

**(2005) 08 PAT CK 0078**  
**In the Patna High Court**  
**Case No : CWJC No. 8322 of 2005**

Md. Shahzada

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

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**Date of Decision :** 23-08-2005

**Acts Referred:**

Bihar Municipal Act, 2007 — Section 33(2), 34, 35

**Citation :** (2005) 4 PLJR 197

**Hon'ble Judges :** Barin Ghosh, J

**Bench :** Single Bench

**Advocate :** Pramod Kr. Sinha, for the Appellant; Kamal Kumar Sinha, Ambika Bhagat for the Respondents and Mr. Anil Kumar Singh for the State, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Barin Ghosh, J.—A letter of resignation was submitted by the petitioner, who was the then Vice Chairman of the municipality, in question. This resignation was addressed to the Divisional Commissioner and not to the Chairman of the municipality. The resignation was considered by the Commissioners at a meeting and they accepted the resignation. Accordingly the petitioner vacated the office of Vice-Chairman of the municipality. At the self said meeting, the Commissioners noted that the petitioner has absented in attending more than four consecutive meetings and accordingly resolved that the State Government be moved with, a request to exercise its powers under-section 25 of the Act for the purpose of removal of the petitioner from the post of Commissioner. This has resulted in filing of the present writ petition. It was contended on behalf of the petitioner that inasmuch as the resignation letter was not addressed to the Chairman, the resignation letter cannot be looked at far less the same can be acted upon. It was next contended that in the event the resignation letter could not be looked at, the petitioner could only be removed in terms of the mandate contained in Section 34 of the Bihar Municipal Act and admittedly the procedure

prescribed in Section 34 of the Act had not been adopted. It was lastly contended that the power u/s 35 of the Act can only be exercised by the State Government and it was not permissible for the Commissioners to decide to approach the State Government to take steps u/s 34 of the Act. It is true that sub-section 2 of Section 33 of the Act directs that the resignation letter is required to be addressed to the Chairman. The Act, however, does not authorise the Chairman to accept the same. The Act obliges the Chairman to lay the resignation before the Commissioners at a meeting. Sub-section 3 of Section 33 of the Act provides that such resignation can only be accepted by the Commissioners at a meeting. Therefore non- addressing the letter of resignation to the Chairman hardly matters. What matters is laying of the resignation letter before the Commissioners at a meeting. In the instant case, there was clear intention of resigning from the post of Vice-Chairman. This resignation could only be accepted by the Commissioners at a meeting. There is no provision that after intention to resign had been expressed, the same could be withdrawn. The resignation could or could not be accepted only by the Commissioners, when resignation was accepted, the matter stood concluded and the petitioner ceased to be the Vice-Chairman of the Municipality. A look at the minutes of the meeting of the Commissioners would show that they considered whether to accept or not to accept the resignation of the petitioner in terms of sub-section 3 of Section 33 of the Act and did not take any step to remove him from the post of Vice-Chairman in terms of Section 34 of the Act.

2. It is true that power u/s 35 is to be exercised by the State Government but the State Government must be informed of the ingredients upon which the State Government can exercise its such power. One of the ingredients for exercising such power is absence from four consecutive meetings of the Commissioners. If the Commissioners do not inform the State Government as to such absence it may not be possible for the State Government to know about the existence of the ingredients upon which it may decide to exercise its power u/s 35 of the Act. In such view of the matter, I find no merit in the writ petition and the same is accordingly dismissed.