
(2007) 03 PAT CK 0062
In the Patna High Court
Case No : LPA No. 1165 of 2005

Md. Shahzada

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-03-2007

Acts Referred:

Bihar and Orissa General Clauses Act, 1917 — Section 24
Bihar Municipal Act, 1922 — Section 23, 3(29), 33
General Clauses Act, 1897 — Section 21

Citation : AIR 2007 Patna 152

Hon'ble Judges : J.N. Bhatt, C.J.; Shailesh Kumar Sinha, J

Bench : Division Bench

Advocate : Rajendra Prasad Singh, for the Appellant; JC to SC8, Ambika Bhagat and Girijesh Kumar, J.C. to AAG 3, for the Respondent

Final Decision : Allowed

Judgement

J.N. Bhatt, C.J.—Whether a tenderer of the resignation could be permitted to withdraw the resignation from an elective post before the acceptance of the resignation, is the sole question which is posed before us for consideration and adjudication in this Letters Patent Appeal under Clause 10 of the Letters Patent questioning the legality and validity of the judgment of the learned Single Judge recorded, on 23.8.2005, in CWJC No. 8322 of 2005.

2. We have heard the learned Counsels for the parties. We have also, dispassionately, examined the record. We have also analyzed and considered the relevant provisions of law and have also considered the case law relied on.

3. The appellant original petitioner tendered his resignation, who was then Vice Chairman of the respondent Munger Municipality. He had addressed his letter of resignation one to the Divisional Commissioner, and the other to the Executive Officer, Munger Municipality. But subsequently, he tendered a letter withdrawing his resignation before the date of its acceptance.

4. In order to appreciate the rival versions and the merits of this Letters Patent Appeal, let there be a short conspectus of material facts giving rise to the present Letters Patent Appeal.

(i) The appellant original writ- petitioner got elected in the general election of Nagar Parishad of Munger, held the year 2002, and, Ward Commissioner and then Vice Chairman of Munger Nagar Parishad (Municipality).

(ii) The appellant sent resignation, on 13.6.2005 from the post of Vice Chairman addressing the same to the Divisional Commissioner, Munger Division (respondent No. 3), a copy, whereof, is produced, as Annexure 1 to the writ petition.

(iii) He had also sent one copy of his resignation from the post of Vice Chairman to the Executive Officer of Munger Municipality on the same day, like 13th June, 2005, a copy of which is Annexure 2 to the writ petition.

(iv) In the meantime, before his resignation could be accepted, the appellant original writ petitioner submitted a letter of withdrawal of his resignation, on 23.6.2005, thus, changing his mind within almost ten days, which was received by the Executive Officer of the Munger Municipality on 26.6.2005.

(v) On 27.6.2005, the Executive Officer (respondent No. 6) postponed the meeting scheduled to be held, on 30.6.2005, which was fixed by letter, dated 25.6.2005, (Annexure-3) in the light of the withdrawal of the resignation of the appellant original petitioner. Thus, the meeting which was proposed to be convened by the Executive Officer of Munger Municipality by letter, dated 25.6.2005, came to be deferred which was for consideration of the resignation of the petitioner from the post of Vice Chairman.

(vi) Though on 27.6.2005, the Executive Officer of the Municipality postponed the meeting proposed to be convened on 30.6.2005 but the Chairperson of the Munger Municipality, by her order dated 29.6.2005 superseded the letter dated 27.6.2005 and ordered holding of the meeting as per earlier notice dated 25.6.2005. In the meantime, the withdrawal letter came to be received and, therefore, the meeting was proposed to be held on 30.6.2005 for consideration of the acceptance of the resignation, in the light of the withdrawal of the resignation of the petitioner.

(vii) Consequently, on 30.6.2005, the meeting came to be convened and the resignation of the appellant-petitioner from the post of Vice Chairman came to be accepted but the same was circulated by letter No. 315/Sa dated 2.7.2005 under the signature of the Chairperson of the Munger Municipality.

5. Virtually, the facts are no longer in controversy which are highlighted hereinabove. The original writ petitioner though submitted withdrawal of his resignation letter but it was not considered. There is also no dispute about the fact what happened to the letter of withdrawal of resignation which was received, prior to the holding of meeting, for acceptance of the resignation, is not known.

Therefore, the sole question which we have formulated above needs to be answered in the light of the provisions of law, as well as, general provisions of law relating to resignation and its withdrawal. As there is no any inhibition or restrictive provision in the Bihar Municipal Act, 1922 ("Act of 1922") which came into force with effect from 22.1.1922. It aims at to consolidate and amend the law relating to municipalities in the State of Bihar.

6. The sole contention which is advanced on behalf of the appellant original writ petitioner by the learned Senior counsel Mr. Rajendra Prasad Singh has been that in absence of any restriction or any negative provision in the Act of 1922, a tenderer of the resignation from an elective post has option to exercise the right to withdraw till the resignation is accepted which submission is countered by Mr. Rajiv Kumar Verma, appearing for the Chairperson of the Municipal Nagarparlika, who, vehemently, contended that in view of the phraseography of the resignation letter, as well as, in absence of any positive provision for withdrawal, it was not open for the original writ petitioner Vice Chairman to resile and withdraw the resignation letter though there is no dispute that withdrawal letter was tendered and submitted prior to the date of acceptance of the original letter of resignation, dated 13.6.2005.

7. With a view to appreciate the rival versions formulated above, let it be highlighted that Section 33 of the Act of 1922 deals with situation in case of resignation of Chairman, Vice Chairman, President or Commissioner of the municipality.

8. The said provisions of Section 33 are necessary to be reproduced with profit for appreciation of the merits of the matter. They read here as under:

33. Resignation of Chairman, Vice Chairman, President or Commissioner- (i) A Chairman may resign by laying notice in writing of his intention so to do before the Commissioners at a meeting:

Provided that the appointed Chairman may resign by giving notice in writing of his intention so to do to the State government.

(2) A Vice Chairman, a President, or a Commissioner may resign by giving notice in writing of his intention to do so, to the Chairman, who shall forthwith lay such notice before the Commissioners at a meeting.

(3) On resignation under Sub-sections (1) or (2) being accepted by the Commissioners at a meeting or by the State Government, as the case may be, the Chairman, the Vice Chairman, the President or the Commissioner, as the case may be, shall be deemed to have vacated his office.

(4) Where a salaried servant of Government who is a Commissioner is granted leave for a period exceeding three months, or is transferred from the district in which the municipality is situated, he shall be deemed to have vacated his office of Commissioner on the date of his departure on leave or transfer.

9. It could very well be seen that the petitioner being then Vice Chairman of the Munger municipality resigned by giving a letter in writing, dated 13.6.2005, in terms of the provisions of Section 33 of the Act of 1922. Sub-clause (2) of Section 33 of the Act provides the prescriptive provision that a Vice Chairman, President, or Commissioner may resign by giving notice of his intention to do so to the Chairman, who shall forward such letter before the Commissioner, at a meeting.

10. There is no dispute about the fact that the resignation letter was never addressed to the Chairman. Two letters were addressed one to the Divisional Commissioner and the second to the Executive Officer Munger Municipality. The provision for election of the Vice Chairman is provided in Section 23. The Commissioner at a meeting shall effect one of their own number, not being a salaried servant of Government to be Vice Chairman. The expression "Commissioners" with a view to make clarity about its connotation, are elected members of the Municipality in view of the definition of Section 3(29). It defines "Commissioner" means the person for the time being appointed or elected to conduct the affairs of the any municipality under the Act.

11. Undisputedly, it may be mentioned that the submission advanced on behalf of the original writ petitioner - appellant was that since resignation letter was not addressed to the competent authority being the Chairperson of the municipality, the resignation letter has no any legal efficacy. This contention we will take up, if need be, hereinafter in the light of the facts of the case while dealing with the main submissions.

12. Let it be mentioned that under the common law, relating to the provisions and practices of resignation or its withdrawal, as well as, in the light of analogous principles of the provisions of Section 21 of the General Clauses Act, 1897, as well as, Section 24 of the Bihar & Orissa General Clauses Act, 1917, the tenderer of the resignation has right to withdraw the resignation and exercise his option till his resignation is accepted by the competent authority. Again, there is no any negative provision or any provision which would inhibit or limit or restrain the discretionary right to withdraw the resignation letter before the date of acceptance thereof.

13. It may, also, be stated here that before acceptance of the letter of resignation by the Commissioner in the meeting, on 30.6.2005, the withdrawal letter from the resignation was already received by the authorities. The meeting was once proposed to be held on 30.6.2005 which was postponed by the Executive Officer in view of the fact that before the date of that meeting a letter of withdrawal had been received. Despite that the Chairperson with her own signature sent notices to the Commissioner to reconvene the meeting on the same day i.e. 30.6.2005 and in that case without considering the letter of withdrawal of resignation, of the original writ petitioner. The Commissioner had, held a meeting, where in it decided to accept the resignation. On a pointed question to the counsel for the Chairperson of the Munger Municipality, as to

what happened to the letter of withdrawal which was, admittedly, received by the authorities, there was conspicuous silence as there is nothing on the record. It is in these context, and in the light of the facts and circumstances of the case, as well as relevant common law provision pertaining to the law of resignation and withdrawal and acceptance, as well as, in absence of any specific provisions providing for effecting such resignation on being tendered or restriction to withdraw the resignation, once it is tendered, we are of the opinion that the discretion exercised for withdrawing the resignation letter before its acceptance has to be acceded to and affirmed and to that extent, the view taken by the learned Single Judge, in our opinion, is not supportable.

14. Therefore, the impugned order shall stand quashed and set aside, as well as, the acceptance of resignation without consideration of the letter of withdrawal of the resignation of the original writ petitioner is quashed and set aside being not in conformity with the provisions of law.

15. This Letters Patent Appeal shall, accordingly, stand, allowed. No costs. Rule is made absolute.