

(1983) 02 KAR CK 0008
In the Karnataka High Court
Case No : Writ Petition No. 515 of 1982

Channabasappa B. Gaddi

APPELLANT

Vs

Divisional Commissioner, Belgaum and Others

RESPONDENT

Date of Decision : 18-02-1983

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Land Revenue Act, 1964 — Section 34
Mysore Village Panchayats and Local Boards Act, 1959 — Section 31 (2)

Citation : AIR 1984 Kar 24 : (1983) ILR (Kar) 700

Hon'ble Judges : P. Chandrakantharaj URS, J

Bench : Single Bench

Advocate : W.K. Joshi and B.V. Deshpande, for the Appellant; M.H. Motgi, Govt. Pleader and I.H. Thippa Rudrappa, for the Respondent

Judgement

1. This Writ Petition is by Chairman of the Village Panchayat of Maranbad, Hangal Taluk, Dharwad District, He was aggrieved by an order the 2nd respondent- Assistant Commissioner, Savanur, dated 4-9-1981 accepting the purported resignation tendered by him to the Chairmanship of Panchayat of the aforementioned Village Panchayat. He, therefore, preferred a Revision Petition to the Divisional Commissioner the 1st respondent, u/s 207 of the Karnataka Village Panchayats and Local Boards Act (hereinafter referred to as "the Act"). The Revision Petition came to be dismissed sustaining the order of the Assistant Commissioner. Therefore, the present petition under Article 226 of the Constitution seeking relief Inter alia contending that the orders of the Assistant Commissioner as well as the Divisional Commissioner suffer from errors apparent on the face of the record and also that the resignation was sent to the Assistant Commissioner by his opponents in the Panchayat making use of blank papers which he had signed in order to facilitate the routine administration of the Panchayat by the Secretary of the Panchayat in his absence.

2. Certain facts which are not disputed are as follows:

The purported resignation letter is dated 3-8-1981. The order of the Assistant Commissioner-2nd respondent accepting the resignation and directing election to that office and with a further direction that the Vice-Chairman should be in charge of the office of the Chairman till election process is completed is dt. 4-9-1981. The order of the Assistant Commissioner is evidently communicated to the petitioner. The communication is effected within about 10 days and thereafter, the petitioner had approached the Divisional Commissioner with the Revision Petition. The original records of the case are not produced by the respondents, particularly, the letter of resignation. Itself. It is stated by the learned Government pleader that the records are lost in transmission between the office of the Assistant Commissioner and the office of the, Divisional Commissioner when the records were called for in connection with the Revision Petition filed before the Divisional Commissioner by the petitioner. The contents of the letter of resignation are not disputed. The facts stated in that letter are that the petitioner due to domestic problems was not able to continue as Chairman and there fore, was tendering his resignation. This is obvious from the preamble to the order of the Assistant Commissioner dated 4-9-1981 which is at annexure-A to the petition, The contents of the resignation letter were typed out in Kannada also is obvious from the order of the Division, Commissioner, The signature of the petitioner himself is not in dispute because he has admitted having signed on blank papers which have been used though the As assistant Commissioner his order has, made it clear that he compared my signature and was satisfied with the signature of the petitioner.

3. Rule in this case was issued on 6-1-1982 and interim stay also was granted and records were called for, Pursuant to the order made at annexure-B by the Divisional Commissioner election to the vacant office of the Chairman was also ordered by the Chief executive Officer who is 3rd respondent herein. The Vice-Chairman of the Panchayat is the 4th respondent as he has been asked to be in charge till the election process is over. On account of the interim stay granted on 6-1-1982, no election as such has taken place. However, on an application made by the Vice-Chairman-4th respondent, A learned single Judge of this Court, on 7-1-1983 vacated the interim stay granted solely on the ground that the letter of resignation bore the signature of the petitioner and therefore prima facie the findings of the authorities below should be accepted before deciding whether the petitioner really tendered the resignation or not. In the result elections are scheduled to be held to the office of the Chairman of the aforementioned Village Panchayat on 19-2-1983. In that circumstance, the petitioner has pressed for a decision in the main petition itself so that the controversy would be at an end.

4. At the time of arguing the case of the petitioner learned counsel Sri W. K. Joshi has stressed on the language of Section 31(2) of the Act. Section 31 of the Act which consists of three sub-sections is as follows:

"31 Resignation of Chairman or Vice Chairman.- (1) The Vice-Chairman may resign his office by writing under his hand addressed to the Chairman and In the

absence of the Chairman to the Assistant: Commissioner.

(2) The Chairman may resign his office by writing under his hand addressed to the Assistant Commissioner.

(3) Resignation under Sub-section 1 or (2) shall take effect from the date of their acceptance."(emphasis is mine).

Sub-section (2) of Sec. 31 of the Act refers to the option conferred on Chairman to resign his office in the manner provided therein, The language used is that he may resign his office by writing under his hand addressed to the Assistant Commissioner.

5. It is Mr. Joshi's contention that "under his hand" must necessarily be understood to mean that the entire resignation letter should be in the handwriting of the person resigning the office. When admittedly the letter of resignation was typed due credence ought to have been given both by the Divisional Commissioner and the Assistant Commissioner to the plea that blank paper signed by the petitioner had been misused by his opponents to cause vacancy in the office of the Chairmanship though he had no intention of resigning. Failure to direct themselves to that aspect of the question has resulted in the Divisional Commissioner misdirecting himself particularly in the absence of original records while the Assistant Commissioner who accepted the resignation totally overlooked the language of sub-section (2) of S. 31 of the Act.

6. There appears to be considerable force in the contention advanced by the petitioner though Mr. Ujjannavar, learned counsel appearing for the 4th respondent (about whose locus in this case is questionable) has contended that "under his hand" should be restrictively read to mean only "under" the signature and no more as otherwise it would mean that a person who does not know how to read and write but nevertheless elected Chairman of the Village Panchayat can never tender his resignation. No doubt, this argument advanced for the 4th respondent appears to be attractive but that does not mean that the language used in sub-section (2) of S. 31 of the Act should be construed for the benefit of illiterate Chairman and not for the benefit of those who know how to read and write. If there is a lacuna in the law it is for the Legislature to correct it. It is for the Court to interpret on Golden Rule of construction as to what is over expression used in the Statute when normally used. The language of sub-section (2) of Section 31 of the Act is not different from the language used in Art. 217 of the Constitution. Sub-clause (1) of Art. 217 of the Constitution deals with the tenure of a High Court Judge and that provision came up for consideration in the context of resignation of a Judge the case of Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, proviso (4) to Art 217 of the Constitution is as follows:

"A Judge may by writing under his hand addressed to the President, resign his office."

This is almost in pari materia with the language used in sub-section (2) of S. 31 of the Act. Sarkaria, J., speaking for the majority in the aforementioned decision of the Supreme Court analysed the effect of clause (1) of Art. 217 of the Constitution read with its Proviso and has observed as follows:

"The three clauses of the proviso to Art. 217(1) indicate that this tenure can be terminated before the Judge at the age of 62 years, in four contingencies namely, where he-

- (i) resigns his office in the manner laid down in its clause (a);
- (ii) is removed from his office in the manner provided in Art. 124(4) (vide its clause (b));
- (iii) is appointed a Judge of the Supreme Court (vide its clause (c));
- (iv) is transferred to any other High Court in India.....,

In this case we have to focus attention on clause (a) of the Proviso. In order to terminate his texture under this clause, the Judge must do three volitional things., Firstly, he should execute a "Writing under his hand". Secondly, the writing should be "addressed to the President". Thirdly by that writing he should "resign his office". If any, of these things is not done or the performance of away of them is not complete, clause (a) will not operate to cut short or terminate the tenure of his office."

From the above it is clear that the contents of a resignation letter also, when the expression "under his hand" is used must be in the handwriting of the person who is tendering his resignation.

7. Mr. Joshi has also relied upon the decision of the Court in the case of Byrappa v. State of Karnataka (1981 2 Kar LJ 1). In the said case S. 34 of the Karnataka Land Revenue Act came up for consideration before a Division Bench of this Court. That section deals with summary procedure. An officer holding a summary procedure is required to record the proceedings in his own handwriting. That expression was strictly construed with its normal ordinary meaning and the Division Bench held that it must be in the handwriting of the officer who is holding the summary enquiry.

8. I do not think that decision should be considered as a direct ruling supporting the case of the petitioner because the language of S. 34 of the Land Revenue Act and the language of sub-see. (2) of S. 31 of the Act are widely different. In S. 34 of the Land Revenue Act me doubt whatsoever is left while under sub-section (2) of S. 32 of the Act a phrase peculiar to English Law has been used.

9. I should command the assistance given by learned Government Pleader Sri M. H. Motgi in bringing to my notice the meaning at that expression explained in Stroud's Judicial Dictionary IIIrd Edn, Vol. 2, at p. 1322 under the item "His Hand". The following is the meaning given therein:

"His Hand: A letter written by a bankrupt's trustees Solicitor in his own name disclaiming a base, held, not a due disclaimer by the trustee, under S. 23 of the Bankruptcy Act 1869 (32 & 33 Vict., e. 71) because it was not a "writing under his (i.e., the trustee's) hand" (Wilson v. Wallani, ((1880) 5 Ex D 155) See Himself. See now bankruptcy Act 1914 (4 & Geo. 5 e 59), S. 54(1).".

10. From the above ruling of the English Courts in the various decisions referred to therein, it is dear "His hand" really Means writing in his hand. In the same Book in Vol. IV at pp. 3348 and 3349 writing as judicially considered has been given. "Writing in his hand" is referred to the meaning given to "His hand".

11. In the light of the discussion above and for the reasons I have already given when the Supreme Court of our country has understood "under his hand" to mean writing in the handwriting of the person resigning, a typed letter of resignation purported to have been signed by the petitioner or one can say admitted to have been signed by the petitioner but such signature having been made use of fraudulently by his opponents, is a matter which should have been more thoroughly investigated by the Divisional Commissioner particularly in the absence of original records. Therefore, there is tot4i failure of proper application of mind and also failure to exercise jurisdiction vested in him as Revisional Authority.

12. In the result, the order of the Divisional Commissioner and also the order of the Assistant Commissioner which are impugned in this Writ Petition, are liable to be quashed and they are so quashed. Rule is made absolute. The election scheduled for tomorrow, i. e., 19-2-1983 is, there fore, automatically cancelled.

13. Learned Government Pleader, it is hoped, will telephone the concerned that election should not take place unless this view I have taken is overruled on appeal by a Division Bench of this Court.

14. Sri M. H. Motigi, learned Government Pleader is permitted to file his memo of appearance in two weeks from today.

15. Rule made absolute.