

Nischal Gupta v. Union Territory, Chandigarh and others
(R. S. Mongia, J.)

claiming reservation on that basis because it is not one's right to claim that a particular game be included in the list provided in the prospectus. It is for the Department concerned to provide such a list of games."

It was also observed by the Learned Judge that valid reasons had also been given for excluding the sport of Boxing. As observed by me above, the petitioner has no right to say that a particular game must continue for all times to come and that valid reasons have been given by the Chandigarh Administration to exclude the game of Shooting.

(5) I also do not find any force in the contention of learned counsel for the petitioner that since the achievement of the previous three years in the various disciplines of sports is to be taken into consideration at least three years notice should have been given so that if a particular sportsman wanted to shift, he could shift over to some other sport. According to the prospectus, three years' achievements are to be taken into consideration only in the sports mentioned in the Prospectus, Once it is held that a particular game can be excluded for valid reasons, the question of any notice being given to sportsman on any count does not arise, as there is no right with the sportsman to say that once a game is included, it cannot be excluded.

(6) For the foregoing reasons, I find no merit in this writ petition, which is hereby dismissed. However, there will be no order as to costs.

R.N.R.

Before Jawahar Lal Gupta, J.

KIRTI PARSHAD JAIN AND OTHERS---*Petitioners*

versus

THE STATE OF HARYANA AND OTHERS---*Respondents*

Civil Writ Petition No. 734 of 1991.

1st April, 1991.

Haryana Municipal Act, 1973—S. 13—Withdrawal of resignation—Municipal Commissioners submitting resignation—Deputy Commissioner accepting it on the same day—S. 13 requiring resignation to be

accepted after the expiry of 15 days and thereafter to be published in the official gazette within 60 days after its receipt by the Deputy Commissioner—Municipal Commissioners submitting another application for withdrawal of resignation after the expiry of 15 days but before the acceptance of resignation could be published in the official gazette—Power of authority to allow the withdrawal is discretionary—S. 13—Interpretation of—Acceptance of withdrawal by Deputy Commissioner after the expiry of 15 days does not violate provisions of S. 13.

Held, that it is incumbent upon the authorities to notify the acceptance of the resignation within 60 days of its receipt. The use of the expression “not more” gives the indication that it is imperative for the authorities to notify the acceptance. Without such a notification, the resignation does not become effective. 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. It is only on the publication of the notification that “the member shall be deemed to have vacated his seat”. S. 13 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. (Paras 9, 10, 11)

Held, that where the application for withdrawal was made before the publication of the acceptance in the official gazette, the Deputy Commissioner had the discretion to allow the withdrawal. He did not violate any provision of the Act while doing so. Consequently the impugned order was not passed in violation of the provisions of S. 13. (Para 12)

Petition under Articles 226 and 227 of the Constitution of India praying that this Hon’ble Court may be pleased to summon the records of the case and after a perusal of the same.

- (a) issue a writ in the nature of Certiorari, quashing the impugned order (Annexure P-4) passed by respondents No. 2, permitting the respondents No. 3 to 6 to withdraw their resignations;*
- (b) issue writ in the nature of Mandamus, directing the respondents 1 and 2 to notify the resignations of the respondents No. 3 to 6 in the official gazette;*
- (c) issue any other writ, order or direction that this Hon’ble Court may deem fit under the facts and circumstances of the case.*

Satya Pal Jain, Advocate, for the Appellants.

R. P. Singh, Advocate for Respondents Nos. 3, 4 to 6.

Jaswant Phrgat A.A.G., for the Respondent No. 1 & 2.

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(J. L. Gupta, J.)

JUDGMENT

J. L. Gupta, J.

(1) The petitioners who are Municipal Commissioners of Municipal Committee, Ambala City, have impugned herein the order of 3rd January, 1991 passed by the Deputy Commissioner, Ambala (Annexure P-4). By this order, the resignation submitted by the four Municipal Commissioners (respondents Nos. 3 to 6) on 2nd October, 1990, which had been accepted by the Deputy Commissioner on the same day were allowed to be withdrawn and it was declared that they should be deemed to have continued as Members of the Municipal Committee, Ambala City.

(2) First, the sequence of events. Respondents Nos. 3 to 6 along with another person submitted resignation to Deputy Commissioner, Ambala on 2nd October, 1990,—*vide* letter at Annexure R-1. It appears to have been accepted by the Deputy Commissioner on the same day. Subsequently, on 22nd November, 1990 they submitted another letter informing the Deputy Commissioner that they were not pressing their resignation. On 28th November, 1990 the Deputy Commissioner informed the Director, Local Bodies, Haryana regarding the request of the four persons for the withdrawal of their resignation. It appears that by this letter which is at Annexure P-3 the Deputy Commissioner sought clarification from the Director, Local Bodies. The matter appears to have been referred to the Legal Rememberancer also and finally,—*vide* impugned order, the Deputy Commissioner appear to have accepted the request of the four respondents and declared that they would be deemed to have continued as Municipal Commissioners.

(3) In reply to the notice of the writ petition, two written statements have been filed. On behalf of respondents Nos. 1 and 2 reply has been filed by the Deputy Commissioner, Ambala while respondent Nos. 3 to 6 have filed a separate written statement. Besides raising various preliminary objections including a challenge to the *locus standi* of the writ petitioners, it has been averred that in view of the provisions of section 13 of the Haryana Municipal Act, a member cannot be deemed to have vacated a seat if the notification regarding the acceptance of his resignation is not published in the official gazette within a period of 60 days. It has also been suggested that the resignation can be accepted finally by the Government and

not by the Deputy Commissioner. Respondents Nos. 3 to 6 have also averred that the acceptance of the resignation was never communicated to them. Various other averments in the writ petition have also been controverted. The other controversies raised by the respondents in their written statements do not appear to be relevant for the decision of the present dispute.

(4) Mr. S. P. Jain, learned counsel appearing for the petitioners has vehemently argued that the resignation submitted by respondents Nos. 3 to 6 had been duly accepted by the Deputy Commissioner on 2nd October, 1990. By the acceptance of the resignation the respondents ceased to be Municipal Commissioner. Thereafter, the publication of the notification in the official gazette was only a procedural/ministerial act which cannot even remotely take away the effect of the acceptance of their resignation.

(5) On behalf of the respondents it has been submitted that the petitioners have no *locus standi* to maintain the present petition. It is further submitted that unless the acceptance of the resignation was duly communicated to the concerned persons, it was wholly ineffective and that the case involves disputed questions of fact which could not be gone into by the Court in the exercise of its writ jurisdiction.

(6) The controversy hinges upon the provision contained in section 13 of the Haryana Municipal Act, 1973. It reads as under:—

“13. 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 shall then be deemed to have been withdrawn.”

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(7) As I read this provision, it gives a member an absolute right to withdraw his resignation within 15 days of its receipt by the Deputy Commissioner. Immediately, on submission of the application for withdrawal, the resignation is "deemed to have been withdrawn" without anything more. Furthermore, the acceptance of the resignation is required to be notified within 60 days of the receipt of the application by the Deputy Commissioner. It is only on the publication of the notification that the "member shall be deemed to have vacated his seat".

(8) I am unable to sustain the plea of the learned counsel for the petitioners that the Deputy Commissioner having accepted the resignation on 2nd October, 1990 itself, respondents Nos. 3 to 6 were not entitled to continue as members. The acceptance under the provisions of section 13 is inchoate for a period of 15 days as mentioned in the proviso to section 13. During that period it is open to the member to withdraw the resignation and without the order from the Deputy Commissioner, the withdrawal becomes automatically effective. Consequently, it is wrong to contend that the acceptance of the resignation was complete and effective on 2nd October, 1990 itself.

(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 the expression "not more" gives the indication that it 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.

(12) According to the petitioners, the application for withdrawal was made on 22nd November, 1990. This was before the publication of the acceptance in the official gazette. I think, the Deputy Commissioner had the discretion to allow the withdrawal. He did not violate any provision of the Act while doing so. Consequently, the impugned order (Annexure P-4) was not passed in violation of the provisions of Section 13.

(13) In this view of the matter, I don't think it is necessary for me to go into the contentions raised on behalf of the respondents regarding the *locus standi*, etc., of the petitioners.

(14) The writ petition thus fails and is dismissed with costs. Counsel's fee Rs. 1,000.

R.N.R.

Before N. K. Sodhi, J.

THE DOABA COOPERATIVE SUGAR MILLS LIMITED,

NAWANSHAHR, PUNJAB,—*Petitioner.*

versus

JASMINDER SINGH AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 85/7 of 1987.

23rd April, 1991.

Industrial Disputes Act, 1947—S. 25-F—Termination of services—Workman even if assumed to be probationer had put in 18 months of service—Mandatory for management to comply with S. 25F—