

(2010) 04 SC CK 0065

In the Supreme Court Of India

Case No : Civil Appeal No's. 3411-3412 of 2010 (Arising out of SLP (C) No's. 23171-23172 of 2009)

Sau. Laxmi Verma

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 19-04-2010

Acts Referred:

Maharashtra Municipal Councils Nagar Panchayats and Industrial Township Act, 1965
— Section 41, 41(2)

Citation : AIR 2010 SC 2653 : (2010) AIRSCW 3182 : (2010) 4 BomCR 732 :
(2010) 4 JT 218 : (2010) 4 SCALE 147 : (2010) 5 SCC 329 : (2010) 4 SCR 782 :
(2010) 3 Supreme 343

Hon'ble Judges : P. Sathasivam, J;Deepak Verma, J

Bench : Division Bench

Advocate : Harish N. Salve, Gangan Sanghi and Rameshwar Prasad Goyal, for the Appellant; Vinod A. Bobde Anil S. Kilor, Satyajit A. Desai, Shushil Karanjkar, Sanjay Kharde, Asha Gopalan Nair, Anagha S. Desai, Vijay Kumar, Makarand D. Adkar, Vishwajit Singh, Arun R. Pednekar and V.N. Raghupathy, for the Respondent

Final Decision : Allowed

Judgement

Deepak Verma, J.—Leave granted. Arguments heard.

2. Even though a short but important and crisp question of interpretation of Section 41(2) of Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter shall be referred to as the 'Act') arises for our consideration in these Appeals. The provision stands as under:

SECTION 41

(1) The term of office of the Councillors shall be co-terminus with the duration of the council.

(2) A Councillor may resign his office unconditionally at any time by notice in

writing in his hand addressed to the Collector and delivered in person and sign before the Collector and then only such resignation shall be effective.

(emphasis supplied)

This particular Sub-section (2) of Section 41 is required to be interpreted by us in this and the connected matter.

3. It is pertinent to mention, prior to amendment carried out sometime in 1994, said Section 41 stood as under:

Resignation of Councillors - (1) A Councillor may resign his office by tendering resignation in writing to the President.

(2) Such resignation shall be effective on its receipt by the President.

But in these Appeals we are not required to consider it.

4. Facts of the case lie in a narrow compass, which are as under:

Respondent No. 6, Rupesh Yogeshwar Dhepe was an elected Councillor of Ward No. 8 of Municipal Council, Achalpur, District Amravati. Election was held sometime in the year 2008. On 18.12.2008, Respondent No. 6 wrote a letter to the Collector, threatening to resign, if certain demands made by him were not fulfilled, within a period of ten days. Since the demands were not fulfilled, on 29.12.2008, he, keeping the promise, tendered his resignation. The Collector held that the resignation was valid and accepted it. On his resignation and acceptance thereof, since the seat fell vacant, Collector proceeded to arrange for elections of Ward No. 8, from which Respondent No. 6 was earlier elected and election programme commenced.

5. In the meantime, Respondent No. 6 filed a Revision Application before Additional Commissioner stating therein that he had in fact not resigned in accordance with law and there has been complete violation of Sub-section (2) of Section 41 of the Act. Thus, no fresh election should be conducted. But in the meanwhile election programme was already announced. The election programme so announced specifically mentioned that election was subject to the decision of pending proceedings. In the fresh elections, the present Appellant Laxmi Verma was elected as Councillor and subsequently she was also elected as President of Municipal Council and is continuing as such. The Additional Commissioner decided the Revision Application of Respondent No. 6 by order dated 25.02.2009 holding that the Collector had rightly accepted the resignation of Respondent No. 6. This order was challenged by Respondent No. 6 by filing W.P. No. 1550 of 2009, which was partly allowed and the Additional Commissioner was directed to decide the Revision Application afresh after hearing both parties. Thereafter, the Additional Commissioner allowed the Revision Application filed by Respondent No. 6, set aside the order of Collector, whereby his resignation from the post of Councillor of Municipal Council, Achalpur, was accepted, thereby restoring the status of Municipal Councillor to Respondent No. 6.

6. This order was challenged by the Appellant in W.P. No. 3167/2009, decided by learned Single Judge of the High Court of Judicature at Bombay, Nagpur Bench whereby the Appellant's writ petition came to be dismissed. Not being satisfied with the said order of dismissal, Appellant carried L.P.A No. 349 of 2009 before Division Bench of the said Court, but vide order dated 26.8.2009, the said L.P.A also came to be dismissed. In other words, the resignation tendered by Respondent No. 6 was held to be invalid, inconsequential and inoperative. Obviously, the election of Appellant, which was subject to the final result of the lis pending before Additional Commissioner stood set aside.

7. We have critically gone through the orders passed by learned Single Judge and Division Bench in L.P.A and are of considered opinion that both had dealt with the matter at length and ultimately came to the conclusion that there has not been full and complete compliance of the provisions of Sub-section (2) of Section 41 of the Act. Therefore, there was no legally valid resignation tendered by Respondent No. 6 and the Collector committed an error in accepting the same.

According to the Appellant, there is no dispute that resignation letter dated 29.12.2008 was signed by Respondent No. 6 and was presented by him before the Collector. It is further not in dispute that he had also put his initials at the places, scored out by him. Therefore, it should be deemed to be substantial compliance of the aforesaid provision. In other words, it has been argued before us that the Collector was fully justified in accepting the resignation of Respondent No. 6, which was tendered in person to him and on being asked to put initials at certain places scored out, he had done so. Therefore, nothing more was required to be done in the matter and it should be construed as if he had delivered the same in person and signed it himself before the Collector, only then the same was accepted.

8. On the other hand, learned Senior Counsel appearing for Respondents contended that mere putting initials at the places scored out in the resignation letter would not tantamount to signing it before the Collector which is pre-requisite for acceptance of the resignation, as contemplated u/s 41(2) of the Act. Therefore, there was no valid resignation tendered by him, consequently, Additional Commissioner, learned Single Judge and Division Bench committed no error while recording a categorical finding against the Appellant.

9. In the light of the aforesaid contentions, we have heard learned Senior Counsel, Shri H.N. Salve for Appellant and learned Senior Counsel, Shri Vinod A. Bobde for Respondent No. 6 and Others for State of Maharashtra.

10. Section 41(2) of the Act referred to herein above requires that a Councillor may resign his office unconditionally at any time by notice in writing in his hand, to be addressed to the Collector. It further requires that such resignation has to be delivered in person and signed before the Collector, then only such resignation shall be effective. Thus, mere putting initials at certain places scored out before the Collector, would not amount to putting the signatures in the resignation letter

before the Collector himself.

11. In this connection, it is necessary to refer to the letter of the Collector, Amravati dated 03.07.2009 to the Secretary, Urban Development Department, Mumbai. Collector had made the following endorsement which reads as thus:

In connection with the subject referred above, it is hereby submitted that Councillor of Achalpur Municipal Council Ward No. 8 Shri Rupesh Yogeshwarrao Dhepe has tendered resignation of his Municipal Council Membership before me on 29.12.2008. The said letter of resignation was typewritten and he had already signed it. On questioning him whether resignation is his own, it was confirmed that it was his own resignation. Later on Shri Dhepe took the copy of his resignation back and made corrections in point No. 4 in that resignation letter and put his initials before me and again handed it over to me and I put remark on that as "submitted before me by Shri Dhepe".

(emphasis supplied)

12. No doubt, it is true that Collector had admitted that resignation was typewritten and it was already signed by the Respondent No. 6. On questioning whether it was his own, Respondent No. 6 confirmed that it was his own resignation. Thereafter, he took a copy of his resignation back and made corrections in point No. 4 in that resignation and put his initials before him and again handed it over, on which he then put the remark "submitted before me by Shri Dhepe". The aforesaid statement of the Collector clearly establishes that in any event the same was not signed by Respondent No. 6 in his presence. Thus, it is manifest that there has been non-compliance of the provision of Section 41(2) of the Act. The said provision being mandatory in nature should have been complied in letter and spirit. Its non-compliance would automatically lead to irresistible conclusion that the same was not properly and validly accepted resignation of Respondent No. 6 by the Collector.

13. Photostat copy of the original resignation of Respondent No. 6 dated 29.12.2008 has been filed by the Appellant together with its English translation. Critical examination of the same makes it abundantly clear that in it certain words were scored out and only at that place he had put his initials, which was already typed resignation, on which he had already put his signature. Thus, there was non-compliance with regard to that part of the Section which requires that resignation shall be signed in presence of the Collector.

14. Shri H.N. Salve, learned Senior Counsel appearing for Appellant strenuously contended before us that purposive interpretation of the aforesaid provision of law would mean that there has been a substantial compliance of Sub-section (2) of Section 41 of the Act, in as much as there was no denial of the fact of submitting resignation by Respondent No. 6, presenting the same by him to the Collector. On being asked by him to put initials at the places scored out by him, which he did, would be deemed to have been signed by him in presence of Collector. It should, thus, be construed that the same was validly accepted by

Collector. He has, therefore, contended that Additional Commissioner in his revisional jurisdiction committed grave error in finding fault in acceptance of the resignation of Respondent No. 6 by the Collector. On the same analogy the orders passed by learned Single Judge passed in Appellant's Writ Petition and confirmed by Division Bench in appeal have been attacked.

15. It was further contended by him that the test of tendering resignation as contemplated under Sub-section (2) of Section 41 of the Act was satisfied and the resignation having been accepted, there was no question of holding otherwise. He has also placed reliance on the topic of "Express Requirements And Conditions" from 'Administrative Law', Tenth Edition 2009 of H.W.R. Wade & C.F. Forsyth.

16. He has contended that if the conclusion is reached that on a true construction, non-observance of the condition is fatal to the validity of the action, that condition is said to be 'mandatory'. But if the conclusion is reached that non-observance does not lead to invalidity, the condition is said to be 'merely directory'. He has further contended that sometimes the legislation makes it plain what the effect of non-observance is to be. But more often it does not, and then the Court must determine the true import of the legislation. It is a question of construction, to be settled by looking at the whole scheme and purpose of the Act and by weighing the importance of the condition, the prejudice to private rights, and the claims of the public interest.

17. On the other hand, learned Senior Counsel Shri Vinod A. Bobde placed reliance on the following judgments starting from AIR 1936 253 (Privy Council); Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, ; Deep Chand Vs. The State of Rajasthan, ; Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, ; Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, . However, in the light of the clear provision of the Act which is as clear as day light, it is not necessary to deal with the aforesaid judgments individually and in details.

18. However, after going through the aforesaid Sub- section (2) of Section 41 of the Act, the plain and only conclusion that can be arrived at is that resignation has to be tendered by the Councillor addressed to the Collector. It is to be delivered by him in person and then he has to affix his signature before the Collector on compliance of the aforesaid conditions, then only such resignation shall be effective. It cannot be disputed that an obligation was created by the Statute to perform it in the manner as provided therein, then in case of its non-compliance, the effect thereof would be rendered redundant and invalid in law.

19. Collector himself admitted, in no uncertain terms, that letter of resignation was already typed, on which the signature of Respondent No. 6 was already appearing. He went through the same and only asked him to put his initials at the place scored out in the said resignation. Putting of initials at the place where some portion of resignation was deleted, would neither amount nor can be

construed to have been signed in presence of the Collector.

20. It would have been entirely different if the Collector would have asked Respondent No. 6 to authenticate and endorse his own signatures in the resignation at the same place where he had already put his signatures, then of course to some extent arguments advanced by Shri H.N. Salve would have made some point.

21. No doubt, it is true that equity swings in favour of the Appellant but the law applicable to the facts of the case is certainly against her. Apart from the above, it is also to be recalled that fresh elections were held only subject to ultimate result of the Revision Petition filed by Respondent No. 6. Thus, Appellant was fully aware that her fate would ultimately depend on the result of the litigation, which ultimately stood decided against her and further has a seal of approval by us.

22. Thus, looking to the matter from all angles and keeping in mind, strict adherence to the provisions of the Act, we are of the opinion that there was no valid, proper and legal resignation tendered by Respondent No. 6 in as much as admittedly, the said resignation dated 29.12.2008 was not signed by Respondent No. 6 in presence of the Collector which was mandatorily required to be done. No other point was argued before us.

23. In the light of this, we are of the considered opinion that no case has been made out for interference in the matter. Appeals are dismissed but with no order as to costs.