
(1997) 07 RAJ CK 0007
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2379 of 1996

Babu Singh

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 28-07-1997

Acts Referred:

Rajasthan Panchayati Raj Act, 1994 — Section 34

Citation : (1997) 2 RLW 1284 : (1997) 3 WLC 383 : (1997) 2 WLN 218

Hon'ble Judges : P.P. Naolekar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.P. Naolekar, J.—Facts in brief are that respondent No. 5 Shri Nahar Singh Jasol tendered the resignation from the office of Pradhan, Panchayat Samiti, Balotra on 10.4.1996 addressed to Zila Pramukh, Banner, which was received by him on 12.4.1996. He, in turn, made an endorsement on the resignation that after 15 days, it be placed before him alongwith comments. The Chief Executive Officer, Zila Parishad, Banner wrote a letter dated 1.5.1996 to respondent No. 1, the State of Rajasthan to declare the office of the Pradhan, Panchayat Samiti, Balotra vacant. On 10.5.1996 respondent No. 4 sought directions from the Chief Executive Officer, Zila Parishad, Banner as to who should act as Pradhan of the Panchayat Samiti, Balotra. On this letter, the Chief Executive Officer, Zila Parishad, Barmer informed respondent No. 4 the Vikas Adhikari, Panchayat Samiti, Balotra that he should act in accordance with the provisions contained in Section 34 of the Rajasthan Panchayati Raj Act, 1994 (for short "the Act" hereinafter).

2. On 21.4.1996, respondent No. 5 sent a letter addressed to the Zila Pramukh, Barmer withdrawing his resignation, similar letter was addressed to the Collector, Barmer. The envelope addressed to the Zila Pramukh was received in the office of the Collector, Barmer on 13.5.1996 as is apparent from the endorsement made thereon by the Office Superintendent, Collectorate Barmer. It was then sent from

the office of the Collector to Zila Pramukh, Barmer, which reached respondent No. 2 Zila Pramukh on 17.5.1996. Zila Pramukh made an endorsement on the envelope as well as on the letter of withdrawal of resignation to this effect. The letter addressed to the Collector is said to have been received by the Collector on 24.4.1996. The Collector, Barmer wrote a letter dated 17.5.1996 to respondent No. 1, the State of Rajasthan, that the letter of withdrawal dated 21.4.1996 sent by respondent No. 5 and addressed to Zila Pramukh, was received in his office on 24.4.1996.

3. On 9.7.1996 Annex. 9 the order was issued by the State Govt. permitting respondent No. 5 to withdraw the resignation tendered by him on 10.4.1996 from the post of Pradhan on the ground that the letter of withdrawal was sent within fifteen days although same was wrongly delivered in the office of the Collector and the petitioner remained the Pradhan of the Panchayat Samiti, Balotra.

4. It is submitted by the counsel for the petitioner that since the withdrawal letter has not been delivered to the Zila Pramukh within 15 days from the date of delivery of the resignation letter, by virtue of the provisions, contained in Sub-section (4) of Section 36 of the Act, the office of the Pradhan, Panchayat Samiti, Balotra became vacant and the election to the office of Pradhan is required to be held for the remaining period/term as required by Section 42 of the Act. The State Govt. has no jurisdiction to pass the order directing permission to withdraw the resignation tendered by the petitioner.

5. It is the case of respondent No. 5 that the resignation letter dated 21.4.1996 addressed to the Zila Pramukh, Banner, was wrongly delivered in the office of the Collector, Banner on 24.4.1996 but in fact and in law, the withdrawal letter was sent before the expiry of period of fifteen days from the date of the resignation and received in the office of the Collector and, therefore, the resignation has not come into effect. Further the State Govt. has a jurisdiction and authority to pass the order in the terms, it has been passed.

6. Section 36 of the Act covers subject of resignation of the Panch, Pradhan, Up-Pradhan, Pramukh, Up-Pramukh and members of Panchayat Samiti or Zila Parishad. Sub-section (2) lays down that a member holding office as Pradhan of the Panchayat Samiti may resign his office at any time by writing under his hand addressed to the Pramukh, Zila Parishad. Sub-section (4) provides that every resignation under Sub-section (2) shall take effect on the expiry of fifteen days from the date of its receipt by the Pramukh, Zila Parishad unless withdrawn within this period of fifteen days. This section makes it abundantly clear that a Pradhan of the Panchayat Samiti may relinquish his office by resignation by submitting the letter of resignation in writing in his hand to the Pramukh, Zila Parishad and such resignation shall take effect on expiry of fifteenth day of the date on which the resignation was submitted to the Pramukh, Zila Parishad. Within these fifteen days, the Pradhan of the Panchayat Samiti could withdraw his resignation so as not to give effect to it. The resignation has to be submitted

to the Pramukh, Zila Parishad, who is the, competent authority to act on the resignation and steps for withdrawal has necessarily to be taken before him before expiry of fifteen days. During fifteen days from the submission of the resignation to the Pramukh, Zila Parishad, the resignation shall remain in abeyance or in vacuum, if the resignation is not withdrawn within fifteen days, it shall come into effect on the expiry of the fifteenth day. The resignation becomes operative automatic and thus, it is necessary for the Pradhan, if he does not want to press his resignation, to withdraw it, within fifteen days by giving intimation to the Pramukh, Zila Parishad. In a democratic set up, nobody can be compelled to hold an elected office for the period more than he or she wishes to hold and, therefore, normally the resignation would come into effect, to the elected office, on its submission to the person authorised to accept it. However, it is subject to relevant provisions of the Act or rules framed thereunder on the subject. Sub-section (4) of Section 36 gives fifteen days time for giving effect to the resignation submitted by the Pradhan of the Panchayat Samiti and it also provides for withdrawal of the resignation within that period. The spirit and the manner in which Section 36 of the Act is being framed, it is manifest that withdrawal of the resignation should be intimated to the Pramukh, Zila Parishad within fifteen days from the date of submission of the resignation before the Pramukh. In the light of the fact that nobody can be compelled to hold the elected office, the withdrawal of the resignation should be as provided by the statute and no other method is permitted.

7. Admittedly, the letter sent by respondent No. 5 for withdrawal of the resignation had reached to the Pramukh, Zila Parishad on 17.5.1996, which is beyond the period of fifteen days from tendering of the resignation to the Pramukh, Zila Parishad. When the resignation was tendered by the Pradhan to the Zila Pramukh, he should have taken care of submission of his withdrawal before the Zila Pramukh on or before the expiry of fifteen days. When the letter was sent to the Zila Pramukh through post, the Post Office acts as an agent of respondent No. 5 and thus any act or omission or mistake committed by the agent will be the responsibility of the principal. Submission of the resignation to the Collector has no meaning as the Collector is not authorised to accept the withdrawal of resignation or to act on it under the statute. On expiry of fifteen days none has the authority to entertain or act on any information of withdrawal of the resignation. Resignation having not been submitted for withdrawal to the Pramukh, Zila Parishad by respondent No. 5 before expiry of fifteen days, his resignation lawfully tendered has come into effect on expiry of fifteen days. The State Govt. has clearly committed an error in directing that respondent No. 5 will continue to be Pradhan of the Panchayat Samiti, Balotra. The order passed by the State Govt. dated 9.7.1996 (Annex.9) is clearly contrary to law and is liable to be set aside.

8. Section 42 is in regard to filling up of vacancies, It lays down that when the office of a member or chairperson or deputy chairperson of a Panchayati Raj Institution becomes vacant by resignation under the Act, the fact shall be

forthwith reported to the State Election Commission and the State Election Commission shall fill up the vacancy in the manner prescribed under the Act. "Chairperson" and "Deputy chairperson" are defined in Sub-section (1) (iv) of Section 2 of the Act. "Chairperson" and "Deputy Chairperson" shall respectively mean the Sarpanch and Up-Sarpanch in the case of a Panchayat the Pradhan and Up-Pradhan in case of a Panchayat Samiti and the Pramukh and Up-Pramukh in the case of a Zila Parishad. Office of Pradhan being vacant on account of the resignation submitted by respondent No. 5, the State Election Commission is bound to hold the election in accordance with law.

9. In view of the decision given by me on the submission made by the counsel, I do not find it necessary to deal with the second question raised by the counsel for the petitioner as regards jurisdiction of the State Govt. to entertain the revision petition and I leave this point open to be decided in an appropriate case.

10. Writ petition is allowed. The order passed by the State Govt. dated 9.7.1996 (Annex. 9) is set aside. Respondent No. 5 shall be taken to have resigned the office of Pradhan of the Panchayat Samiti, Balotra. Respondent No. 6 the State Election Commission, Jaipur, through its Secretary is directed to take up the steps to fill up the vacancy of Pradhan of Panchayat Samiti, Balotra in accordance with law. However, in the circumstances of the case, there shall be no order as to costs.