
(2002) 06 UK CK 0004

In the Uttarakhand High Court

Case No : Writ Petition No. 5189 (M/B) of 2000

Vikram Singh Bhandari

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-06-2002

Acts Referred:

Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 — Section 24

Citation : (2003) 2 UC 985 : (2003) 1 UD 174

Hon'ble Judges : A.A. Desai, C.J;P.C. Verma, J

Bench : Division Bench

Judgement

P.C. Verma, J.—We allowed the writ petition in part vide our order dated 21-12-2001 and held that the petitioner did not resign as member of Zila Panchayat voluntarily and, therefore, acceptance of his resignation was quashed. Consequently, we further held that the vacancy did not occur. Therefore, election of respondent No. 5 Mahendra Singh Mer as member of Zila Panchayat, Almora, was set aside. The petitioner was ordered to be treated as member of Zila Panchayat, Almora. The petition was allowed on 21-12-2001 for the reasons to follow later on.

2. Now we proceed to record our reasons. A very short but interesting question raised to be decided in this writ petition is as to whether resignation of the petitioner was voluntary and valid in the eye of law ?

3. The petitioner was holding the elected office of member of Zila Panchayat, Almora. According to the petitioner from the newspapers published on 7-6-2000, he came to know that his resignation has been accepted. Then on the same day he made a representation to the District Authorities that he had not resigned and if any resignation had been accepted, it was a forged, as he had never tendered his resignation. The petitioner also challenged the authority of the Chairman, Zila Panchayat, Almora on the ground that he ceased to be Chairman, Zila Panchayat, Almora as he had become member of Zila Panchayat, District-Bageshwar. During the course of pendency of the writ petition two other new grounds were added

challenging the election notified for the constituency which was being represented by the petitioner.

4. On behalf of respondents Nos. 2 and 3, a counter-affidavit was filed by Upper Mukhya Adhikari, Zila Panchayat, Almora, in which it has been stated that the statement of the petitioner was wholly incorrect that signatures of the petitioner were forged or that he was compelled to resign from the membership of Zila Panchayat, Almora. In para-8 of the counter-affidavit it has been stated that petitioner Vikram Singh Bhandari submitted his resignation directly to the Chairman, Zila Panchayat, Almora and he accepted the same as provided u/s 24 of U.P. Kshetra Panchayat and Zila Panchayat Act, 1961.

5. The respondent No. 4, Chairman, Zila Panchayat, Almora has also filed his counter-affidavit. He has denied the averments made in the writ petition in general and in para-14 of the counter-affidavit he has made specific statement that the petitioner has given his resignation to the Mukhya Adhikari and thereafter Mukhya Adhikari forwarded it to the department who in its turn accepted the same on 6-6-2000.

6. Now before us there are three versions. One by the petitioner that he never tendered his resignation; second by the Mukhya Adhikari that he tendered his resignation directly to Chairman, Zila Panchayat, Almora who accepted the resignation on 6-6-2000 and third is of Chairman, Zila Panchayat, Almora who has stated that the resignation was submitted to Mukhya Adhikari who forwarded the same to him and then he accepted.

7. The petitioner was holding an elected office of Zila Panchayat, Almora. Zila Panchayat, Almora is a creation of statute known as Kshetra Panchayat and Zila Panchayat Adhiniyam. The members of Zila Panchayat constitute Zila Panchayat after being elected from their constituencies. Therefore, the right to hold this elected office is statutory one and the continuance thereon shall be governed by the provisions of statute under which the same has been created.

8. Section 24 of Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 provides for resignation of the member of a Panchayat, which reads as under :--

"24. Resignation of Adhyaksha, Up-Adhyaksha or member-- [(1) An Adhyaksha, Up-Adhyaksha or any elected member of the Zila Panchayat may resign his office by writing under his hand addressed, in the case of Adhyaksha, to the State Government, and in other cases to the Adhyaksha and delivered to the Mukhya Adhikari of the Zila Panchayat.]

(2) The resignation of the Adhyaksha shall take effect on and from the date on which the sanction thereto of the State Government is received in the office of the [Zila Panchayat] the resignation of an Up-Adhyaksha or member shall take effect on and from the date on which the resignation is accepted by the Adhyaksha [and such Adhyaksha, Up-Adhyaksha or member be deemed to have vacated his office].

9. According to the aforesaid provision a member of Zila Panchayat may resign in writing and resignation shall be addressed to the Chairman and shall be presented to Mukhya Adhikari who in turn shall place before Chairman for the acceptance. In the present case we have seen that there is contradiction in the affidavits filed by the Mukhya Adhikari and the Chairman, Zila Panchayat. The Mukhya Adhikari has stated that the resignation was directly submitted to the Chairman while the Chairman has stated that it was submitted to the Mukhya Adhikari.

10. In order to find out the correct factual position, we may examine the resignation letter itself, which is in Hindi, but it is necessary to reproduce, as it is to find out the fact.

(Vernacular matter omitted....Ed.)

There are two notings on the above letter dated 6-6-2000. One by Adhyaksha addressed to Mukhya Adhikari,

"Accepted, Members and Government be informed and affix on Notice Board."

11. Another noting is by the Mukhya Adhikari to Upper Mukhya Adhikari directing him to put up the application with the rules. This second noting below the noting of Adhyaksha, is obviously made to comply the order of Adhyaksha.

12. Both the aforesaid notings lead to the inference that the "resignation" was dealt with directly by the Adhyaksha on giving a complete go-bye to the prescribed channel of the Mukhya Adhikari. The Inference thus drawn leads into conclusion when we look into the affidavit of the Mukhya Adhikari whose credentials have not been challenged by either party. At the risk of repetition it may be worthwhile to record that in his affidavit the Mukhya Adhikari has categorically denied that the alleged resignation was ever received by him from the petitioner or that in his own he ever had the occasion to forward it to the Adhyaksha. This lent support to contention of the petitioner that the resignation in question was forged.

13. Moreover, the acceptance of the alleged resignation was not in accordance with Section 24 of Kshettra Panchayat and Zila Panchayat Adhiniyam, It is settled law that if a particular mode is prescribed to do a thing in a particular manner then that thing is to be done in that particular manner alone. Reliance is placed on Chandra Kishore Jha Vs. Mahavir Prasad and Others, ; State of Uttar Pradesh Vs. Singhara Singh and Others, ; Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, ; AIR 1936 253 (Privy Council) .

14. Resultantly, it is held that there was no resignation at all; obviously there was no question or occasion of its acceptance leading to the vacancy for which the election exercise was undertaken or; naturally it was void ab initio and is hereby quashed, the petitioner continues to hold the post of a member of Zila Panchayat, Almora. We have already pronounced the operative portion of the order on 21-12-2001 and we have now given the reasons for the order

pronounced.