

(2016) 06 MP CK 0032

In the Madhya Pradesh High Court

Case No : Writ Petition No. 6783 of 2016

Shekhar Choudhary

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 20-06-2016

Acts Referred:

Citation : (2016) AIR(MP) 147 : (2016) 4 Civil LJ 427 : (2016) 3 Jab LJ 435 : (2016) 3 MPLJ 303

Hon'ble Judges : R.S. Jha, J.

Bench : Single Bench

Advocate : Shri K. C. Ghildiyal with Shri Suyash Thakur, Advocates, for the Appellant; Smt. Indira Nair, learned Senior Advocate with Shri Rajas Pohankar, Advocate, Shri Jafar Khan, learned Counsel, Shri Aseem Dixit and Ms. Shweta Yadav, Advocates, Shri Shivendra Pa

Final Decision : Allowed

Judgement

R.S. Jha, J.—The petitioner has filed this petition being aggrieved by order dated 7.4.2016 (Annexure P/7), which is a resolution passed by the Special Board Meeting of Cantonment Board, Sagar, accepting his resignation as well as the letter dated 7.4.2016 (Annexure P/8) issued by the Chief Executive Officer, Cantonment Board, Sagar whereby, the Chief Executive Officer has called for a Special Meeting of the Board on 18.4.2016 for the purposes of holding elections for the post of Vice President of the Board under Section 39 of the Cantonments Act, 2006 (hereinafter referred to as the "Act of 2006").

2. The admitted and undisputed facts leading to the filing of the petition are that the petitioner is the duly elected Vice President of Cantonment Board, Sagar. It is also an undisputed fact that on 4.3.2016 the petitioner sent a letter to the authority tendering his resignation from the post of Vice President, Cantonment Board, Sagar. It is also an admitted and undisputed fact that the matter of acceptance of the resignation of the petitioner came up for consideration in a Special Meeting of the Board held on 7.4.2016. It is also an undisputed fact that

the petitioner submitted an application for withdrawal of his resignation on 6.4.2016 which was also considered and came up for decision before the Special Meeting of the Board on 7.4.2016. It is also an admitted and undisputed fact that the Members of the Special Committee of the Board accepted the petitioner's resignation in the Special Meeting held on 7.4.2016 by a majority of 8:3 votes and the post of Vice President was declared vacant by the Chief Executive Officer and fresh elections were directed to be held by the letter dated 7.4.2016 (Annexure P/8).

3. In the backdrop of the aforesaid admitted and undisputed facts, the learned counsel for the petitioner/Vice President submits that the petitioner's notice of resignation was withdrawn by him on 6.4.2016 prior to its acceptance in the Special Meeting of the Board on 7.4.2016 and in such circumstances, once the resignation has been withdrawn the question of its acceptance by the Board did not arise. It is submitted that before the Special Meeting that was held on 7.4.2016 the petitioner had submitted his letter of withdrawal of resignation on 6.4.2016 and the same was duly considered in the Special Meeting held on 7.4.2016 but the Members of the Board instead of applying their mind to the fact that the resignation had already been withdrawn, accepted it by a majority of 8 against 3 votes, which is contrary to law.

4. The learned counsel for the petitioner further submits that in his letter of withdrawal of resignation, he had stated that in case the Members of the Board wish to remove him then they should follow the prescribed procedure under the Act of 2006 by moving a motion of no confidence but the respondents/Board has adopted a novel method of circumventing the rigors of those provisions by accepting the resignation that had been withdrawn simply by resorting to voting which is in contravention of the provisions relating to no-confidence. On the basis of the aforesaid submissions, it is urged that the impugned decision of the Special Meeting dated 7.4.2016 (Annexure P/7) and the letter dated 7.4.2016 (Annexure P/8) issued by the Chief Executive Officer be quashed.

5. The learned Senior Advocate for the respondents no. 3 and 4 submits that the petitioner submitted a letter of resignation from the post of Vice President which was processed by the authority of the Board and was placed for consideration in the agenda for the meeting that was held on 7.4.2016. It is stated that while the said agenda regarding resignation of the petitioner was being considered, the petitioner submitted his letter of withdrawal across the Board in the meeting itself and it was in such circumstances that the Members of the Board decided to accept the resignation which cannot be found fault with. It is submitted that the procedure followed by the respondent/authority is in consonance with and in accordance with the provisions of Section 20 and Section 45 of the Act of 2006. The impugned letter dated 7.4.2016 calling for a Special meeting to elect a new Vice President has been issued with a view to ensure that the work of the Board does not suffer as the Vice President of the Board is a necessary and important Member of several committees.

6. The learned counsels appearing for respondents no. 5, 6, 7, 8, 9 and 10 submit that the resignation of the petitioner was duly accepted in the Special Meeting held on 7.4.2016 and it is only thereafter that the petitioner tendered his resignation and in such circumstances as the resignation had already been accepted in the Special Meeting by a majority of the Members, therefore, the same could not have been permitted and cannot be permitted to be withdrawn by the petitioner after its acceptance and in the circumstances, the petition filed by the petitioner deserves to be dismissed.

7. Having heard the learned counsel for the parties and in view of the undisputed facts mentioned in the preceding paragraphs, it is necessary to examine the resolution passed in the Special Meeting of the Board held on 7.4.2016. The agenda and the resolution is in the following terms:

Agenda of the Special Meeting of the Board to be held on 07.04.2016 at 1300 hrs. in the office of the Cantonment Board, Saugor.

1. Resignation from the Post of Vice-President.

To consider the letter dated 4.3.2016 from Shri Shekhar requesting the Board to accept his resignation from the post of Vice-President of the Board. Elected members Smt. Veena, Smt. Kiran, Shri Jeelani and Shri Prabhudayal have also requested vide letter dated 5.3.2016 to consider the application of Shri Shekhar for resignation from the post of Vice-President.

Resolution

1. Considered. Shri Shekhar submitted his application stating to withdraw his resignation letter. Shri Shekhar vide another letter dated 6.4.2016 has mentioned that his resignation be not accepted and if any elected members have any objection they may move a no confidence motion against him. Discussions were held on the matter with the elected members. Smt. Kiran, Shri Jeelani, Shri Vimal and Shri Virendra, elected members, mentioned that the resignation has become a part of the Board agenda and be considered. The Board also perused Section 20(2) and Section 20(3) of the Cantonments Act, 2006. It was observed that the elected members were divided amongst themselves in 4:3 ratio on the agenda matter. After deliberations on the provisions of the ibid Act the Board decided to take a decision in the matter as per Section 45(1) of the ibid Act by majority of votes of the members present and voting. A secret voting was held in the presence of President, Cantonment Board who mentioned that those who are for acceptance of the resignation may tick for "Yes" and put a cross on "No" and those who are against the resignation may tick for "No" and put a cross on "Yes". This was also explained in Hindi by the President and the chits for voting were also prepared in Hindi by the President, Cantonment Board. Eleven such chits were distributed amongst the members present and collected after voting in presence of President, Cantonment Board. The result of voting was declared by the President, 8 for acceptance of the resignation and 3 against the acceptance of resignation.

The Board resolved to accept the resignation of Shri Shekhar from the post of Vice President of the Board."

From a perusal of the aforesaid resolution, it is apparent that at the time of consideration of the agenda regarding resignation of the petitioner and before its acceptance the fact that the petitioner had withdrawn his resignation has been duly considered in the Special Meeting as before the letter of resignation was considered the letter of withdrawal of resignation was brought to the notice of the members present. It is also apparent that the Members of the Board did not apply their mind to the effect and impact of the withdrawal of the resignation of the petitioner but straightaway went on to consider whether previous notice of resignation should be accepted or not and thereafter, took a decision in terms of Section 45(1) of the Act of 2006 by voting in which 8 Members voted in favour of the acceptance of the resignation and three against the resignation and in view of the aforesaid majority vote of 8:3, it was resolved to accept the resignation letter.

8. Before I advert to the validity of the action taken by the respondents/ authority, it would be proper to consider the provisions of Sections 20 and 45 of the Act of 2006 which have been relied upon by the respondents. Section 20 and 45 of the Act of 2006 are in the following terms :

"20. Term of office of Vice-President.- (1) The term of office of a Vice President shall be five years or his residual term of office as a member, whichever is less.

(2). A Vice-President may resign his office by notice in writing to the President and, on the resignation being accepted by the Board, the office shall become vacant.

(3). A Vice-President may be removed from his office, at a special meeting convened for the purpose on a requisition for the same by not less than one half of the elected members of the Board holding office, by a resolution passed by a majority of not less than two-thirds of the total number of elected members then holding office and attending and no member, other than an elected member, shall have the right to vote on the resolution :

Provided that in case of Category IV Cantonments, the Vice-President may be removed if a resolution to this effect is passed by the Board and the other elected member shall become the Vice-President.

45. Method of deciding questions (1). All questions coming before a meeting shall be decided by the majority of the votes of the members present and voting.

(2). In the case of an equality of votes, the person presiding over the meeting shall have a second or casting vote.

(3). The dissent of any member from any decision of the Board shall, if the member so requests, be entered in the minutes, together with a short statement of the ground for such dissent."

9. A perusal of sub section 2 of Section 20 makes it abundantly clear that a Vice-President may resign his office by notice in writing to the President and, on the resignation being accepted by the Board, the office shall become vacant and, therefore, the existence of a notice of resignation and its acceptance by the Board is necessary before the resignation becomes effective. Sub Section 3 of Section 20 on the other hand provides that the Vice President may be removed from his office, at a special meeting convened for that purpose on a requisition for the same by not less than one half of the elected members of the Board holding office by a resolution passed by a majority of not less than two-thirds of the total number of elected members then holding office and attending. Section 45 of the Act of 2006 provides that all questions coming before the Meeting shall be decided by the majority of the votes of the members present in the meeting.

10. It is an admitted and undisputed fact that there is no provision in the Act of 2006 other than Section 20(2) which provides for the procedure for tendering resignation and that there is no separate procedure providing for the manner of withdrawing the same and therefore, the general principles of withdrawing a notice of resignation are applicable and, therefore, a notice of resignation can be withdrawn by simply giving an intimation in writing to that effect. It is also apparent from the undisputed fact before this Court that before the resignation of the petitioner was accepted by the Board, the same was withdrawn by him on 6.4.2016 which fact has been taken note of in the resolution of the Special Meeting of the Board itself dated 7.4.2016. In the circumstances, as the petitioner had withdrawn his resignation by letter dated 6.4.2016 prior to its acceptance therefore, at the time of passing of the resolution, the notice of resignation submitted by the petitioner stood withdrawn and did not remain in existence and, therefore, could not have been accepted in the meeting held on 7.4.2016. In the circumstances, once the petitioner had withdrawn his resignation, I am of the considered opinion that the same could not have been arbitrarily accepted by treating it to be alive in the meeting by adopting the method of voting.

11. At this stage it is appropriate to take note of the fact that the respondents/ authority in the resolution has also relied upon and invoked the provisions of Section 20(3) of the Act of 2006 for the purpose of accepting the resignation and removing the petitioner from the post of Vice-President. A bare perusal of section 20(3) makes it apparent that the said sub section can be invoked only in case there is a requisition for removing the Vice-President moved by not less than one half of the elected members of the Board holding office and a Special Meeting has been convened for the purpose of considering such a requisition and that a resolution is passed in such a Special Meeting accepting the requisition for removing the Vice President by a majority of not less than two thirds of the elected members then holding office and attending the meeting.

12. Apparently and admittedly in the instant case there is no requisition moved by not less then one half of the elected members of the Board for convening a

Special Meeting for removing the petitioner/Vice President. This fact is evident from a bare perusal of the proceedings and resolution of the Special Meeting held on 7.4.2016, the agenda whereof clearly states that the meeting had been convened to consider the letter dated 4.3.2016 whereby, the petitioner/Vice President had requested the Board to accept his resignation from the post of Vice President of the Board and the letter dated 5.3.2016 submitted by the elected members i.e. respondents no.9, 5, 7 and 10 whereby, they had asked the Board to consider the application of the petitioner for resignation from the post of Vice President.

13. Though the learned counsel for the respondents laboured hard to submit that the letter dated 5.3.2016 should be treated to be a requisition moved by not less than half of the elected members of the Board for removing the petitioner from the post of Vice President as there are 7 elected members in Sagar Cantonment Board and the letter in question has been signed by 4 elected Members of the Board, which is more than one and half of number of elected members of the Board, but the said contention of the respondents is heard only to be rejected. A bare perusal of the letter dated 5.3.2016 which has been filed along with the petition at page 17 indicates that it is not a requisition for removing the Vice President as envisaged under of Section 20(3) of the Act of 2006 but it is a simple letter by which they have forwarded the letter of resignation of the petitioner from the post of Vice President under Section 20(2) of the Act of 2006 with a request that the same be placed for consideration in the next meeting of the Board and therefore, by no stretch of imagination can the said letter be treated to be a requisition under Section 20(3) of the Act of 2006 for removing the petitioner from the post of Vice President as submitted by them.

14. In view of the aforesaid facts and circumstances existing in the present case and the undisputed fact that the petitioner had withdrawn his letter of resignation by letter dated 6.4.2016 before it was accepted in the Special Meeting held on 7.4.2016 and as there is no provision under the Act of 2006 and the Rules preventing or prohibiting the petitioner from doing so, I am of the considered opinion that once the resignation had been withdrawn by the petitioner the same could not have been approved and accepted in the Special Meeting held on 7.4.2016 and therefore, the decision taken by the Board in its meeting dated 7.4.2016 being contrary to law deserves to be and is hereby quashed.

15. I am also of the opinion that in the absence of any specific requisition for removal of the Vice President/petitioner from office as provided under Section 20(3) of the Act of 2006, the Board could not have taken resort to the aforesaid provision for the purpose of conducting a voting in terms of Section 45 of the Act of 2006 and thereafter, resolve that the petitioner's resignation was accepted by a majority of voting of 8:3 and therefore, the aid and assistance taken by the respondents of Section 20(3) of the Act for accepting the petitioner's resignation is also misconceived as the said provision has no applicability to the facts and

circumstances of the present case and, consequently, in view of the aforesaid findings recorded by this Court the impugned resolution dated 7.4.2017 (Annexure P/7) and the consequent letter dated 7.4.2016 (Annexure P/8) are hereby quashed and the act of the respondents in accepting the petitioner's resignation and removing him from the post of Vice President of Cantonment Board, Sagar is hereby quashed.

16. As a result of the conclusions as aforesaid recorded by this Court, the petition filed by the petitioner is allowed.

17. In the facts and circumstances of the case there shall be no order as to costs.