motion against Shri Vijay Kumar Saluja, therefore, this is 2/3rd majority. The motion for removing the present President of the Municipal Committee, Gharaunda, Shri Vijay Kumar Saluja, from his office is hereby passed.

Sd/-  
(Mohinder Kumar),  
H.C.S., SDO (N), Karnal.

(2) A perusal of the above order shows that the Municipal Committee has a total of 14 members. At the meeting held on August 1, 1991, only 9 members were present and all of them supported the motion of no confidence against the petitioner. The petitioner challenges it as being violative of the provisions of Section 21 of the Act.

(3) The respondents in spite of an opportunity have not filed any written statement. Mr. V. K. Jain, learned Additional Advocate General, Haryana appearing for the respondents, has prayed for the grant of a short adjournment to enable him to file the reply. Keeping in view the fact that an opportunity had been granted earlier and that there was no controversy on facts, we decline the prayer of Mr. Jain.

(4) Mr. Sanjeev Walia, learned counsel for the petitioner has submitted that the action of the respondents is contrary to the provisions of Section 21 of the Act. On the other hand, Mr. Jain has contended that 9, out of a total of 14 members, having supported the motion of no confidence, the impugned action is legal and valid.

(5) It is apt to extract the relevant portion of Section 21.

“Section 21. Motion of no confidence against President or Vice-President,—

(1) A motion of no confidence against the President or Vice-President may be made in accordance with the procedure laid down in the rules.

- (2) The Deputy Commissioner or such other officer not below the rank of an Extra Assistant Commissioner, as the Deputy Commissioner may authorise, shall convene a meeting for the consideration of the motion referred to in sub-section (1), in the manner laid down in the rules, and shall preside at such meeting.
- (3) If the motion is carried with the support of not less than two-thirds of the members of the committee, the President or Vice-President, as the case may be, shall be deemed to have vacated his office."

(6) The relevant provision is, in fact, contained in Clause (3). It provides that the President shall be deemed to have vacated his office "if the motion is carried with the support of *not less than two thirds* of the members of the Committee....." (Emphasis supplied). Admittedly, the Committee has 14 members. Two-thirds of 14 is 9.33. Indisputably, only 9 persons were present at the meeting and had supported the motion of no confidence against the petitioner. 9 is less than 9.33. On a perusal of Section 21, we are of the opinion that the impugned proceedings had not been taken by the requisite number of persons. It was not in conformity with the provisions of Section 21(3).

(7) In view of the above, the writ petition is allowed and the impugned proceedings at Annexure P. 1 are set aside. It is declared that the motion of no confidence against the petitioner was not passed in accordance with law. In the circumstances of the case, the parties are left to bear their own costs.

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J.S.T.

Before : S. S. Sodhi & G. C. Garg, JJ.

SMT. SARLA SACHDEVA.—Petitioner.

versus

THE ESTATE OFFICER, U.T., CHANDIGARH AND OTHERS,  
—Respondents.

Civil Writ Petition No. 14213 of 1990

1st November, 1991.

Constitution of India, 1950—Art. 226—Auction held in 1977 of residential plot—Twenty five per cent paid—Balance amount to be paid in accordance with allotment letter by 1980—Allottee failed to pay—Lease cancelled—Despite several opportunities to pay amount