

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 14607 of 2016 (O&M)

Date of decision : July 14, 2017

Pavitar Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Kanwaljit Singh, Senior Advocate with
Mr. A. S. Jattana, Advocate and
Mr. Gagandeep Singh Virk, Advocate
for the petitioner.

Ms. Suniat Kaur, AAG., Punjab.

Mr. Athar Ahmad, Advocate
for respondent No. 5,7 & 9.

Ms. Kavita Arora, Advocate
for respondent No.6.

RAKESH KUMAR JAIN, J (oral).

This petition is filed for seeking a writ in the nature of certiorari for quashing the order dated 16.4.2015 which is apparently a wrong date mentioned in the order as it was communicated to the petitioner on 19.7.2016 whereby the resignation of the petitioner dated 11.5.2016 was accepted by the Secretary, Department of Local Bodies, Punjab.

In brief, the elections of the Municipal Council (hereinafter referred to as 'Council'), Adampur, District Jalandhar were held in March, 2015 to elect its 13 members. The petitioner contested as an independent candidate from Ward No.9 and was returned. Thereafter, the election of the President was held in terms of Section 20 of the Punjab Municipal Act, 1911 on 11.3.2015 in which the petitioner was elected as the

President.

The controversy started when the petitioner was allegedly forced to sign a communication to the Deputy Commissioner, Jalandhar on 11.5.2016 in respect of tendering his resignation from the post of the President of the Council. The contents of the letter are reproduced as under:-

*“To
“Hon'ble Deputy Commissioner
Jalandhar.*

*Subject: Regarding resignation from the post of President,
Municipal Council, Adampur, District Jalandhar.*

Sir,

*It is submitted that I, Pavitar Singh (counselor,
Municipal Council, Adampur, Ward No.8, district Jalandhar)
is resident of Jawahar Nagar, Adampur, District Jalandhar.
Now I am rendering my service as President, Municipal
Council, Adampur, District Jalandhar, but due to my family
problems I am unable to perform my service at this post,
therefore, I without any external pressure and with my full
knowledge is submitting my resignation from the post of
President, Municipal Council, Adampur, District Jalandhar, so
my resignation may kindly be accepted. It shall be very
thankful to you.*

*Sd/- 11.5.2016
Yours Sincerely,
Sd/- 11.5.2016
Pavitar Singh, President,
Municipal Council,
Adampur, District Jalandhar*

No.450/L.F.A Dated 3.6.2016

*A copy of this is sent to Sub Divisional Magistrate,
Jalandhar-I for necessary action and report.*

*Sd/-Deputy Commissioner,
Jalandhar
2.6.2016*

Sub-divisional Magistrate, Jalandhar-I

Endst.No.447-80/LFC Dated 6.6.2016

A copy of this is sent to Tehsildar, Adampur for information and necessary action.”

The case of the petitioner is that he had signed the letter on 11.5.2016 but he had never resigned from the post of President. In this regard, he also sent an e-mail to the committee and also called for a meeting in which all the 13 members of the Council were present and decided that “Today on dated 6.6.2016 at 4.30 PM in reference to endorsement no. 447-48 the resignation of president has not been accepted.”

The minutes of the meeting were also recorded accordingly about the non-acceptance of the resignation of the petitioner from the post of President. However, on 24.6.2016 the Regional Deputy Director, Local Govt., Jalandhar passed an order authorizing the Executive Officer of the Council in terms of Section 234(2) to release the payment for salaries of employees, electricity/telephone bill, petrol/diesel and other commodities on the pretext that post of the President has become vacant on the resignation tendered by him and that the petitioner can ask for an opportunity of hearing to apprise the authorities about the fact that he had not resigned on 19.7.2016. He received notification issued by the Department of Local Government that has been recorded on 11.5.2016 that his resignation from the post of President has been accepted in terms of Section 22 of the Act.

The case of the respondent-department is that notification was issued after verifying the fact through the Deputy Commissioner about the resignation of the petitioner.

Counsel for the petitioner has submitted that even if the

petitioner has signed the letter on 11.5.2016, which is termed as resignation, allegedly already typed was put up to him to sign under pressure yet the resignation tendered to the Deputy Commissioner does not fall within the definition of Section 22 of the Act as the Deputy Commissioner is not the competent authority to receive the resignation and the State Government is also not competent to declare/notify the acceptance of resignation and notify the same as has been done. This is rather submitted that the said procedure is to be followed in case of resignation of a member of the Council and not in the case of the President.

In this regard, counsel for the petitioner has referred to the provisions of Section 22 of the Act to contend that if the President or Vice President of the Municipality desires to vacate his seat by way of resignation he has to tender it in writing to the Committee. However, he further submits that in case the President or Vice President who has to resign also wanted to resign from the membership of the committee then he would tender his resignation to the Deputy Commissioner and the State Government shall accept the resignation and notify the same in the official gazette. It is also submitted that the Municipal Counsellor has two status; 1) of a member of Municipal Council having been elected by the voters; 2) of the President or Vice President having been elected by the members. In this regard, he has also referred to provisions of Section 20 of the Act which deals with election of President or Vice President.

On the other hand, counsel for the respondents have submitted that the petitioner is estopped by his own act and conduct as he himself has admitted to have signed the letter of his resignation which was tendered by him to the Deputy Commissioner. His resignation has been

ultimately accepted by the State Government and due notification has been issued in this regard.

It is also submitted that notification was not issued by the State Government without verification from the petitioner about the resignation. It is also submitted that the Municipal Council who had passed the resolution on 7.6.2016 not accepting the resignation of the President has no jurisdiction in this regard.

I have heard learned counsel for the parties and perused the record with their able assistance.

In order to decide the controversy, from the facts and circumstances of the case, following question arises for consideration of this Court:-

i) Whether the resignation of the Vice President or President of the Municipality is governed by Section 22 of the Act and if it is so, whether the resignation tendered by the President or Vice President of the Municipality to the Deputy Commissioner and accepted by the State Government is in accordance with law?

In order to answer this question, it would be relevant to refer to certain provisions, referred during the course of arguments:-

“Section 3(4) “committee” means a Municipal Council or Nagar Panchayat, as the case may be, constituted under Section 12 of this Act;”;

(9) “Municipality” means an institution of self government constituted as a Nagar Panchayat or a Municipal Council under sub-section (2) of section 4 of this Act;

Section 15: Resignation of member of committee: - If a member of committee wishes to resign his office he shall submit an application in writing through the Deputy Commissioner to

the State Government. If such resignation is accepted, it shall be notified in the gazette on date not less than 15 days and not more than 60 days after the receipt of the said member's application by the Deputy Commissioner whereupon the member shall be deemed to have vacated his seat:

Provided that if a member who has submitted an application to resign wishes to withdraw his resignation the may apply to the Deputy Commissioner within 15 days of the receipt by the Deputy Commissioner of his application to resign, and the application to resign shall then be deemed to have been withdrawn.

Section 20(1).Election of President and Vice-President.- (1) *“Every Municipality shall, from time to time, elect one of its members to be its President, and the member so elected shall, on being notified by the State Government shall become President of the Municipality.”*

(2) *Every Municipality may also, from time to time, elect one or two of its members to be Vice-President or Vice-Presidents and when two Vice-Presidents are elected on the same date, the Municipality shall declare which of them shall be deemed to the senior.*

(3) *Notwithstanding anything contained in this section an ex-officio member shall not be eligible for election as President or Vice-President of the Municipality.”*

22. Resignation [or removal]² of President and Vice-President – *Wherever a President or Vice-President vacates his seat or tenders in writing to the committee his resignation of his office, he shall vacate his office; and any President or Vice-President may be removed from office by the ³[State] Government on the ground of abuse of his powers of or habitual failure to perform his duties or in pursuance of a*

resolution requesting his removal passed by two-thirds of the members of the committee:

⁴[Provided that if a resolution requesting the removal of the President or the Vice-President is passed by two thirds of the members of the committee the President or, as the case may be the Vice-President shall be deemed to be under suspension immediately after such resolution is passed]:

Provided further that before the ⁵[State] Government notifies his removal, the reason for his proposed removal shall be communicated to him by means of a registered letter in which he shall be [called upon]to tender within twenty-one days an explanation in writing and if no such explanation is received in the office of the ⁷[appropriate Secretary to Government] within twenty one days of the dispatch of the said registered letter, the ⁸[State] Government may proceed to notify his removal.”

As per scheme of the Act, the Municipality means an institution of self government constituted as a Nagar Panchayat or a Municipal Council. Constitution of the Committee falls in Chapter-III of the Act in which it is provided that Municipal Council or a Nagar Panchayat constituted under Section 4 shall consist of a body of members, specified in section (3) having authority over such area.

The petitioner was elected as a member from Ward 9 of the Municipality by voters of the ward and was elected as President under Section 20 by the elected members. The petitioner was thus enjoying two status, namely, of a member of the Council and the President of the Council.

The procedure has been prescribed separately by the legislature for the member and the President to resign from his office/post.

In case the member does not want to continue then he may tender his

resignation in writing through the Deputy Commissioner to the State

Government and if such resignation is accepted then it shall be notified in the gazette on a date not less than 15 days and not more than 60 days after the receipt of the said member's application by the Deputy Commissioner whereupon the member shall be deemed to have vacated his seat and if a member who has submitted an application to resign wishes to withdraw his resignation he may apply to the Deputy Commissioner within 15 days of its receipt by the Deputy Commissioner of his application to resign, and the application to resign shall then be deemed to have been withdrawn.

The very fact that Deputy Commissioner is just an agency of the State to receive the resignation of the member which he has to put up to the State Government for the purpose of its acceptance or not, the entire decision is to be taken by the State Government and merely by sending a letter to the Deputy Commissioner with an application to resign from the post of the member would not come into effect for the purpose of the resignation of the member. The member is again given a chance to withdraw the letter given to the Deputy Commissioner within 15 days of receipt of the said letter by the Deputy Commissioner but once the said procedure is not adopted by the member and the matter reaches to the State Government then the State Government may notify in the gazette but the notification of the said member to resign from his post on the date which should not be less than 15 days and not more than 60 days. The procedure for the resignation by the President or Vice President although is different because it is provided that if the President or Vice President, for reasons best known to them, do not want to continue on the post to which they have been elected can tender in writing their resignation to the committee. If the resignation is accepted by the committee then they would cease to be

President or Vice President of the committee.

In this case, it appears that the procedure that has been followed was of the resignation of the member when the petitioner had signed the letter Annexure P-1 to resign as a President, therefore, he cannot be removed from the post of the President in the manner in which it has been done by the Deputy Commissioner by referring his case to the State Government who has accepted the resignation and notified the same.

Learned counsel for the petitioner, in this regard has also relied upon the decision rendered in by this Court in **Karnail Singh and others Vs. Lachhman Dass Gupta and others 1970 PLR 939.**

In view of the aforesaid discussion, the question which has been posed in the aforesaid order is hereby answered holding that for the purpose of resignation by the President or Vice President, provisions of Section 22 of the Act would apply and for the purpose of resignation of a member from the Council, the provisions of Section 15 would apply in which a separate procedure has been provided.

Thus, in my considered view, there is a merit in the present petition, therefore, it is allowed and the impugned order/notification is set aside.

(RAKESH KUMAR JAIN)
JUDGE

July 14, 2017
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Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No