

***IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.***

CWP No.4960 of 2018

Date of Decision: 29.05.2018

Reena

....Petitioner

Versus

State of Haryana and others

...Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Sanjay Kaushal, Sr. Advocate
with Mr. Gourav Mohunta, Advocate
for the petitioner.

Mr. Rajesh K. Sheoran, Addl. A.G., Haryana.

Mr. Aditya Sanghi, Advocate
for respondents No.4 and 5.

Mr. Deepak Jindal, Advocate
for respondent No.6.

DAYA CHAUDHARY, J.

The present petition has been filed by petitioner-Reena under Article 226 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing of impugned notice dated 19.02.2018 (Annexure P-1), whereby, 'No Confidence Motion' in terms of Section 21 of the Haryana Municipal Act, 1973 has been called against the petitioner. A further prayer has also been made for issuance of a direction to respondent No.1 to notify the resignation of respondents No.4 to 6 accepted by respondent No.3 i.e Deputy Commissioner in the official gazette in terms of Section 13 of the Haryana Municipal Act, 1973.

Briefly, the facts of the case, as made out in the present petition are that the petitioner was elected as the President of the Municipal Committee, Mahendergarh on 07.07.2016. The Municipal Committee comprises of total 15 elected members and one member is from the Legislative Assembly and one member of Parliament. Said two members are the nominated members in terms of Section 9(3)(ii) of the Haryana Municipal Act, 1973 (here-in-after called as 'the Act'). Meaning thereby, the total members of the Municipal Committee, Mahendergarh are 17. Out of the total elected members, 10 elected members signed a resolution of 'No Confidence Motion' against the petitioner on 19.02.2018. There were allegations of dictatorial attitude/nature of the petitioner and her discriminatory attitude. In pursuance of said resolution, a notice dated 19.02.2018 was issued by the Deputy Commissioner, Mahendergarh for calling 'No Confidence Motion' against the petitioner in view of provisions of Section 21 of the Act on 08.03.2018. All the members were requested to be present for said purpose. Out of total members, three of the elected members of the Committee are those, who had signed the said resolution, had already submitted their resignations from the membership of the Committee to the Deputy Commissioner on 01.12.2017. As per case of the petitioner, said resignations were duly accepted by the Deputy Commissioner on 18.12.2017 and were forwarded for notification in the official gazettee to the Principal Secretary to Government of Haryana (respondent No.1). Three members, who earlier signed the 'No Confidence Motion' also sent a letter to the Secretary, Municipal Committee, Mahendergarh on 13.12.2017 for withdrawal of their resignation dated 01.12.2017 by mentioning detailed reasons. The resignations were already

accepted by the Deputy Commissioner vide order dated 18.12.2017 i.e much prior to letter dated 01.01.2018 (Annexure P-3).

The petitioner has challenged impugned notice/letter dated 19.02.2018 (Annexure P-1), whereby, a special meeting was convened with regard to 'No Confidence Motion' against the petitioner.

Learned senior counsel for the petitioner submits that the resignations of respondents No.4 to 6 were submitted to the Deputy Commissioner and the same were forwarded to respondent No.1 for notification in the official gazette. It was for respondent No.1 to notify the same within a period of 60 days after receipt of the application sent by the Deputy Commissioner in terms of Section 13 of the Act. Learned senior counsel also submits that the impugned order has been passed without compliance of provisions of Section 13 of the Act. Learned senior counsel further submits that respondents No.4 to 6 resigned from the membership of the Municipal Committee on 01.12.2017 and those resignations were duly accepted on 18.12.2017. Those resignations were also forwarded for notification in the official gazette, which is considered to be deemed acceptance. Learned senior counsel further submits that the impugned notice is defective and unsustainable in the eyes of law. The act and conduct of said respondents No.4 to 6 is also clear from the press conference held on 23.12.2017, wherein, it was specifically stated by them that they had resigned from the membership of the Municipal Committee. It is also the argument of learned counsel for the petitioner that the letter of withdrawal of resignation was addressed to Secretary, Municipal Committee, Mahendergarh, who is not the competent authority as the competent authority is the Deputy Commissioner. At the end, learned senior counsel

submits that the statutory period of 15 days for withdrawal of resignation had already expired and subsequent letter for withdrawal the resignations could not be acted upon and same is contrary against the provisions of Section 13 of the Act.

Learned senior counsel for the petitioner has relied upon the judgments of Hon'ble the Apex Court in cases ***Modern School vs Shashi Pal Sharma and others 2007(4) SCT 375***, ***State of Punjab vs Bhajan Singh 2001(2) RCR (Civil) 507*** and ***State of T.N. vs M/s Arooran Sugars Ltd. 1997(1) SCC 326*** in support of his arguments.

Learned counsel for the State has opposed the submissions made by learned counsel for the petitioner. He submits that in pursuance of order dated 07.03.2018, a status report was filed, which is on record. In said order, a direction was issued to respondent No.3 to take action and pass necessary order after considering the application for withdrawal by respondents No.4 to 6. After considering the application for withdrawal and also by giving an opportunity of hearing, a detailed speaking order has been passed on 15.03.2018, which is annexed as Annexure R-1 with the status report. It has been mentioned in the speaking order that three members submitted their resignations to the Deputy Commissioner on 01.12.2017 but they did not apply for its withdrawal within a period of 15 days from the day of its submission. The letter of withdrawal of the resignation was not submitted to the Deputy Commissioner but it was submitted to the Secretary, Municipal Committee, Mahendergarh and by considering that it was not a valid mode, the same were not considered. Learned counsel also submits that the resignations of respondents No.4 to 6 were to be notified in the official gazette not earlier than 15 days but not later than 60 days from

its submission to the Deputy Commissioner. Learned counsel further submits that the resignations could have been withdrawn within a period of 15 days from the date of receipt by the Deputy Commissioner. The acceptance of resignation was required to be notified within a period of 60 days of receipt of the application by the Deputy Commissioner. Learned counsel further submits that the resignations were submitted on 01.12.2017 and were accepted by sending to the State Government vide letter dated 18.12.2017. The statutory period of 60 days for publication of acceptance of the resignation in the official gazette notification expired on 30.01.2018 but the acceptance of these resignations was not notified either upto 30.01.2018 or till date. It is also the argument of learned counsel that the State Government did not notify the acceptance of resignation within a statutory period of 60 days and in absence thereof, it is presumed not to be accepted.

Heard the arguments of learned counsel for the parties and have also perused the impugned notice as well as other documents on the file.

Facts of the case are not disputed to the extent that 'No Confidence Motion' was moved against the petitioner, who has been working as President of the Municipal Committee, Mahendergarh. Three elected members out of total members who signed 'No Confidential Motion' submitted their resignations on 01.12.2017. Those resignations were not accepted but the information was sent to the State Government. A legal opinion was sought about the acceptance or not acceptance. Meanwhile, the present petition has been filed by the petitioner, wherein, vide order dated 07.03.2018, a direction was issued to respondent No.3 to take action and pass necessary order after considering the application for withdrawal of resignation of three members of the Municipal Committee. Vide letter dated

01.03.2018 issued by the Director of Urban Local Bodies Department of Haryana, Panchkula requiring respondent No.3 to take action as per its letter dated 25.01.2018 and to inform about the action to be taken on the applications. Said three members were given opportunity vide letter dated 13.03.2018. Their statements were recorded before the Deputy Commissioner, wherein, they stated that they wanted to remain members of the Municipal Committee and inadvertently on account of mistake and due to lack of knowledge of the procedure, they could not apply for withdrawal of their resignations to the competent authority i.e Deputy Commissioner. Their applications were sent to the Office of Municipal Committee.

Two issues are there for consideration before this Court, whereby, the validity of applications dated 13.12.2017 moved by respondents No.4 to 6 for withdrawal of resignation were sent to the Secretary, Municipal Committee, whereas, the competent authority was the Deputy Commissioner. Secondly, in case, the resignations submitted by the members were accepted within a period of 15 days then what would be the status of said resignations in view of provisions of Section 13 of the Act.

In the present case, respondents No.4 to 6 submitted their resignations on 01.12.2017 but letters of withdrawal of resignation were not submitted to the Deputy Commissioner but were sent to the Secretary, Municipal Committee. Resignations submitted by respondents No.4 to 6 were accepted on 18.12.2017 and the same were sent to the State Government. As per case of respondents No.4 to 6, they submitted the applications for withdrawal of resignation to the Secretary, Municipal Committee, Mahendergarh on 13.12.2017 but not to the Deputy Commissioner who is competent authority.

As per provisions, the resignations were to be accepted and notified.

The resignations were withdrawn on 13.12.2017. Meaning thereby, the resignations of respondents No.4 to 6 were to be accepted and notified in the official gazette only after 15 days but not later than 60 days from its submission to the Deputy Commissioner.

Section 13 of the Act is relevant, which is reproduced as under :-

“13. Resignation of member of committee. – If a member of a committee wishes to resign his office, he shall submit an application in writing to the Deputy Commissioner. If such resignation is accepted, it shall be notified in the Official Gazette on a date not less than fifteen days and not more than sixty 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, he may apply to the Deputy Commissioner within fifteen days of the receipt by the Deputy Commissioner of his application to resign, and the application to resign then shall be deemed to have been withdrawn.”

On perusal of said provisions, it appears that in case, a member submits his resignation to the Deputy Commissioner, the same is to be notified in the Official Gazette but on a date not less than fifteen days and not more than sixty days after the receipt of said member’s application. In said provision of Section 13 of the Act, it is clear that the word ‘shall’ has been used. It is also the requisite condition that it is to be notified in the Official Gazette for which the minimum and maximum period has been

given.

As per provisions of Section 13 of the Act, in case, any member of the Committee submits resignation from the membership of the Committee, he is required to submit an application in writing to the Deputy Commissioner. In case, such a resignation is accepted, it is to be notified in the Official Gazette on a date not less than 15 days and not more than 60 days after the receipt of said application in this regard. There is a proviso to Section 13 of the Act, wherein, it has been provided that in case, any member who has submitted an application to resign and he/she wishes to withdraw his/her resignation, he/she is to make an application for withdrawal within a period of 15 days of the receipt by the Deputy Commissioner of his/her application to resign and such application to resign shall be deemed to have been withdrawn.

In the present case, respondents No.4 to 6 sent a letter expressing their willingness to withdraw resignation dated 01.12.2017. The resignations were submitted on 01.12.2017 and the applications for withdrawal were submitted on 13.12.2017 i.e much earlier to the acceptance of resignation. As per provisions applicable, the resignation after acceptance is required to be notified in the Official Gazette then only it is considered that the same has been accepted. The notification must be effected on a day not less than 15 days and not more than 60 days after the receipt of such application by the Deputy Commissioner.

Section 14 of the Act provides that no member of a Municipal Committee can vacate office at will, and that before he can be relieved of the responsibilities of office, his/her resignation must be accepted by the State Government. Section 14 of the Act clearly states that an application by

the member conveying his/her desire to resign must be applied and the same is to be considered by the State Government but it is for the State Government to decide whether or not the application should be allowed and the member permitted to resign. Moreover, any member who submits the application for resignation may have second thought and he/she may decide to withdraw his application of resignation. He/she is entitled as of right to withdraw the application and in such circumstances, no discretion vests in the Deputy Commissioner or the State Government but the withdrawal of such application is to be made within a period of 15 days of its receipt by the Deputy Commissioner. The proviso to Section 14 lays down that if such member wishes to withdraw his/her resignation and applies to the Deputy Commissioner within such period of 15 days, "the application to resign shall then be deemed to have been withdrawn."

In the present case, the State Government did not notify its acceptance of the resignation of respondents No.4 to 6 within a statutory period of 60 days, in such circumstances, it must be taken that the resignations have not been accepted. Thereafter, it is no longer open to the State Government to accept the resignations. Respondents no.4 to 6 remained to be the member of the Municipal Committee. Accordingly, it cannot be said that it was a case of deemed acceptance of resignations. Respondents no.4 to 6 were also granted opportunity of personal hearing vide letter dated 13.03.2018 calling upon them to appear before the Deputy Commissioner on 15.03.2018 in view of order passed by this Court. Respondent No.4 appeared through his counsel, whereas, respondents No.5 and 6 appeared personally. They submitted their statements in writing requesting that they wanted to remain members of the Municipal Committee

and due to lack of knowledge of the procedure and on account of inadvertent mistake, they could not apply directly before the competent authority. After providing opportunity of personal hearing to respondents No.4 to 6, a detailed speaking order was passed on 15.03.2018 and an application filed by respondents No.4 to 6 for withdrawal of resignation was decided. A detailed order was passed, wherein, it was mentioned that the resignations were submitted by respondents No.4 to 6 on 01.12.2017 but said members did not apply for its withdrawal within a period of 15 days from the date of submission of the resignations. Order dated 18.12.2017 for acceptance of resignations was passed and it was informed to the State Government. Admittedly, the applications were submitted by respondents No.4 to 6 on 13.12.2017 in the Office of Municipal Committee, Mahendergarh, who was not the competent authority. Section 13 of the Act provides that the resignations in writing were to be submitted to the Deputy Commissioner and in case, such resignations are accepted, it is mandatory to be notified in the Official Gazette on a date not less than 15 days and not more than 60 days after the receipt of such application. Meaning thereby, as per statutory provision, the resignation of a member of the Municipal Committee is to be accepted and notified in the Official Gazette not earlier than 15 days and not later than 60 days from its submission to Deputy Commissioner.

In view of judgment passed by this Court in case ***Kirti Parsad Jain and others vs State of Haryana and others 1991(1) PLR 693***, a member has an absolute right to withdraw his/her resignation within a period of 15 days from the date of its receipt by the Deputy Commissioner and immediately on submission of application for withdrawal, the

resignation is deemed to have been accepted. It has been held in said judgment that without such a notification, the resignation does not become effective. In case, the acceptance has not been published in the Official Gazette, the member has a right to withdraw the same.

The controversy in the present case is squarely covered by **Kirti Parsad Jain's** case (supra). The relevant portion of said judgment is reproduced as under :-

“9. The next question that arises is as to whether or not the respondents Nos.3 to 6 were entitled to withdraw their resignation after the expiry of 15 days or at any time before the publication of the notification. The answer to this question would essentially depend upon an interpretation of the substantive provision. It provides that the acceptance of the resignation “shall be notified in the official gazette on a date not less than 15 days and not more than 60 days after the receipt.” In my view it is incumbent upon the authorities to notify the acceptance of the resignation within 60 days of its receipt. The use of expression “not more” gives the indication that is imperative for the authorities to notify the acceptance. Without such a notification the resignation does not become effective.

10. The reason for so constituting this provision is that a member of a Municipal Committee holds an elected office and is burdened with statutory duties which involve considerable public interest. The Legislature has in its wisdom chosen to give an option to the member to withdraw the resignation within 15 days and also made it incumbent upon the authorities to notify the acceptance within 60 days. It is only on the publication of the notification that “the member shall be deemed to have vacated his seat.”

11. Is it possible for a member to withdraw the

resignation at any time before its acceptance is notified in the official gazette. I think, yes. Section 13 in my view gives a right to a member to withdraw the resignation within 15 days even if it has been accepted before that. Thereafter if the acceptance has not been published in the official gazette the member has a right to withdraw it. The only difference would be that it would be discretionary for the authority to allow the withdrawal or to disallow it.”

At the end, it can be concluded that it cannot be said to be a case of deemed acceptance of resignation as submitted by learned counsel for the petitioner.

In view of facts as mentioned above and the provisions as well as ratio of judgment as discussed above, there is no merit in the contention raised by learned counsel for the petitioner and the present petition, being devoid of any merit, is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

29.05.2018
gurpreet

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No