

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

MAT 1478 of 2024

CAN 1 of 2024

Suri Municipality & Anr.

Vs

Pranab Kar & Ors.

For the Appellant : Mr. Soumya Majumder
Mr. Saikat Chatterjee
Mr. P Pal

**For the writ petitioner/
Respondent no. 1** : Mr. Puspall Chakraborty
Mr. Prasanna Ganguly

For the State : Mr. Lalit Mohan Mahata
Mr. Jagabandhu Roy

Heard on : 29.08.2024

Judgment on : 29.08.2024

Joymalya Bagchi, J.:-

1. Appellant municipality has assailed the order passed by the Hon'ble single Judge whereby the Hon'ble Judge held the Board of Councillors acted beyond their jurisdiction to accept resignation after the same was withdrawn.

2. Short facts of the case giving rise to the dispute are as follows:-

Writ petitioner/respondent was elected as councillor of ward no 15 of Suri Municipality. Thereafter, he was also elected as its Chairman. By letter dated 4.8.2023 the writ petitioner-respondent intimated the Chairman of the municipality that he wished to resign from the post of Chairman as well as councillor of ward no 15. Due to abrupt vacancy in the position of Chairman, a meeting was convened by the Board of Councillors on 5.8.2023 and his resignation from the post of Chairman was accepted. However, his resignation from councillorship was not considered during the meeting. On 16.8.2023 writ petitioner-respondent wrote a letter to the Chairman stating he wished to withdraw his resignation as councillor. On 19.8.2023 the Board again met and resolved to accept the resignation from the post of councillor ignoring his subsequent withdrawal. This gives rise to the dispute.

3. Mr. Majumder argues provisions with regard to resignation from the post of chairmanship and that of councillor are different under the West Bengal Municipal Act 1993 (in short Act of 1993). While section 18(2) of the Act of 1993 and the rules framed thereunder governs acceptance of resignation by the Chairman, resignation from the post of councillor is governed by section 21A(b) of the said Act. He also contends the letter withdrawing the resignation was vague and it appears writ petitioner had sought to withdraw his resignation from the post of Chairman i.e. *Poura Poti* (which had already been accepted) and not councillor i.e. *Poura Pita*.

4. Section 21A (b) provides for resignation from the post of councillor.

21A (b) reads as follows:-

“21A. ****

(a)****

(b) he resigns his office by writing under his hand addressed to the Chairman and the resignation is accepted by the Board of Councillors at a meeting in which case the resignation shall take effect from the date of its acceptance.”

5. The aforesaid clause makes it evident that a councillor may resign from his office by writing under his hand to the Chairman and such resignation has to be accepted by the Board of Councillors at a meeting. Resignation shall take effect from the date of its acceptance. During the interregnum, resignation remains inchoate and it is open to the councillor to withdraw the same prior to its acceptance. Admittedly, the resignation letter from the post of councillor was accepted by the Board on 9.8.23. Prior to its acceptance, on 16.8.23 the writ petitioner had withdrawn his resignation from the post of councillor.

6. Though Mr. Mukherjee strenuously argues in the withdrawal letter writ petitioner had withdrawn his resignation from the post of *Poura Poti* i.e. Chairman. A plain reading of the document in its entirety leaves no doubt that writ petitioner had sought to withdraw his resignation from the post of councillor of ward no. 15 and not Chairman of the municipality. Moreover, perusal of the resolution of the Board also shows the Board was fully conscious of the withdrawal of resignation from councillorship and chose to ignore it on the ground the writ petitioner had

not appeared in person to support the said withdrawal. Had the Board entertained any doubt with regard to authenticity of the withdrawal letter, the Board could have adjourned the proceeding for appearance of the writ petitioner and not acted upon a resignation which appears to have been withdrawn prior to its acceptance.

7. In light of the aforesaid discussion we do not find any reason to interfere with the order impugned.

8. The appeal is accordingly dismissed.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

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