

witnesses, who have been examined, namely, Agya Kaur wife of the petitioner, Bansi Lal and Surjit Singh, have named C.L. Sharma as eye-witness. The petitioner has relied upon the evidence of Karam Singh, Inspector of Police, for the justification of C. L. Sharma being summoned as an eye-witness. In his statement, Karam Singh said that he joined C.L. Sharma in the investigation of the case. Karam Singh does not at all state that C. L. Sharma was an eye-witness of the occurrence.

7. A witness may be summoned under section 540, Criminal Procedure Code, as a Court witness by a Court in its discretion. The power conferred upon Court is essentially discretionary and has to be exercised if it appears to the Court that the evidence of the witness sought to be summoned is essential to the just decision of the case. The petitioner himself, as pointed out above, neither in the first information report lodged by him nor in his statement at the trial nor his wife Agya Kaur named C. L. Sharma as an eye-witness. Similarly, the other two eye-witnesses, namely, Bansi Lal and Surjit Singh, who are said to be independent witnesses and have like other two witnesses supported the prosecution version, do not at all refer to C. L. Sharma having witnessed the occurrence. It is not necessary that any and every witness, which the injured complainant wants to be examined, must be examined at the trial. Thus, the application made by the petitioner, who is merely a prosecution witness in the case, deserves to be dismissed.

In the result, the revision petition fails and is disallowed.

*B.S.G.*

CIVIL MISCELLANEOUS.

*Before H. R. Sodhi, J.*

KARNAIL SINGH AND OTHERS,—*Petitioners.*

*versus.*

LACHHMAN DASS GUPTA AND OTHERS,—*Respondents*

**Civil Writ No. 2810 of 1969.**

July 16, 1970.

*Punjab Municipal Act (III of 1911)—Section 22—Meaning and scope of—President and Vice-President of a Municipal Committee tendering resignations to the Deputy Commissioner of the District—Such resignations—Whether valid.*

Karnail Singh, etc. v. Lachhman Dass Gupta, etc. (Sodhi, J.)

*Held*, that in case of corporate bodies like a Municipal Committee, the provisions relating to resignation must be strictly construed and complied with. Section 22 of the Punjab Municipal Act, 1911, provides for contingencies in which the office of a President or Vice-President can be said to have been vacated. It is open to either of these functionaries to voluntarily give up the incumbency of his office either by abandoning the same or tendering resignation in writing to the Committee. In either of the cases he shall be deemed to have vacated his office. There is no other mode recognised by law in which the office of a President or Vice-President can be vacated. A Municipal Committee is a body corporate and these offices are the creation of a statute. Business of a corporate body has to be transacted in the manner as authorised by the Act and the only mode of tendering resignation as envisaged is that the same must be given in writing to the Committee. The requirement of law that a resignation has to be in writing and tendered to the Committee is not just a formality but a mandatory provision, omission to comply with which will render resignation, if any, invalid. There is a definite purpose behind this requirement inasmuch as a Committee being the foundation of democratic set-up, no uncertainty can be allowed to remain amongst the members thereof as to whether there is President or not. By putting in writing his intention to vacate the office, the President or Vice-President commits himself to the members of the Committee to which both are responsible, thereby leaving no room for doubt that he has really vacated the office thereby putting the matter beyond any controversy.

(Para 5).

*Held*, that before a President or Vice-President of a Municipal Committee can be deemed to have vacated his office by resignation both the conditions, namely, that the resignation is in writing and that it is tendered to the Committee, must be satisfied. Hence where the President or Vice-President tendered their resignations to the Deputy Commissioner of the District and not to the Municipal Committee, the resignations are invalid.

(Para 5).

*Petition under Articles 226 and 227 of the Constitution of India, praying that a writ of quo warranto, prohibition, mandamus or any other appropriate writ, order or direction be issued against respondents Nos. 1 and 2 directing them not to work and perform the duties of the President and the Vice-President of the Municipal Committee, Raman, and restraining the respondents Nos. 1 and 2 from performing the duties and functions as President and Vice-President of Municipal Committee, Raman, till the decision of this writ petition.*

PURAN CHAND, ADVOCATE, for the petitioners.

HARBANS LAL, ADVOCATE, FOR RESPONDENT NO. 1 AND A. S. BAINS, DEPUTY ADVOCATE-GENERAL (PUNJAB), for other respondents.

## JUDGMENT

H. R. SODHI, J.—(1) This writ petition raises somewhat interesting and unusual question relating to the meaning and scope of section 22 of the Punjab Municipal Act, 1911 (hereinafter called the Act).

(2) In the year 1967, elections to Municipal Committee, Raman, were held in which 11 members were elected. Respondent 1 was later elected as its president and respondent 2 as Vice-President. It appears that some dissensions cropped up amongst the members and 8 of them made an application, annexure 'A' with the writ petition, to the Deputy Commissioner, Bhatinda, praying that directions be issued to the President to call a special meeting of the Committee in order to get a vote of confidence passed as he was reported to have lost the confidence of majority of the members. The Deputy Commissioner wrote to the President on 5th August, 1969, to convene a special meeting within a specified period to consider the no-confidence move, but no such meeting was held. Six out of eight Municipal Commissioners who had first approached the Deputy Commissioner on 4th August, 1969, again submitted another application on 18th of the same month, pointing out that the President, respondent 1, had paid no attention to their application, nor complied with his (Deputy Commissioner's) orders, and that instead of holding a special meeting to get a vote of confidence, he had convened a general meeting for 19th August, 1969. A prayer was made to the Deputy Commissioner in this application (Annexure 'B') that the Secretary of the Committee be asked to call an urgent meeting in order to afford an opportunity to the members to pass a no-confidence motion. In other words a misconduct was being attributed to respondent 1 inasmuch as he was said to be not holding a special meeting where the matter of no-confidence against him could be considered. This general meeting of 19th August, 1969, was not held on that date and was adjourned to 22nd August, 1969. The Deputy Commissioner again sent a letter to respondent 1 per registered post calling upon him to convene a special meeting but the same was received back from the postal authorities as undelivered. The Deputy Commissioner addressed a communication to the State Government on 9th September, 1969, in which a recommendation was made that action be taken against respondent 1 under section 22 of the Act for the alleged misuse of power in not convening a meeting as ordered

by the Deputy Commissioner and that he be removed from his office of Presidentship.

(3) On the same day, respondent 1 and 2 submitted their resignations to the Deputy Commissioner wherein it was stated that on account of misuse of position by some members of the Committee and non-cooperation of the high Government officers, the resignations were being tendered. The Deputy Commissioner wrote back to respondent 1 and 2 on 26th September, 1969, saying that they should tender the resignations to the Municipal Committee as provided in section 22 of the Act since there was no provision which could enable them to hand over the same to him but they never gave them to Municipal Committee.

(4) The petitioners allege that on coming back from Bhatinda, after submitting the so-called resignations, respondents 1 and 2 told the Secretary, respondent 5, the same evening that they had resigned their offices and that the name-plate of President was removed from his office and that he addressed a meeting of the municipal staff informing them that he and the Vice-President had discontinued to perform their duties. On 10th September, 1969, respondent 5 is said to have written a letter to the Deputy Commissioner that since the President and the Vice-President of the Committee had resigned and there was enough work pending, some directions be issued in this behalf. This averment is admitted by the Deputy Commissioner though respondent 5 has, in spite of service, not put in appearance, nor filed any return. Respondent 1 alone has filed an affidavit by way of reply in which he denies that he ever addressed any staff meeting or told them that he had tendered his resignation. It is not admitted that his name-plate from the office was removed and instead it is claimed by him that he and the Vice-President continued to discharge the duties in their respective public offices.

(5) Mr. Puran Chand, appearing for the petitioners, concedes that respondent 1 is still functioning as President and that the term of office of Vice-President has expired though till expiry of that term he held the office. A dispute is, however, raised as to whether after tendering their resignations to the Deputy Commissioner on 9th September, 1969, and on their return back to Raman, they ever discontinued working for sometime. This is purely a question of fact on which it is not possible for this Court to give any conclusive finding on the

material as it is available. It is not disputed that no other person was ever elected as President in place of respondent 1 and that the term of respondent 2 expired in the ordinary course. The sole question that has been raised by Mr. Puran Chand is that respondents 1 and 2 must be deemed to have vacated their offices when they tendered resignations to the Deputy Commissioner, respondent 3, and that there has been substantial compliance with section 22 of the Act. The argument is that section 22 is only procedural and directory and what has indeed to be seen is the real intention of the person concerned no matter that there is no strict compliance with the letter of law. In order to substantiate this contention, he relies on disputed questions of fact, namely, the conduct of respondent 1 in addressing a staff meeting of the Committee and having his name-plate removed. I am afraid there is no merit in these contentions and the resignations tendered to the Deputy Commissioner cannot be treated as valid and effective resignations.

Section 22 of the Act reads as under :—

“22. Whenever 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 State Government on the ground of abuse of his powers or of 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 :

Provided that before the 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 invited to tender within twenty-one days an explanation in writing and, if no such explanation is received in the office of the appropriate Secretary to Government within twenty-one days of the despatch of the said registered letter, the State Government may proceed to notify his removal.”

This section provides for contingencies in which the office of a President or Vice-President can be said to have been vacated. It is open to either of these functionaries to voluntarily give up the incumbency of his office either by abandoning the same or tendering

resignation in writing to the Committee. In either of the cases he shall be deemed to have vacated his office. He can also be removed from office by the State Government on the grounds as stated in the said section but we are not concerned with them in the instant case. There is no other mode recognised by law in which the office of a President or Vice-President can be vacated. A Municipal Committee is a body corporate and these offices are the creation of a statute. Business of a corporate body has to be transacted in the manner as authorised by the Act and the only mode of tendering resignation as envisaged is that the same must be given in writing to the Committee. The requirement of law that a resignation has to be in writing and tendered to the Committee is not just a formality but a mandatory provision, omission to comply with which will render resignation, if any, invalid. The argument of the learned counsel that the requirement of written resignation being tendered to the Committee is only a directory and not mandatory, is, in my opinion, without any substance. There is a definite purpose behind this requirement inasmuch as a Committee being the foundation of democratic set-up, no controversy can be allowed to be raised amongst the members thereof as to whether there is a President or not. By putting in writing his intention to vacate the office, the President or Vice-President commits himself to the members of the Committee to which both are responsible thus leaving no room for doubt that he has really vacated the office thereby putting the matter beyond any controversy. Keeping in view the context and scheme of the Act and in order to carry out its purposes, it must be held that before a President or Vice-President can be deemed to have vacated his office by resignation, both the conditions, namely, that the resignation is in writing and that it is tendered to the Committee, must exist. In *Sivasankaram Pillai v. Emperor*, (1) the President of a Taluk Board constituted under the Madras Local Boards Act, gave notice of his resignation by circulating the same to each member who communicated its acceptance. The Government also treated the President as having resigned and issued a notification accordingly. Section 16 of the Madras Local Boards Act enabled a President to resign by giving notice to the Local Board. The President had in that case given notice to each individual member and not at a duly constituted meeting of the Board. A question about the validity of the resignation having been raised, it was held that there was no proper notice of resignation within the meaning of section 16 of the Madras Local Boards Act and that the resignation did not,

(1) A.I.R. 1929 Mad. 8.

therefore, take effect. The decision of that case supports the conclusion that in case of corporate bodies like a Municipal Committee, the provisions relating to resignation must be strictly construed and complied with and that there is no scope for the argument of substantial compliance.

(6) Mr. Puran Chand, learned counsel for the petitioners, invited my attention to a judgment reported as *Sukhdeo Narayan and others v. Municipal Commissioners of Arrah Municipality and others* (2), and urged that a Division Bench of that Court had held that there was an intention on the part of the Chairman of the Municipal Committee to resign though he had not expressed his intention to resign in writing as required by the Bihar and Orissa Municipal Act (7 of 1922). Relevant part of section 33 of the said Act was in the following terms :—

“33. (1) \* \* \* \*

- (2) An elected Chairman may resign by laying notice in writing of his intention to do so before the Commissioners at a meeting.
- (3) A Vice-Chairman, a President or a Commissioner may resign by notifying his intention to do so to the Chairman who shall forthwith lay such notice before the Commissioners at a meeting.
- (4) On a resignation under sub-section (2) or (3) being accepted by the Commissioners at a meeting, the Chairman, Vice-Chairman, President or Commissioner, as the case may be, shall be deemed to have vacated his office.”

The facts of *Sukhdeo Narayan's case* (2), are quite distinguishable and no assistance can be derived from that case. A meeting of the Municipal Commissioners was duly convened at which the Chairman himself moved the resolution signifying his intention to resign, corrected the form of the resolution and subsequently under his signature sent the copy of the resolution to the Government. He might not have followed the formality of resigning by laying notice in writing but in the circumstances of the case there was undoubtedly a sufficient compliance with sub-section (2) of section 33. In the present case, at no meeting of Committee the

(2) A.I.R. 1956 Patna 367.

## Chaman Lal v. Mohinder Devi (Jain, J.)

President or Vice-President ever gave his resignation in writing and both of them only handed over the same to the Deputy Commissioner who did not accept them and wrote back to respondents 1 and 2 advising that they should submit the resignations to the Committee which was never done. In *Sukhdeo Narayan's case* (2), another President had been elected whereas in the case before us it is conceded that respondent 1 is still functioning as a President and respondent 2 also continued to hold his office of Vice-President for the full term. The allegation of voluntary abandoning of their offices by respondents 1 and 2 is denied by respondent 1 in his affidavit and this disputed question of fact cannot be resolved in these proceedings under Articles 226 and 227 of the Constitution. Moreover, there is no material on which it can possibly be held that respondents 1 and 2 ever quitted their offices.

(7) For the foregoing reasons, there is no merit in the writ petition which stands dismissed. In the peculiar circumstances of this case, the parties are left to bear their own costs.

B.S.G.

## LETTERS PATENT APPEAL

Before Harbans Singh, A.C.J. and Prem Chand Jain, J.

CHAMAN LAL,—Appellant.

versus.

MOHINDER DEVI,—Respondent.

## Letters Patent Appeal No. 11 of 1968.

July 22, 1970.

*Hindu Marriage Act (XXV of 1955)—Sections 9, 13(1), 13(1A) and 23(1)(a)—Wife obtaining decree for restitution of conjugal rights—Decree remaining unsatisfied for the required period—Mere existence of such decree—Whether gives absolute right to the husband to obtain divorce—Section 13(1A)—Whether subject to the provisions of section 23(1)(a).*

*Held*, that from the plain reading of section 23 of the Hindu Marriage Act, 1955, there is no manner of doubt that this section is in the nature of an overriding provision. It governs "any proceeding" under the Act and provides that it is only if the conditions mentioned in sub-section (i) are satisfied "but not otherwise" that the Court shall decree the relief sought.