
(1998) 08 MP CK 0011

In the Madhya Pradesh High Court

Case No : Writ Petition No. 403 of 1997

Municipal Corporation

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 17-08-1998

Acts Referred:

Madhya Pradesh Municipal Corporation Act, 1956 — Section 18

Citation : (1999) ILR (MP) 632 : (1998) 2 MPLJ 512

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : R.N. Singh, for the Appellant; Vivek Awasthy, Dy. Govt. Advocate and Qamaruddin, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.

Invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India the petitioner, Municipal Corporation, Bhopal through its Commissioner has prayed for issue of a writ of certiorari for quashment of order dated 28.12.1996, Annexure-P.1, passed by the State of Madhya Pradesh refusing to treat the seat of councillor of ward No. 42 to be vacant and further declare that the resignation tendered by the respondent No. 2 which bears endorsement of the respondent No. 3, the Mayor of Municipal Corporation, Bhopal as a voluntary act of tendering by the councillor, the respondent No. 2 herein, and hence operative and binding on the authorities concerned.

The brief facts leading to filing of this writ petition are that the respondent No. 2 was elected as a councillor from Ward No. 42 of the Municipal Corporation, Bhopal. As alleged in the petition she was unhappy with some of the actions taken by the Mayor of the Municipal Corporation for which she submitted her resignation on 31-8-1996 when the meeting of the councillors was going on. The letter of the resignation was addressed to the Commissioner of the Municipal

Corporation. It is pleaded in the petition that it was personally handed over to the Mayor who had immediately made endorsement on the top of the resignation letter. According to the petitioner the factum of the resignation was released to the press by the respondent No. 2 herself. As per the provisions of the Municipal Corporation Act, 1956 (hereinafter referred to as "the Act") intimation was sent to the State Government along with the original letter of resignation of the respondent No. 2. It is also pointed out that her resignation was accepted by the Council in its meeting dated 31.12.1996. Various newspapers clippings, the contents of resignation and certain photographs showing her handing over the letter of resignation have been brought on record. Certain facts have been narrated to show that the said respondent No. 2 has, in fact, handed over the resignation to the Mayor of the Corporation. It is pleaded that on 20th November, 1996 a letter was written by the State Government to the Mayor of the respondent No. 3 calling for a detailed report and the said letter was received by the Corporation on 26.11.1996. It is to be noted here that in her letter dated 9-10-1996 the respondent No. 2 which was communicated to the Under Secretary in Local Self Government it was mentioned that she had not tendered her resignation but had submitted a letter highlighting certain allegations. It is alleged that after the State Government called for a report it did not wait for the report and passed the impugned order on 28.12.1996, indicating that the councillor had not tendered her resignation as per the provisions postulated under the Act, and therefore, her seat could not be treated to have fallen vacant. It is further averred in the writ petition though the respondent No. 2 had addressed her letter of resignation to the Commissioner of Municipal Corporation, it was, in fact, handed over to the Mayor who had made an endorsement and, therefore, there has been due compliance of the provisions of Section 18 of the Act and the reason scribed by the State Government not to declare the seat as vacant are unsustainable in law.

A counter affidavit has been filed by the respondent No. 1 contending, inter alia, that the letter of resignation was a conditional one and was addressed to the Commissioner of the Municipal Corporation who is not the competent authority. It has been highlighted that the respondent No. 2 had indicated in her letter that if the Mayor of the Corporation did not resign she would resign. Thus, the stand of the respondent No. 1 is that the State Government on verification deemed it proper not to accept the resignation as it was addressed to the commissioner of the Municipal Corporation who is not the competent statutory authority.

A return has been filed by the respondent No. 2 pleading that the writ petition at the instance of the petitioner is not maintainable as neither the Municipal Corporation nor the Commissioner can be regarded as a person aggrieved. It is putforth that she never submitted resignation as required u/s 18 of the Act, and therefore, the question of its acceptance or rejection does not arise. It is further setforth that the letter written by her was an expression of resentment over the conduct of the Mayor and the Deputy Mayor. She has disputed to have tendered her resignation to the Mayor. She has also contended that the petitioner has not

filed the copy of the letter written by her to the Mayor.

The respondent No. 3, Mayor of the Municipal Corporation, has supported the stand of the petitioner by stating that the respondent No. 2 had personally handed over the letter of resignation dated 31.8.1996 when the meeting of the councillors was in progress and the said letter became effective the moment it was handed over to the Mayor. The said respondent has stated that he had recorded his endorsement on the letter of the resignation.

I have heard Mr. R.N. Singh, learned counsel for the petitioner, Mr. Vivek Awasthy, learned Deputy Government Advocate, for the respondent No. 1 and Mr. Qamaruddin, learned counsel for the respondent No. 2. It is contended Mr. Singh, learned counsel for the petitioner, that the order passed by the State Government, vide Annexure-P.1 is vulnerable inasmuch as the State Government has failed to appreciate the tenor of the letter written by the respondent No. 2 and further erred in holding that there has been non-compliance of the provision enshrined u/s 18 of the Act. Mr. Singh in support of his contention has placed reliance on the decision rendered in the case of Om Prakash Choudhary v. Collector, District Guna 1987 MPLJ 369. Mr. Qamaruddin, learned counsel for the respondent No. 2 in his turn has contended that the order passed by the State Government is in consonance with the provision of the Act and does not warrant any interference by this Court. He has placed reliance on Section 17(3) of the Act. Mr. Awasthy, learned Deputy Government Advocate, has supported the Governmental action.

The sole question that arises for consideration is whether the letter written by the respondent No. 2 vide Annexure-P.2 should be construed as a letter of resignation has to be acted upon as per provision of the Act. Section 18 of the Act deals with the resignation of the councillor. The said provision reads as under:

Section 18. Resignation of councillor. - Any councillor may resign his office by giving notice in writing to that effect to the Mayor and his seat shall thereupon become vacant.

The Mayor shall forthwith inform the Government and the fact shall be notified in the Gazette.

Provided that the Government may even after the councillor has resigned his office, if it comes or brought to its notice and it after giving such councillor an opportunity of being heard, it is satisfied that the councillor, during the term of his office as councillor, has been guilty of misconduct in the performance of his duties, order his removal and thereupon the councillor shall be deemed to have been removed from the date he resigned his office."

On a fair reading of the aforesaid provision it becomes luminously clear that a councillor who intends to resign may resign by giving notice in writing to that effect to the Mayor. Thus, the requirement of the provision is a notice in writing by the councillor indicating his/her resignation to the Mayor. Thereafter, it is

required of the Mayor to inform the same forthwith to the Government and the fact is required to be notified in the Gazette. The proviso enables the State Government to direct the removal of a councillor under certain conditions even though the councillor has tendered his resignation.

The letter written by the respondent No. 2 has to be scrutinised on the anvil of the aforesaid provision. The State Government has refused to declare the seat to have fallen vacant on the ground that the letter of the resignation was addressed to the Commissioner which is not in accordance with the mandate of Section 18 of the Act. The stand in the counter affidavit of the State Government is that it was a letter of conditional resignation. On a perusal of the letter contained in Annexure-P. 2 it is noticed that the respondent No. 2 had expressed her resentment over the conduct of the Mayor and others and had requested they should resign without any hesitation by which the respect of the councillor would stand restored. The letter also reflects that if the said Mayor and others do not do so she would not be in a position to continue as a councillor. Thereafter, she had stated that in a heavy heart she was tendering her resignation. In the last line of her letter she had requested other councillors to consider the matter.

Mr. Singh, learned counsel for the petitioner has urged with vehemence that she has in fact tendered her resignation when she has categorically used the language in the present tense.

Before I advert to deal with the letter, whether the tenor of the language of the letter makes it a conditional one or not I may State that the heart of the matter is whether it has been done in accordance with the provisions of the Act. On a scrutiny of the letter under Annexure-P.2 it is apparent that it has been addressed to the Commissioner of the Corporation. There is an endorsement by the Mayor as submitted by Mr. Singh and as per the affidavit sworn to by the Mayor, the respondent No. 3. Mr. Singh, relying on the decision tendered in the case of Om Prakash Choudhary (Supra) has contended that the action of the State Government is absolutely unjustified. In the case of Om Prakash Choudhary (supra) out of 24 Members of the Municipal Council 13 tendered their resignation to the Collector who accepted the same. A contention was raised that as per Section 40(1) of the M. P. Municipalities Act, 1961 the resignation was to be given in writing to the President and the same having not been done all the consequential action was bad in law. The court repelled the aforesaid contention on the ground that the President of the Municipality had no role except to act like conduit pipe and ultimate authority of acting upon the letter of the resignation vests in prescribed authority. It is to be noted here that u/s 40 of the Municipalities Act resignation is required to be given in writing to the President who thereafter communicates the same to the prescribed authority. The prescribed authority is the Collector under the said Act. Keeping in view the aforesaid requirement of law this Court in the case of Om Prakash (supra) held as under:

"It would thus be seen that even though Sub-section (1) of Section 40 of the Act

contemplates the resignation to be tendered by the Councillor to the President, it does not prescribe the consequence of the letter of resignation not being tendered to the President, but being tendered directly to the prescribed authority who has been authorised to accept the resignation. Apparently the President, under Sub-section (1) of Section 40 of the Act is to act like a conduit pipe. The ultimate authority of acting upon the letter of resignation vests in the prescribed authority. In this view of the matter we are of the opinion that in so far as Section 40(1) of the Act contemplates that the letter of resignation is to be tendered by the councillor to the President is concerned, it is only directory and not mandatory. It is apparently for conveyance."

From the aforesaid it is perceptible that the role of the president under the Municipalities Act is different than that of the Mayor under the Municipal Corporation Act as the Mayor is not a conduit pipe because once a letter of resignation in writing is submitted to the Mayor by a councillor the seat falls vacant. In fact, it contemplates automatic consequence. The other role ascribed to Mayor is to forward the same to the Government and the fact is to be notified in the Gazette. It is to be borne in mind that the Government does not have any positive role in its acceptance. Mr. Singh, learned counsel for the petitioner has drawn the analogy by submitting that when the letter of resignation was addressed to the Commissioner and endorsed by the Mayor, the prescribed authority, it is to be construed that there has been due resignation by the respondent No. 2. It may be noted here that in the case of Om Prakash (supra) this Court while interpreting the provision envisaged u/s 40 of the Municipalities Act interpreted the same as directory and the same being for convenience, accepted the role of the President as a conduit pipe. But u/s 18 of the Act the mandate is, the councillor is required to resign from his office by giving notice in writing to that effect to the Mayor. Admittedly, in the case at hand the letter was addressed to the Commissioner and not to the Mayor. It is well settled in law that when the statute requires a particular thing to be done in a particular manner, it has to be done in that manner or not at all. In view of the aforesaid analysis I am of the humble view that the letter of resignation addressed to the commissioner is not in accordance with the requirement of Section 18. of the Act and the endorsement by the Mayor on the letter does not save the situation.

In view of my preceding analysis, I am of the considered view that the letter, Annexure-P/2, is not in terms of Section 18 of the Act, and, therefore, the order passed by the State Government vide Annexure-P.1 does not require to be lanced in exercise of extra-ordinary jurisdiction of this Court. Consequently, the writ petition, being devoid of merit, stands dismissed but without any order as to costs.