
(1984) 11 MP CK 0033

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 141 of 1984

Krishna Prakash Sharma

APPELLANT

Vs

Collector, District Rajgarh, Rajgarh and Others

RESPONDENT

Date of Decision : 29-11-1984

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 322, 323, 46, 46(4), 46(5)

Citation : AIR 1985 MP 194

Hon'ble Judges : V.D. Gyani, J; P.D. Mulye, J

Bench : Division Bench

Advocate : V.S. Kokje, for the Appellant; A.H. Khan, Government Advocate, T.N. Singh and M.A. Khan, for the Respondent

Final Decision : Allowed

Judgement

P.D. Mulye, J.—The petitioner, who is an Advocate and a Member of the Municipal Council, Rajgarh, has filed this petition under Article 226 of the Constitution in the matter of Section 46 of the M. P. Municipalities Act to issue a writ calling upon respondent No. 4 Shri Jamal Ahmad Khan, Advocate and President of the Municipal Council Rajgarh, how he is continuing in office of the President of the Municipal Council, Rajgarh after having tendered his resignation as President of the Municipal Council and the same having also been accepted. He has also prayed that the direction given by respondent Collector, District Rajgarh and the Circular issued by respondent, Chief Municipal Officer, Rajgarh recognising respondent No. 4 as President, be also quashed (Annexure-C).

2. The short facts, giving rise to this appeal, may be stated, in brief, thus : The petitioner as also respondents 4 and 5, who are all advocates, are the members of Municipal Council Rajgarh. Respondent 4 Shri Jamil Ahmed Khan was elected as the President and respondent 5 Shri Daulatram Varma was elected as the Senior Vice-President of the Municipal Council Rajgarh. Respondents Nos. 4 and 5 also belong to Congress (I) Party.

3. On 28-10-83 respondent 4 resigned from the post of President, Municipal Council, by writing a letter of resignation addressed to respondent No. 5 Vice-President of the Municipal Council (Annexure-A). The said letter of resignation was accepted by respondent 5 who directed the Chief Municipal Officer to take further necessary action in the matter. Respondent No. 3, thereupon intimated the fact of the tender of the resignation, of acceptance of resignation to all the Councillors and other concerned parties. Copy of the Circular letter dt. 31-10-83 is Annexure-B.

4. According to the petitioner the respondent No. 4 having resigned from the post of President, Municipal Council he ceased to be the President of the said Municipal Council from 28-10-83 onwards and did not do any work as such. However, on 7-11-83 the Chief Municipal Officer, respondent 3, under the directions of respondent 1 the Collector, District Rajgarh wrote to all councillors informing them that the Collector has refused to recognise the validity of the resignation of respondent 4 and as such respondent 4 will continue to hold his office. Copy of the Circular letter dt 7-11-83 is Annexure-C. On the same day respondent 3 also addressed a letter to respondent 5 stating that he had sent the case of resignation of the President to the Collector for his guidance and had since received the guidance that the resignation was ineffective and invalid as it was addressed to the Vice-President. He also sent a copy of the letter dt. 2-11-83 addressed by the Collector to the Chief Municipal Officer (Ann. D). The Copy of the Collector's letter dt. 2-11-83 is Annexure E.

5. The case of the petitioner has been that the resignation of respondent 4 was perfectly valid and was not only accepted but was also acted upon by concerned parties. Respondent 5 had also taken over charge of the President's Office and was working as such for a few days. Therefore, according to the petitioner the Collector had no authority to intervene in the matter and render advise nor respondent 3 had any business to ask for the guidance from the Collector, and the Collector also had no jurisdiction to give such advise. Therefore, according to the petitioner all this is against the provisions of Section 46 of the M. P. Municipalities Act, 1961. Hence this petition.

6. Respondent 5, though represented by a counsel in this Court, did not file any returns.

7. Respondent 1 has contested the said petition mainly on the ground that though the letter of resignation was addressed to the Senior Vice-President of the Municipal Council, respondent No. 4 himself had not delivered it to the Chief Municipal Officer of the Council. Thus, delivery of the letter of resignation was in contravention of Section 46 of the Municipal Council Act. Further according to respondent 1, Chief Municipal Officer had the authority and jurisdiction to ask for the guidance of the Collector especially when respondent 4 had addressed him a letter to the effect that he had not tendered his resignation and thus according to the provisions of Sections 322 & 323 of the M. P. Municipalities Act, the Collector had the jurisdiction to give the necessary guidance and directions. That

respondent 4 by his letter dt. 2-11-1983 Annexure-R-4 had written to the Collector that he had not submitted his letter of resignation according to the provisions of the Municipalities Act and had not authorised anyone to deliver the same to Council Office; that his letter of resignation was delivered to the Chief Municipal Officer without his consent and knowledge. Shri Mangilal Choudhary," Secretary of the Congress(I) Party had intimated by his letter dt 1-11-1983 that respondent No. 4 had sought permission from the party to tender his resignation and the same was refused as per Annexure-R-5.

8. Respondents 2 and 3 by their returns while contesting the said petition have submitted that the resignation letter tendered by respondent 4 was not entered in the inward register and was given by respondent 5 to the then C. M. O. of Rajgarh on Sunday the 30th Oct. 1983 after accepting the same and thus the whole affair is suspicious.

9. Respondent No. 4 while deciding the said petition has also submitted that though he had written the letter of resignation addressed to the Vice-President, Municipal Council, Rajgarh, under his hand and signature, he never handed it over to any authorised person, but this letter was given to Shri Choudhary, the Secretary of the Congress Party for its consideration in the meeting of the Congress Party as he wanted to seek the permission of the Party before resigning, of which he was loyal member. His case, therefore, has been that it is not known how that letter of resignation reached the office of the Municipal Council. Therefore, according to respondent 4 his case, in brief, has been that he had never tendered the resignation as provided by Section 46 of the Municipalities Act and consequently he had immediately informed about the same to the Chief Municipal Officer who had every right to seek guidance from the Collector under the provisions of the M. P. Municipalities Act.

10. It may be noted at the outset that the fact that respondent 4 had written his letter of resignation in his own hand and under his signature dt. 28-10-83 and addressed to the Vice-President Municipal Council, Rajgarh, is not in dispute. But the short question raised is that it was not actually meant for being sent to the Vice-President of the Municipal Council, but it was given to the Secretary of the Congress(I) Party which had to decide whether respondent 4 should resign as President of the Council or not, and if the Congress(I) party had given its permission then only that letter of resignation could be forwarded to the Municipal Council and if not there was no question of his resigning as President of the Municipal Council.

11. So far as these questions of disputed fact are concerned, the Congress(I) Party as such is not concerned with the Municipal Council. Similarly we are not concerned with the correspondence that was entered into between respondent 4 and his party. But the fact remains that the respondent 4 had tendered his letter of resignation as President of the Council in his own handwriting and under his signature though the learned counsel for respondent 4 submitted that from the original letter of resignation which he filed at the time of the hearing of this

petition, if compared with the photostat copy filed by the petitioner would indicate that Annexure-A filed by the petitioner is a fabricated document and on that basis the petitioner is not entitled to any relief. However, after seeing the original as also the photostat copy, we do not find any substantial difference between the two, except some part of the endorsement. It also appears that there is over writing in the date in the original 30th Oct. 1983. That apart, so far as the main and principal portion of the letter is concerned there is absolutely no difference. Therefore, on that basis we are not called upon to give any finding.

12. It is further not in dispute that the letter of resignation was acted upon by the Municipal Council as is clear from the proceedings of the Municipal Council regarding the same which have been filed by the concerned respondents and accordingly the Chief Municipal Officer of the Municipality had also informed the Collector to notify about the same in the Gazette about which Section 46 of the said Municipalities Act, which is quoted below; is quite clear :

"46. Resignation by President and Vice-President. -- (1) The President may, by writing under his hand addressed to the Vice-President and delivered to the Chief Municipal Officer, resign his office.

(2) The Vice-President may, by writing under his hand addressed to the President and delivered to the Chief Municipal Officer, resign his office.

(3) The resignation under Sub-section (1) or Sub-section (2) shall take effect from the date on which it is delivered.

(4) The fact of every resignation received under Sub-section (1) or Sub-section (2) shall forthwith be communicated by the Chief Municipal Officer to the Council and the prescribed authority.

(5) On receipt of the information under Sub-section (4), the prescribed authority shall notify in the Gazette the fact of the resignation and occurrence of casual vacancy consequent thereon."

13. The learned counsel, therefore, submitted that the grievance of respondent 4 that the said letter of resignation was not meant to be tendered to the Municipal Council, but was meant to be considered first by the Congress(I) Party, cannot be considered because that is an inter se matter between him and his party and even in his letter addressed to Collector he has nowhere stated that he had written the letter of resignation but his main contention was that as a loyal member of the party he would abide by its decision. He, therefore, submitted that the letter of resignation having been in accordance with provisions of Section 46 of the Act and the same having been accepted and acted upon, respondent 4 had no right to recontinue as the President of the Municipal Council. He further submitted that the provisions of Sections 322 and 323 of the Municipalities Act do not apply in such a situation, as those provisions are quite different.

14. On the other hand, learned counsel for the contesting respondents submitted

that according to Section 46(1) of the M. P. Municipalities Act, it is necessary that the letter of resignation must be delivered by the President himself to the Chief Municipal Officer personally and thereafter only the same could be said to have been tendered validly, as addressed to the Vice-President. It was, therefore, submitted that as respondent No. 4 had not personally submitted the said letter of resignation or delivered the same to the Chief Municipal Officer the letter of resignation was invalid. It was further submitted that though according to Sub-section (4) of Section 46 the fact of such resignation was forthwith communicated by the Chief Municipal Officer, under Sub-section (5) of the said section the prescribed authority, namely the Collector who had to notify about the same in the Gazette regarding the fact of the resignation, the Collector had every authority and jurisdiction to find out and verify whether in fact the respondent No. 4 had resigned as President or not and the learned counsel for respondent No. 4 in support of his submission placed reliance on the decisions reported in AIR 1955 35 (Nagpur) .

15. After hearing the learned counsel and after going through the provisions of the case law cited as also the provisions of Section 46 of the M. P. Municipalities Act we are not persuaded to agree with the submission made by the contesting respondents. The authorities cited being distinguishable on facts and not relevant to the point involved, in our opinion, do not help the respondents in any way. The wordings of Section 46 of the said Act are quite clear. It is nowhere prescribed as a mandatory provision that the President who wants to resign must himself personally deliver the letter of resignation to the Chief Municipal Officer. The only requirement of Sub-section (1) is that he has to address the letter of resignation to the Vice-President in writing under his hand and the same has to be delivered to the Chief Municipal Officer, whose duty thereupon is to act forthwith according to Sub-section (4) of this section and on receipt of such information under Sub-section (5) the prescribed authority has only to notify in the Gazette the fact of the resignation. The wordings of this section, therefore, are quite clear and they have to be interpreted in a normal way. If this section nowhere prescribes a particular mode in which a resignation could be tendered either by the President or by the Vice-President, it is difficult to agree with the submission made by the learned counsel for the contesting respondents that a letter of resignation has to be delivered personally by the President or the Vice-President, as the case may be, to the Chief Municipal Officer of the Municipality. If the Legislature had such an intention, then it could have worded this section accordingly. But that does not seem to be the import of this section.

16. Sub-section (5) of Section 46 of the Act does not give any authority or jurisdiction to enquire and find out whether the President or the Vice-President in fact have resigned or not in accordance with the provisions of this Act. In fact the wording of Sub-section (5) is "information" and on receipt of such information he has only to notify in the Gazette the fact of resignation. Therefore, in our opinion, the respondent 1 namely the Collector had no jurisdiction to interfere with the action taken by the Council on the basis of the said letter of resignation

which was not only accepted but acted upon for a few days. In these circumstances there was no question of seeking any guidance or advice by the Chief Municipal Officer even though the respondent 4 had subsequently sent a letter informing him that in fact he had not resigned, though even in that letter he did not state that he had not written such a letter of resignation in his own hand. The provision of Sections 322 and 323 of the M. P. Municipalities Act, which are quoted below, are not meant to be applied in such cases, would be clear from the wordings of those sections : --

"322. Power of inspection and supervision.--The Divisional Commissioner, Collector or any officer authorised by the State Government in this behalf by general or special order may--

(a) enter on and inspect or authorise any other person to enter on and inspect any immovable property occupied by Council or any of its committees or any institution under its control or management or any work in progress under its directions;

(b) call for or inspect and record or extract from the proceedings of any meeting of the Council or of any of its committees and any book or document in the possession of or under the control of a Council;

(c) call for any return, statement, account or report which he may think fit, to require such Council to furnish;

(d) require a council to take into its consideration any objection which appears to him to exist to the doing of anything which is about to be done or is being done by or on behalf of such council or any information which it is able to furnish and which appears to him to necessitate the doing of a certain thing by the Council and to make a written reply to him within a reasonable time stating its reasons for not desisting from doing, or for not doing such thing."

"323. Power to suspend execution of orders etc. of Council.-- (1) If, in the opinion of the Divisional Commissioner, the Collector, or any other officer authorised by the State Government, in this behalf, the execution of any order, or resolution of a council or of any of its Committee or any other authority or officer subordinate thereto, or the doing of any act which is about to be done or is being done by or on behalf, of the council, is not in conformity with law or with the rules or bye-laws made thereunder and is detrimental to the interest of the Council or the public or is causing or is likely to cause injury or annoyance to the public or any class or body of persons or is likely to lead to a breach of the peace, he may, by order in writing, under his signature, suspend the execution of such resolution or order or prohibit the doing of any such act.

(2) When any order under Sub-section (1) is passed, the authority making the order, shall forthwith forward to the State Government and to the Council affected thereby a copy of the order with a statement of reasons for making it; and it shall be in the discretion of the State Government to rescind the order, or

to direct that it shall continue in force with or without modification, permanently or for such period as it thinks fit :

Provided that the order shall not be revised, modified or confirmed by the State Government without giving the Council reasonable opportunity of showing cause against the order."

17. The provision for resignation by President and Vice-President as prescribed u/s 46 of the said Act is a simple one and the Council having accepted the resignation and acted upon it, there was no question for the Collector to act and intervene in this manner as has been done by him at the instance of respondent 4 as also the Municipal Council.

18. In the result this petition is allowed. The impugned orders passed by the Collector and in pursuance thereof the letter dt. 7-11-83 sent by the Chief Municipal Officer, Municipality, Rajgarh to the petitioner (Annexure-C) are quashed and it is held that the resignation of respondent 4 having been properly accepted, he has ceased to be the President of the Municipal Council, Rajgarh, from the date it was delivered to the Chief Municipal Officer. However, considering the facts and circumstances of the case, the parties are directed to bear their respective costs of this petition. The amount of security deposit, if any, on verification be returned to the petitioner.