

ShamsuddIn Vs. the State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Sep-19-1951

Reported in : AIR1952Raj53

Judge : Wanchoo, C.J. and; Bapna, J.

Appeal No. : Civil Misc. Case No. 58 of 1951

Appellant : Shamsuddin

Respondent : The State of Rajasthan and ors.

Advocate for Def. : Sumer Dan, Adv. and; Govind Narain, Adv. for Respondent No. 2

Advocate for Pet/Ap. : Chand Mal, Adv.

Disposition : Application dismissed

Judgement :

Wanchoo, C.J.

1. This is an application by Shamsuddin under Article 226, Constitution of India, for the issue of a writ in the nature of 'mandamus' or prohibition or 'certiorari' to the State of Rajasthan.

2. The facts, which have led to this application, are not in dispute. The applicant, Shamsuddin, was elected as a member of the Nagaur Municipal Board on 10-9-1949 and his election was notified in the Rajasthan Raj-Patra dated 21-12-1949. The applicant worked as a member of the Board till January, 1951. Thereafter, it appears that he had to go to Bombay and stay there for a long time in connection with his business. He, therefore, sent his resignation from the membership of the Board by post from Bombay to the Collector of Nagaur on 8-6-1951, and this was received by the Collector on 12-6-1951. Shortly afterwards, the applicant found that he would not have to stay longer in Bombay. Therefore, on 23-6-1951, he sent a telegram to the Collector of Nagaur withdrawing his resignation which he had despatched on 8-6-1951, he also sent a letter on 25-6-1951, confirming his telegram and withdrawing his resignation. It appears that the resignation of the applicant, along with the letter withdrawing it, was forwarded to the Government of Rajasthan by the Collector. It further appears that the Government of Rajasthan accented the resignation on 23-7-1951, and did not attach any weight to the letter withdrawing the resignation. The applicant's contention before us is that in view of the fact that he had withdrawn his resignation the Government had no authority to act upon it, and the order of the Government accepting the applicant's resignation was clearly illegal 'ultra, vires', and void, and could not be enforced.

3. Learned counsel for the applicant has admitted that there is no law in force with respect to the Municipality of Nagaur, except Act No. XXI (21) of 1949, which prescribes the manner in which elections to Municipal Boards in District towns in the former State of Jodhpur would be held. This Act, however, makes no provision for any other matter except the election of members to such Boards. The matter of resignation from such membership is thus left entirely unprovided for and there is no law in support of the applicant's contention that the Government had no authority to act upon the letter of resignation, when he had withdrawn it.

4. WE may, in this connection, refer to certain passages in Halsbury's Laws of England, Hailsham Second Edition. In Volume IV, at page 191 para 905, dealing with unincorporated bodies, the following observations occur:

'Subject to any provision in the rules to the contrary, a member of an unincorporated members' club may at any time terminate his membership, and if desirous of doing so must communicate to the secretary his intention to resign. The resignation does not require any acceptance by the committee, and cannot, in the absence of a bye-law to the contrary, be withdrawn or revoked. A member who sends a letter of resignation thereupon ceases to be a member, and can only be reinstated by re-election.'

The law relating to corporate bodies is to be found in Volume XXI (21), at page 128, para. 224, where the following passage occurs:

'A person elected to a corporate office may at any time resign the same by writing signed by him and delivered to the town clerk, the resignation taking effect upon receipt by the town clerk of the notice.'

Further, in para. 335, at page 179, we find the following passage:

'Either the chairman or the councillors may resign by notice in writing delivered respectively to the parish council in the case of the chairman, or to the chairman in the case of a councillor, and such resignation takes effect on receipt of the notice.'

It is true that these two passages relating to corporate bodies are based on certain provisions in the Local Government Act of 1933; but learned counsel has not been able to point out to us any general principle by which the Government was bound to take into account the letter withdrawing the resignation. It is not even clear whether the Municipal Board of Nagaur is a corporate body or an unincorporated association. Whatever may be the position of the Municipal Board of Nagaur, in the absence of any law, we are unable to issue a writ of any kind.

5. The application is hereby dismissed. The stay order is withdrawn. We pass no order as to costs.