

(1973) 12 GUJ CK 0018
In the Gujarat High Court

Parshottam Dhanji Ved and Another

APPELLANT

Vs

N. Gopalswami, Collector and Others

RESPONDENT

Date of Decision : 19-12-1973

Acts Referred:

Gujarat Municipalities Act, 1963 — Section 35(1), 35(1), 35(2), 35(5)

Citation : (1975) 16 GLR 394

Hon'ble Judges : S.H. Sheth, J

Bench : Single Bench

Judgement

S.H. Sheth, J.—Petitioner No. 1 was the president of Mandavi Municipality and petitioner No. 2 was the vice-president thereof. They were elected to their respective offices for the term expiring on 30th June 1974. On 18th June 1973 they tendered resignations of their respective offices wherein they stated that they would be effective from 1st July 1973. On 26th June 1973, resignation of petitioner No. 1 as the president of the municipality was accepted by the Collector under Sub-section (1) of Section 35 of the Gujarat Municipalities Act, 1963. The resignation of petitioner No. 2 as the Vice-president of the municipality was accepted by the Municipality on 30th June 1973 under Sub-section (2) of Section 35. Acceptance of resignation of petitioner No. 1 was not notified in the official gazette as required by Sub-section (4) of Section 35.

2. On 25th July 1973, the two petitioners raised a dispute by separate applications which they made to the Collector of Kutch in which they stated that their resignations were not valid because they were obtained from them under threat of taking disciplinary action by the political party to which they belong. The Collector-respondent No. 1 forwarded the application of petitioner No. 1 to the Director of Municipalities for inquiry because the latter is the officer appointed for that purpose under Sub-section (5) of Section 35. I am told that the application made by the petitioner No. 1 is still pending before the Director of Municipalities and has not yet been finally decided. The Collector who is the officer appointed under Sub-section (5) of Section 35 so far as the resignation of

the vice-president is concerned, retained it for inquiry by him. However, on 7th August 1973, he rejected the application made to him for staying the fresh election which was to be held to the post of the vice-president. It appears that that application has yet not been finally decided. Pending the final decision in those two applications, the petitioners have filed this petition for a declaration that no vacancy in the office of the president or the vice-president of the municipality has arisen and for other appropriate reliefs.

3. Mr. Shah who appears for the petitioners has raised before me only one contention in the following terms:

(1) In view of the language of the second proviso to Sub-section (5) of Section 35, resignation of a president or a vice president does not take any effect whatsoever until the dispute is decided.

4. The petitioners Ought to have moved the Director of Municipalities and the Collector for an early decision of their applications and then should have approached this Court if there was any grievance left in that behalf. However, they have chosen to approach this Court during the pendency of those applications. I proceed to answer the contention raised by Mr. Shah because it turns entirely on the construction of Section 35. Mr. Shah has argued that a resignation which is tendered by a president under Sub-section (1) or by a vice-president under Sub-section (2) of Section 35 does not take any effect whatsoever until the dispute as to its validity is decided.

5. In order to examine the contention raised by Mr. Shah it is necessary to turn to Sub-sections (1), (2) and (5) of Section 35 of the Gujarat Municipalities Act, 1963. Sub-section (1) of Section 35 deals with the resignation of the president of a municipality. It provides as under:

35(1). A president may resign his office by tendering resignation in writing to the Collector. Such resignation shall take effect on the date on which it is accepted by the Collector or on the expiry of thirty days from the date of tendering the resignation, whichever event occurs earlier.

Sub-section (2) of Section 35 which deals with the resignation of a vice-president is in the following terms:

35(2). A vice-president may resign his office by tendering his resignation in writing to the municipality. Such resignation shall take effect on the date on which it is accepted by the municipality or on the expiry of thirty days from the date of tendering the resignation whichever event occurs earlier.

6. Leaving aside for the time being Sub-section (5) of Section 35, one concept which clearly emerges from Sub-sections (1) and (2) is that a resignation tendered by the president or the vice-president of a municipality takes effect either on its acceptance by the Collector or the municipality, as the case may be, and if there is no such acceptance by the Collector or the municipality it automatically takes effect on the expiry of 30 days from the date on which it was

tendered. In other words, if a resignation which attracts the provision of Sub-section (1) or (2) of Section 35 is accepted by the appropriate officer or authority before the expiry of 30 days, it takes effect on that date. If it is not accepted by an appropriate officer or authority before the expiry of 30 days it becomes automatically effective on the expiry of 30 days from the date on which it was tendered. Sub-sections (1) and (2) do not postpone the taking of effect of a resignation until a dispute raised in that behalf is decided.

7. Let us now, therefore, see what Sub-section (5) of Section 35 provides. It is in the following terms:

35(5) If any dispute regarding any resignation arises, it shall be referred for decision to such officer as the State Government may, by general or special order, appoint In that behalf and the decision of such officer shall be final:

Provided that no such dispute shall be entertained after the expiry of a period of thirty days from the date on which the resignation took effect:

Provided further that such resignation shall take effect in accordant with the decision of such officer.

8. Mr. Shah has argued before me that since in case of a dispute a resignation is required to take effect in accordance with the decision of the officer competent to decide the dispute it does not take effect at all either on its acceptance or on the expiry of 30 days whichever event earlier It is extremely difficult for me to accept this argument in view of the express language which Sub-sections (1) and (2) use. They in provide that the resignations shall take effect. If the Legislature had desired that a resignation should not take effect at all until a dispute rated as to its validity is decided, it would have stated some so many words.

9. In my opinion, therefore, the combined effect of Sub-sections (1), (1) and (5) of Section 35 is as follows:

A resignation takes effect on its acceptance by the Collector or the municipality, as the case may be, if such an acceptance has been recorded prior to the expiry of 30 days from the date on which it was tendered. If no such acceptance has been recorded by an appropriate officer or authority, it automatically takes effect on the expiry of 30 days from the date on which it was tendered.

That is the view which I have taken in Special Civil Application No. 1316 of 1973 decided by me on 23rd/26th November 1973. *Bulsar Muni. v. V.V. Ramsubba Rao*. In that case I was not called upon to answer the question relating to the combined effect of Sub-sections (1), (2) and (5) of Section 35. I was merely analysing therein the scheme of Sub-sections (1), (2) and (3) of Section 35. Now if no dispute is raised the effect which the resignation has taken in the aforesaid terms becomes final. If a dispute is raised and if the validity of a resignation is upheld in that dispute, the effect which the resignation has taken continues to be in force. The proceeding in which a dispute has been raised against the validity of a resignation per se produces no effect whatsoever on the finality or

conclusiveness of the resignation. The third category of cases is a category in which a dispute may be raised and it may be decided in favour of the disputant. What happens in such a case?

10. In my opinion, in this group of cases, the effect which the resignation has taken in terms of Sub-section (1) or (2) of Section 35 stands modified or nullified, as the case may be, in accordance with the decision of the officer who has decided it. However, it cannot, therefore, be said that it has taken no effect whatsoever. Therefore, the effect of Sub-section (5) is as follows:

If fresh election to the office of the president or vice-president, as the case may be, has been held and if some one has been elected as the president or the vice president he holds that office subject to the decision of the dispute which has been raised in regard to the resignation tendered by his predecessor-in-office.

In my opinion Sub-sections (1), (2) and (5) of Section 35 are not capable of producing the result which Mr. Shah wants them to produce.

11. Since in my opinion the resignations tendered by the petitioners have taken effect subject to the final decision in the applications which they have made, respondents No. 3 and 4 must be regarded at this stage to have been validly elected. No declaration, sought for by the petitioners, can, therefore, be given. I need not say that if ultimately the officer concerned holds that both or any one of the resignations is not valid, certainly both or any one of the respondents No. 3 and 4 affected by the decision shall have to vacate their offices or his office, as the case may be. In this view of the matter I am unable to grant any relief>n this petition.

12. In the result, the petition fails and is dismissed. Rule is discharged with no order as to costs in the circumstances of the case.