

ALLAHABAD HIGH COURT

Bahori Lal Paliwal

Vs.

District Magistrate, Bulandshahr

Civil Misc. Writ No. 804 of 1955

(Agarwala, V. Bhargava and M.L. Chaturvedi, JJ.)

23.02.1956. 08.05.1956

JUDGMENT

Chaturvedi, J.

1. I have had the benefit of reading the judgments of Agarwala and V. Bhargava, JJ. I do not propose to repeat the facts of case and consider it sufficient to state that I agree with the judgment of V. Bhargava, J. on the preliminary point and am of the opinion that the petition has not become in fructuous because a bye-election has subsequently been held. If the argument of the learned counsel for the petitioner is accepted, the result would be that there was no vacancy in the office of the President and, therefore, the subsequent election to that office was void and of no consequence.

2. On the other question, namely, the effect of withdrawing the resignation, I agree with the judgment of Agarwala, J. and am of the opinion that the resignation having been withdrawn by the petitioner before its acceptance by the District Magistrate, there was no right left in the District Magistrate to accept the resignation. The petitioner had a right to withdraw the resignation before its acceptance even though it was an unconditional one.

3. The further question whether the President can withdraw his resignation after its acceptance by the District Magistrate but before the communication of that acceptance to the Committee does not arise for decision in this case, and express no opinion upon it.

4. In the end I would allow this petition and issue a writ of mandamus to respondent No. 2 to refrain from claiming to be the Chairman of the Town Area Committee of Pahasu and from acting as such, and to respondent No. 1 to allow the petitioner to act as the Chairman of the said Committee.

5. I think the petitioner is entitled to his costs from respondent No. 2.

Agarwala, J.

6. This is a petition under Article 223 of the Constitution.

7. The petitioner was the Chairman of the Town Area Committee of Pahasu, district Bulandshahr. On 22-4-1955 he submitted his resignation to the District Magistrate by post. On 16-7-1955 the District Magistrate sent the resignation for verification to the Tahsildar of Khurja. The petitioner verified the resignation. Two days later, however, the petitioner sent a letter to the District Magistrate withdrawing his resignation. The letter was received by the District Magistrate the next day but in spite of the withdrawal the District Magistrate accepted the resignation on 13-8-1955 and directed the petitioner to hand over charge of his office. On 14-8-1955 the petitioner handed over charge to the vice chairman Sri Balkrishna Chand Mathur and it was on this date that the Town Area Committee received information from the District Magistrate that the petitioner's resignation had been accepted by him. A vacancy was thereupon declared to have occurred in the office of the Chairman. 6-9-1955 was fixed for filing of nomination papers and 26-9-1955 was fixed for the election of the new Chairman.

On 6-9-1955 the present writ petition was filed in this Court as against the District Magistrate, Bulandshahr, praying that the proceedings including the order of acceptance of the petitioner's resignation be quashed and a writ of mandamus be issued commanding the District Magistrate, Bulandshahr, to recognize the petitioner as the Chairman of the Town Area Committee, Pahasu. It was also prayed that an interim order be issued commanding the opposite party not to hold the proposed election. The stay order was however not granted by this Court with the result that the election was held on 26-9-1955 and one Jyoti Prasad was elected as Chairman. Jyoti Prasad was then added as opposite party No. 2.

8. The petitioner's case was that under Section 8-A Clauses (3), (4) and (5), U.P. Town Areas Act (Act 2 of 1914) the petitioner's resignation was not effective until it was accepted by the District Magistrate, that he was entitled to withdraw it before it was accepted, that having withdrawn it, the resignation could not be accepted and there was therefore no vacancy in the office of the Chairman and all subsequent proceedings for the declaration of vacancy, for the holding of election and declaring Jyoti Prasad opposite party duly elected are null and void in the eye of law and that therefore the petitioner is the Chairman of the Town Area Committee and entitled to act as such.

9. The case for the opposite parties is twofold, firstly, that the petitioner having resigned unconditionally had no right to withdraw it and that therefore the District Magistrate was entitled, to accept the resignation even though the petitioner had purported to withdraw it and that upon the acceptance of the petitioner's resignation a vacancy had occurred and the elections were in accordance with law and, secondly that in any event the election having been held and Jyoti

Prasad opposite party No. 2 having been elected as Chairman the election could only be challenged under the Town Areas Act and not by this petition.

10. The case came up before a Bench of this Court which considered that in view of somewhat conflicting opinions expressed in two decisions one of the Supreme Court, *Jai Ram v. Union of India*¹ and the other of this Court, *Jwala Prasad v. State of Uttar*

¹ AIR 1954 SC 584

*Pradesh*², the case was lit to be heard by a larger Bench. It has therefore been placed before us for decision.

11. The provisions of the U.P. Town Areas Act relating to resignation of a Chairman are contained in Section 8-A. Clause (3) of that section runs as follows :-

"When a vacancy occurs by reason of the death, removal or resignation of a chairman, a chairman shall be elected by the electors of the town area at a date to be fixed by the District Magistrate within one month of the vacancy."

Clause (4) says :

"The term of office of a chairman shall expire on the expiry of the term of office of the members of a committee."

Clause (5) runs thus :-

"If the chairman wishes to resign he shall forward his resignation in writing to the District Magistrate. He shall be deemed to have vacated his office from the date of receipt by the committee of information that his resignation has been accepted by the District Magistrate."

12. Normally a chairman holds office during the continuance of the term of office of the members of the committee. But during this period a vacancy may occur in the office of chairman by reason of (a) death, (b) removal or (c) resignation. "Does the vacancy occur as soon as the resignation is submitted by the chairman ?

13. In certain cases a resignation may be effective as soon as it is delivered to the proper authority. In other cases it may not be effective till it is accepted by that authority. In voluntary organisation like clubs, a person is free to be a member and unless the contrary is laid down in the rules of the association he is free to resign at any time he likes. The freedom to associate implies the freedom to disassociate. Thus in Halsbury's Laws of England, Simond's edition, vol. 5 p. 261 the law with regard to resignation in voluntary societies has been laid down as follows :-

"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 his letter of resignation thereupon ceases to be a member and can only be reinstated toy re-election."

14. But in corporations created by statute for the discharge of public functions a member may not have an absolute right to resign at will, because the law may cast a duty upon the person elected to a public office to act in that office in the public interest. Under the English common law when a person was elected to a municipal

² AIR 1954 All 638

corporation he could resign only with the consent of the proper authority. Mr. Justice Bradley delivering the opinion of the Supreme Court of the United States in '*Edward M. Edwards v. United States*³', observed as follows :

"As civil officers are appointed for the purpose of exercising the functions and carrying on the operations of Government, and maintaining public order, a political organization would seem to be imperfect which should allow the depositories of its power to throw off their responsibilities at their own pleasure. This certainly was not the doctrine of the common law.

In England a person elected to a municipal office was obliged to accept it and perform its duties, and subjected himself to a penalty by refusal. An office was regarded as a burden which the appointee was bound, in the interest of the community and of good government, to bear. And from this it followed of course that, after an office was conferred and assumed, it could not be laid down without the consent of the appointing power. This was required in order that the public interests might suffer no inconvenience for the want of public servants to execute the laws....To complete a resignation it is necessary that the corporation manifest their acceptance of the offer to resign, which may be done by an entry in the public books, or electing another person to fill the place, treating it as vacant."

15. But though this was the common law, Parliament provided otherwise and conferred upon a member of a statutory corporation an absolute right to resign first on payment of a fine and later without any payment.

16. Section 33(1), Municipal Corporations Act, 1882, provided that :-

"A person elected to a corporate office may at any time, by writing signed by him and delivered! to the town clerk, resign the office, on payment of the fine provided for non-acceptance thereof."

17. Section 62, Local Government Act, 1933, provides that :-

"A person elected to any office under this Act may at any time resign his office by writing signed by him and delivered" (to the person named in the section) "and his resignation shall take effect upon the receipt of the notice of resignation by the person or body to whom it is required to be delivered."

18. Thus the common law rule has been abrogated in the case of Municipal Corporations, and in Halsbury's Laws of England (Hailsham Edition) Vol. 21, para 94 (p. 57) the position has been summarized in these words : -

"A member of a county council may at any time resign his office by notice in writing signed by him and delivered to the clerk of the county council, such resignation, taking effect upon the notice of the county clerk." In para 325 at p. 179 of the same volume it is stated

"Either the chairman or the councilors may resign by notice in writing
³⁽¹⁸⁸⁰⁾ 26 Law Ed 314
delivered respectively; to the parish council, in the case of the chairman, or to the chairman in the case of councilor and; such resignation takes effect on receipt of the notice."

19. The Indian Law under the U.P. Town Areas Act, however, has not followed the English statutory law in this respect because the provisions of Section 8-A of the Indian Act provide for acceptance of the resignation by the District Magistrate, which clearly shows that the resignation is not effective till it is accepted.

20. During the period between the delivery of the letter of resignation and its acceptance by the proper authority, what is the position ? The resignation has not become effective and is in a state of suspense. Can it be withdrawn in such circumstances ? It seems to me that the law allows a person to withdraw his resignation before it has become effective by acceptance. This proposition is supported by authority.

21. In Corpus Juris Secundum, Vol. 62, at p. 942 the law is clearly stated that "a resignation may be withdrawn at any time before it is accepted."

22. The analogy of the law of contract dealing with offer and acceptance may legitimately be drawn upon in this connection. An offer may be withdrawn before it is accepted. Section 5 of the Indian Contract Act provides :

"A proposal may be revoked at any time before the communication of its acceptance is

complete as against the proposer, but not afterwards. An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not otherwise."

23. in AIR 1954 SC 584 the Supreme Court observed that –

"It may be conceded that it is open to a servant who has expressed a desire to retire from service and applied to his superior officer to give him the requisite permission, to change his mind subsequently and ask for cancellation of the permission thus obtained; but he can be allowed to do so as long as he continues in service and not after it has terminated."

24. From this observation it would follow that a person has a right to withdraw his resignation before it is accepted or before his office has come to an end.

25. Learned counsel for the opposite party has strongly relied upon the observations made by a Bench of this Court in AIR 1954 Allahabad 338. The facts of that case were that a patwari sent a letter of resignation with the request that it may be accepted by 3-3-1953 and he may be relieved of his responsibilities. On 10-2-1953 the resignation of Jwala Prasad was accepted by the appointing authority. After this acceptance but before 3-3-1953, namely on 24-2-1953, the patwari submitted an application for withdrawal of his resignation and for his re-employment as a patwari. The patwari's conduct was however not found satisfactory and he was not allowed to withdraw his resignation and was not re-employed. On these facts it was held, and I think, with respect, rightly, that the patwari was not entitled to withdraw his resignation as his resignation had already been accepted. The Bench, however, went on to observe that :

"Even if his withdrawal of resignation application had been received before the resignation was accepted, he could not claim an absolute right to withdraw his resignation. The resignation was unconditional, and whether he would be permitted to withdraw that resignation was a matter within the discretion of the appointing authority. We do not want to express any opinion on the question whether if the resignation had been conditional, the party tendering it could claim a right to withdraw it as the point has not arisen in this case."

This observation was clearly an obiter dictum as it was not necessary for the decision of the case. With the utmost respect I am unable to agree with the law thus propounded by the learned Judges. No authority is cited in support of this view. If the resignation is conditional no question of its acceptance could arise unless the conditions were fulfilled and there is no reason why before the conditions were fulfilled it could not be withdrawn. Similarly there is no reason why a resignation which may be unconditional but is yet ineffective before its acceptance, may not be withdrawn. A resignation which depends for its effectiveness upon the acceptance by the proper authority is like an offer which may be withdrawn before it is accepted.

26. On behalf of the opposite parties reliance was also placed upon a decision of a Bench of the Rajasthan High Court in '*Shamsuddin v. State of Rajasthan*⁴', a case arising under the Rajasthan Act 21 of 1949 which prescribed the manner in which elections to the Municipal Boards in district towns in the former State of Jodhpur were to be held and which made no provision for resignation from membership of that Board. It was held that :

"A letter of resignation sent by a member who is duly elected to a Municipal Board takes effect on receipt of the letter by the appropriate authority. And unless there is any law or general principle to the contrary, the member cannot contend that the authority has no authority to act upon the letter of resignation when he had withdrawn it."

The learned Judges relied upon the passages in Halsbury's Laws of England which have been quoted above. The passage quoted from the 5th volume of Simonds Edition refers to a resignation, by a member of an unincorporated club, where the resignation does not depend for its effectiveness upon the acceptance by some other authority. That principle cannot, as shown above, apply to a case-under the U.P. Town Areas Act. The second and the third passages from the 21st Volume of Halsbury's Laws of England (Hailsham Edition) relate to the power of a person elected to a corporate office to resign at any time. As already shown the statement in Halsbury's Laws of England is based upon the express provisions of the Local Government Act of 1933. The learned Judges of the Rajasthan High Court realized this, and they dismissed the writ petition because, as they observed :

⁴ AIR 1952 Raj 53

"Whatever may be the position of the Municipal Board of Nagpur, in the absence of any law, we are-unable to issue a writ of any kind." The decision can therefore be of no assistance to the opposite party.

27. In my opinion therefore the petitioner had a right to withdraw his resignation and he having done so there was no resignation left which could be accepted by the District Magistrate. The purported acceptance of the resignation by the District Magistrate was a nullity and so was his communication to the Town Area Committee. There was therefore no vacancy in the office of the chairman and no election could be held. The election held in these circumstances was void at law. Jyoti Prasad opposite party No. 2 cannot therefore claim to be a duly elected chairman or to act as such. The contention of learned counsel for the opposite party that the election having been held it could only be set aside in accordance with the provisions of the Town Areas Act or the rules framed there under cannot be accepted. Such an election is void ab initio and can be quashed in these proceedings.

28. In the result I would allow the writ petition, and quash the order of the District Magistrate purporting to accept the petitioner's resignation, his order communicating his acceptance to the Town Area Committee, the declaration of the vacancy, and the entire proceedings relating to the election to the office of the chairman. I would issue a writ of mandamus to the opposite party No.

2 to refrain from claiming to be a chairman of the Town Area Committee of Pahasu or to act as such, and: to the opposite party No. 1 to allow the petitioner to act as the chairman of the said Committee. The petitioner is entitled to his costs from opposite party No. 2.

Bhargava, J.

29. This petition under Article 226 of the Constitution has been filed by Bahori Lal Paliwal who was elected as Chairman of the Town Area Committee, Pahasu, district Bulandshahr, in the last general elections and took over charge of his office in or about the month of October, 1953. The petitioner came forward with the allegation that he discharged the duties of his office conscientiously, diligently and to the best of his capacity and that there was no complaint of any sort against him, so that he enjoyed the confidence of not only the members of the Town Area Committee, Pahsu, but also of the general public of that town. In April 1955, the petitioner proposed to go to Rajasthan for a long stay and consequently, on 22-4-1955, he tendered his resignation from the post of the Chairman, Town Area Committee, Pahasu, and submitted it to the District Magistrate of Bulandshahr on 29-4-1955, all the nine members of Town Area Committee, Pahasu, unanimously sent a representation to the District Magistrate of Bulandshahr requesting him not to accept the resignation of the petitioner. On 16-7-1955, the petitioner was sent for by the Tahsildar of Tahsil Khurja in that district and was asked to verify his signatures on the letter of resignation which he had submitted to the District Magistrate. The petitioner verified his signatures. Subsequently, great pressure was brought upon the petitioner both by the public as well as by the members on the Town Area Committee, Pahasu, to cancel his visit to Rajasthan and continue to work as the Chairman, Town Area Committee, Pahasu.

Consequently, on 18-7-1955, the petitioner sent a letter to the District Magistrate of Bulandshahr, withdrawing his resignation. This letter was received by the District Magistrate on 19-7-1955. Thereafter the petitioner was informed by a letter of the Sub-Divisional Magistrate, Khurja, district Bulandshahr, dated 13-3-1955, that the petitioner's resignation had been accepted on 13-8-1955. The petitioner received this information on 14-8-1955, and, on the same day, he handed over charge to the Vice-President of the Town Area Committee. In these circumstances, this petition was moved by the petitioner on 7-9-1955, with the prayer that the Court be pleased to issue a writ in the nature of 'certiorari', calling for the record of the petitioner's case and quashing the entire proceedings including the order of acceptance of the petitioner's resignation. A further writ of 'mandamus' was sought, commanding the District Magistrate of Bulandshahr to recognize the petitioner as the Chairman of the Town Area Committee, Pahasu, and to extend to him all the privileges and facilities attached to that office. A prayer was also made in the petition for an interim order, commanding the District Magistrate of Bulandshahr not to hold any bye-election to fill in the vacancy which had been caused by the impugned order of the District Magistrate accepting the resignation of the petitioner. That prayer was not granted by this Court. Consequently, a bye-election was held and one Jyoti Prasad was elected as the Chairman of the Town Area Committee, Pahasu, on 26-9-1955. As a result, he was also impleaded as an opposite-party to this petition.

30. The petition has been contested both on behalf of the District Magistrate of Bulandshahr as well as on behalf of Jyoti Prasad, the newly elected Chairman of the Town Area Committee, Pahasu, district Bulandshahr. In the affidavit filed on behalf of the District Magistrate, it was admitted that the petitioner had been elected as a Chairman but it was denied that his work had been satisfactory. It was also admitted that his work, had been satisfactory. It was also admitted that he had submitted his resignation to the District Magistrate on 22-4-1955, which was received in the office of the District Magistrate on 26-4-1955, by post. It was then sent for verification to the Tahsildar of Khurja and the petitioner had duly verified his signatures on it on 16-7-1955. It was also mentioned in the affidavit that the application for withdrawal of the resignation had been received by post but the assertion was that that application was never granted and, since the signatures on the letter of resignation were duly verified by the petitioner, it continued to have full force. The District Magistrate accepted the resignation on 13-8-1955, and, consequently, the petitioner ceased to be the Chairman. It was urged that it was open to the District Magistrate not to allow the resignation to be withdrawn. Another counter-affidavit was filed by the newly elected Chairman, Jyoti Prasad. In that affidavit, the facts alleged by the petitioner were contested in greater detail. It was urged that the petitioner's work had been unsatisfactory and inefficient and that controversies arose between the members of the Town Area Committee and the petitioner. The members of the Town Area Committee, Pahasu, therefore, contemplated moving a vote of no confidence and, in order to get over that situation, the petitioner submitted his resignation on the excuse that he intended going to Rajasthan for a long stay, whereas this was entirely wrong and the petitioner had no property in or connection with Rajasthan. Later, when the petitioner felt that the controversy against him had abated to some extent, he went round to the members of the Committee individually and obtained their signature on the letter of representation to the District Magistrate in his favor on the clear understanding that he would not continue or attempt to continue as Chairman of the Town Area Committee and would still adhere to the resignation submitted by him to the District Magistrate. It is also denied that any pressure was brought upon the petitioner either by the public or by the members of the Committee to withdraw his resignation. He sent his letter for withdrawal of the resignation because he felt that the controversy against him had abated and he would be able to bring round the members of the Committee in his favor. It was urged that, in these circumstances, the District Magistrate was justified in refusing to act on the withdrawal and in accepting the resignation. It was also contended that, after the acceptance of the resignation of the petitioner, bye-election had been held and Jyoti Prasad had been declared duly elected Chairman in the vacancy which had occurred and, until that election was set aside in accordance with the provisions of law made for that purpose, this Court could not issue writs of the nature claimed by the petitioner. Counter-affidavits were also filed by Jyoti Prasad having been obtained from a number of members of the Town Area Committee, Pahasu, viz., Sohan Lal, Om Prakash, Mohan Lal Paliwal, Ratthan Lal, Sudhakar, Muhammad Khan and Hal Kishan Chandra Mathur. The Town Area Committee of Pahasu consisted of ten members besides the Chairman and Jyoti Prasad filed affidavits of seven out of those ten members who, in their affidavits, averred that the relations between the petitioner

and members of the Committee were very unhappy and strained and, on account of inefficient and unsatisfactory condition resulting from the activities of the petitioner, various representations were made against him. It was further averred that the petitioner was popular neither with the public nor with the members of the Committee who had contemplated passing no-confidence motion against him and that, after submitting his resignation, the petitioner approached all those members individually and, by appealing to their sentiments of mercy and by-bringing pressure on them of their friends and relations, he obtained the signatures of those members on the letters of representation to the District Magistrate that his resignation should not be accepted on the clear understanding that his resignation was genuine and he did not intend to act as the Chairman of the Committee in future. It was urged, in these circumstances, on behalf of Jyoti Prasad that the District Magistrate was fully justified in accepting the resignation of the petitioner in spite of his application for its withdrawal.

31. The petition came up for hearing before a Division Bench of this Court but, in view of the fact that the important question of law involved in this case required a consideration of the effect of a decision of the Supreme Court in AIR 1954 SC 584 (A) and of a Division Bench of this Court in AIR 1954 Allahabad 638 (B) the case was referred to a Pull Bench for decision.

32. I may first deal with the preliminary point raised on behalf of the opposite-parties that this petition is not maintainable in view of the fact that, after the acceptance of resignation of the petitioner by the District Magistrate, a casual vacancy was declared and Jyoti Prasad has already been declared as the duly elected Chairman of the Town Area Committee of Pahasu, so that this petition is not entertain able unless this election is set aside. I do not think that there is any force in this contention. It does not appear that there is any necessity for the election of Jyoti Prasad being set aside in accordance with the proceedings permitted in law for challenging the validity of elections, because here the subsequent election held after the order of the District Magistrate which is being questioned in this Court, can be ignored for the purpose of dealing with the validity of that order. If that order was a valid order, the subsequent election of Jyoti Prasad would not be affecting by any order passed by this Court on this petition. On the other hand, if it be held that the order of the District Magistrate accepting the resignation of the petitioner was against law and void so that it was altogether ineffective, the result would be that the petitioner would be deemed to have continued as the Chairman of the Town Area Committee, Pahasu, throughout and any election held on the basis that a casual vacancy had occurred would automatically be null and void. An election for a casual vacancy is permissible only after a casual vacancy has occurred. If, in fact, no causal vacancy has occurred, any election held to fill up that alleged vacancy would be no election at all under the U.P. Town Areas Act, 1914 (U.P. Act 2 of 1914) and can, therefore, be ignored as being void and of no effect whatsoever. It was urged on behalf of the opposite-parties that this petition cannot be allowed by this Court without setting aside the subsequent election of Jyoti Prasad. I cannot accept this submission. If the Court holds that the petitioner is still the Chairman of that Town Area Committee, adequate relief can be granted by passing suitable directions to the opposite-parties to allow him to function as such and

not to interfere with the discharge of his duties in that capacity.

33. I now come to the question whether the District Magistrate, in accepting the resignation of the petitioner on 13-8-1955, committed any breach of law inasmuch as he was not entitled to pass that order of acceptance, as contended by the petitioner. The petitioner admits that he sent his resignation on 22-4-1955, and that he verified his signatures on it before the Tahsildar on 16-7-1955. Under Sub-Section (5) of Section 8-A, U.P. Town Areas Act, 1914, it is laid down that

"if the chairman wishes to resign he shall forward his resignation in writing to the District Magistrate. He shall be deemed to have vacated his office from the date of receipt by the committee of information that his resignation has been accepted by the District Magistrate".

34. It was contended on behalf of the opposite-parties that, in fact, the resignation became complete and effective as soon as it was received by the District Magistrate on 26-4-1955, and therefore, there could be no subsequent withdrawal of the resignation by the petitioner. The letter of withdrawal sent by the petitioner on 18-7-1955, would not be acted upon and the District Magistrate was therefore, justified in accepting the resignation. I am unable to accept this submission. It appears to me that, on the language of Sub-Section (5) of 8. 8-A, U.P. Town Areas Act, 1914, it must be held that the resignation does not take effect until it has been accepted. That Sub-Section does lay down that the Chairman is to forward his resignation in writing to the District Magistrate and at the same time, Sub-Section (3) of Section 8-A of the Act provides that a vacancy occurs, amongst other reasons, by reason of the resignation of a chairman. These provisions do not show that the resignation takes effect as soon as it reaches the hands of the District Magistrate. The subsequent clause in Sub-Section (5) of Section 8-A of the Act gives an indication as to the time when the resignation becomes effective. Therein it has been laid down that a chairman shall be deemed to have vacated his office from the date of receipt by the committee of information that his resignation has been accepted by the District Magistrate. This shows that the Act contemplates an acceptance of the resignation by the District Magistrate. After acceptance, it is necessary that the District Magistrate must communicate his acceptance to the committee and when the committee has received information of the acceptance, the chairman is deemed to have vacated his office.

It is, of course, correct that the effective operation of a resignation need not always be simultaneous with the vacation of the office by the chairman. A resignation may be complete and effective and yet the chairman may vacate his office some time later. In the case of the U.P. Town Areas Act, however, the language used implies that, after the chairman forward his resignation, the District Magistrate has to accept it. Unless the resignation has been accepted by the District Magistrate, it cannot be held that the resignation has already become effective and complete. Consequently, before such acceptance, the chairman can send an application for withdrawal of his resignation which will be considered by the District Magistrate. Before the acceptance of the resignation, the chairman can change his mind and apply to the District Magistrate for

withdrawal of his resignation, praying that it may not be accepted by the District Magistrate.

35. Learned counsel for Jyoti Prasad opposite-party relied on two decisions of English Courts in *R. v. Wigan Corpn.*, (1885) 14 QBD 908 and *Pease v. Lowden*⁵, in support of his opposition that, in a case of this nature the resignation must be held to be complete and effective from the time that it reaches the hands of the District Magistrate. Those decisions cannot be applied in this case where the decision on such a question turns on the language used in the U.P. Town Areas Act, 1914. In England, under the Municipal Corporations Act, 1882,

"a person elected to a corporate office may at any time, by writing signed by him and delivered to the town clerk, resign the office on payment of the fine provided for non-acceptance thereof" and, in any such case, "the council shall forthwith declare the office to be vacant and signify the same by notice in writing signed by three members of the council and countersigned by the town clerk, and fixed on the town hall and the office shall thereupon become vacant."

Subsequently a different provision that was to the effect, for the purpose of filling a casual vacancy in any office for which an election was to be held under the Local Government Act, 1933, the date, on which the vacancy was to be deemed to have occurred, was, in the case of resignation, "upon the receipt of the notice of resignation" by the person or body to whom the notice was required to be delivered.

It will be seen that, in England, the law was that as soon as the resignation was handed over to the town clerk, the council was enjoined to declare a vacancy forthwith and, even for purposes of bye-election for the casual vacancy, the vacancy was deemed to have occurred as soon as the resignation had been handed over to the town clerk. Under the U.P. Town Areas Act, 1914, the vacancy does not occur on the mere receipt of the resignation by the District Magistrate. Sub-Section. (5) of Section 8-A of the Act itself contemplates that the resignation must be accepted by the District Magistrate where after it enjoins that the information of the acceptance must be sent to the town area committee and the vacancy is deemed to occur only after such information has been received by the committee. The provision that there must be acceptance of the resignation by the District Magistrate clearly implies that the

⁵(1899) 1 QB 386

resignation cannot be effective and complete until such acceptance has been recorded by the District Magistrate. The acceptance by the District Magistrate is a necessary step in giving effect to the resignation and until that step has been taken, the resignation is not complete and effective. While the resignation has not yet taken effect the person resigning can make an application withdrawing the resignation.

36. The question, however, still remains whether the application for withdrawal by a person tendering the resignation is by way of right and he can claim that, if he applies for withdrawal of his resignation, the District Magistrate is subsequently debarred from exercising his discretion of

accepting the resignation. Learned counsel for the petitioner, in support of his submission on this point, referred to a decision of a learned single Judge of this Court in '*Chote Lal v. State*⁶', I do not, however, find that that case supports the proposition relied upon by the petitioner. In that case, a patwari had submitted his resignation from service on 4-2-1953, at a time when disciplinary proceedings were already pending against him. The resignation could not be accepted while the disciplinary proceedings were pending in accordance with the orders of the Land Reforms Commissioner. The Sub-Divisional Magistrate, who was in charge of the disciplinary proceedings, passed an order of dismissal of the patwari on 30-5-1953. That order was set aside in appeal by the Additional District Magistrate on 12-9-1953, and the case was remanded for a proper enquiry according to the rules. The case then went before another Magistrate who made a thorough inquiry into the matter, found the patwari not guilty and exonerated him from the charges. That order was passed on 31-7-1954, and the patwari was reinstated. Subsequently, on 28-8-1954 the "Sub-Divisional Magistrate passed an order, accepting the resignation of the patwari, even though he had withdrawn his resignation in July, 1953. The learned Judge, in deciding the case, did not hold that the Magistrate, who passed the order accepting the resignation, was bound by the application for withdrawal made by the patwari in July, 1953. The case turned on the point that that resignation became ineffective when, before accepting the resignation the services of the patwari were terminated by the Sub-Divisional Magistrate by his order dated 30-5-1953, and it could not relate to his services after his re-instatement by the order of the Magistrate.

Another alternative ground, on which the petition was allowed by the learned Judge, was that the Sub-Divisional Magistrate, when accepting the resignation, should, at least, have applied his mind, before accepting the resignation, to the question whether, in the circumstances of the case, the patwari could be permitted to withdraw his resignation or not. The Magistrate on the other hand, refused the prayer for withdrawal on the ground that it was made after the expiry of the period fixed by the Land Reforms Commr. who had prescribed a time-limit for withdrawal of the resignations which had been submitted by the patwaris. That case is, therefore, of no assistance.

37. The next case relied upon by learned counsel is a decision of the Supreme Court in AIR 1954 SC 584 (A). In that case, the question related to a government servant who applied for permission to retire before superannuation. The permission for retirement was granted and the government servant proceeded on leave preparatory to retirement. It was while he was enjoying post-retiring leave under the rules that he moved the Courts to enforce his rights to return back to duty.

⁷ AIR 1958 All 163

Their Lordships of the Supreme Court held that he had ceased to be in service when he moved the Courts and, consequently, he could not obtain the relief claimed by him. In dealing with this point, their Lordships held :

"It may be conceded that it is open to a servant, who has expressed a desire to retire from service and applied to his superior officer to give him the requisite permission, to change

his mind subsequently and ask for cancellation of the permission thus obtained; but he can be allowed to do so, so long as he continues in service and not after it has terminated."

Reliance is placed on the view expressed by their Lordships that the government servant had the right to change his mind and asked for cancellation of the permission for retirement obtained by him. It appears to me that the case of a permission for retirement cannot stand on the same footing as the case of a resignation. When a government servant applies for permission to retire and permission is granted by the superior authority, the servant is still to retire. If he actually retires, he cannot, thereafter, go back upon it. Having merely asked for permission to retire, it cannot be held that he has actually applied for retirement. Subsequent to the grant of permission to retire, he is still to exercise his option either to retire or not to retire; and if he changes his mind and chooses to continue in service and does not apply for retirement after availing of the permission granted, he cannot be compelled to retire. In that case, the question did not arise whether, if after obtaining the permission the government servant had actually applied for retirement and that application was an unconditional application, it was still an absolute right vested in the government servant to withdraw his request for retirement. There are various provisions of law where a certain act can only be done with the permission of another authority; for example, a criminal case, in certain circumstances, can only be compounded with the permission of the Court. A civil suit, to which a minor is a party, can, only be compromised on behalf of the minor with the permission of the Court. In such cases, if the permission of the Court is sought and is granted, the parties can yet change their minds and may not compound the case or compromise the suit. Mere obtaining of permission from the requisite authority cannot compel the person obtaining the permission to necessarily act in the manner contemplated. The position may be different where a compromise has been filed in Court in pursuance of the permission granted. After a compromise has been filed, the compromise is still not effective till the Court passes an order on it. It cannot be said that any party to the compromise has an absolute right to go back on the compromise and withdraw it at this stage. In fact, the law at such stage enjoins the Court to give effect to the compromise and leaves no option to the parties to resile from it. The case of a resignation is not similar to that of a compromise filed in Court because compromises filed in Court are governed by special provisions of law but I have taken this example only to clarify the distinction that arises in considering the effect of a withdrawal when the change of mind is after obtaining the permission and when the mind is changed after the act contemplated has already been done, if, for example, there had been a provision that the chairman could only resign with the permission of the District Magistrate and had obtained such permission, there would be no doubt that the chairman, would still have the right not to resign and to change his mind.

The present case is different where all that the chairman has to do is to submit his resignation to the District Magistrate and he has done so. Therefore, it cannot be said that the chairman has any absolute right to withdraw the resignation already submitted and, in any case, I am unable to hold that their Lordships of the Supreme Court in the case cited above intended to lay down any such

proposition.

38. At this stage, it will be useful to consider the nature of the right of resignation as it appears to me that the nature of the right of withdrawal can appropriately be determined by reference to the nature of the right of resignation which is sought to be withdrawn. The resignation in this case was from the office of the chairman of a corporate public body created by a statute. The right of resignation by such a civil officer was considered by the Supreme Court of America in (3880) 26 Law Ed. 314 (C) where it was observed :

"As civil officers are appointed for the purpose of exercising the functions and carrying on the operations of government, and maintaining public order, a political organization would seem to be imperfect which should allow the depositaries of its power to throw off the responsibilities at their own pleasure. This certainly was not the doctrine of common law. In England a person elected to a municipal office was obliged to accept it and perform its duties, and subjected himself to a penalty by refusal.

An office was regarded as a burden which the appointee was bound, in the interest of the community and of good government, to bear. And from this it followed of course that, after an office was conferred and assumed, it could not be laid down without the consent of the appointing power. This was required in order that the public interests might suffer no inconvenience for the want of public servants to execute the laws."

In that case, decisions of the Supreme Courts of some of the States in the United States of America were also considered and the views expressed in those cases approved. Reference was made, particularly, to decisions of Courts in those states in which the common law rule continued to prevail. The following extract from the decision of the Supreme Court of North Carolina '*Hoke v. Henderson*⁸, was cited with approval :-

"An officer may certainly resign; but without acceptance his resignation is nothing, and he remains in office. It is not true that an office is held at the will of either party. It is held at the will of both. Generally resignations are accepted; and that has been so much a matter of course with respect to lucrative offices, as to have grown into a common notion that to resign is a matter of right. But it is otherwise. The public has a right to the services of all the citizens, and may demand them in all civil departments as well as in the military.

Hence there are on our statute book several Acts to compel men to serve in offices. Every man is obliged, upon a general principle, after entering upon his office, to discharge the duties of it while he continues in office, and he cannot lay it down until the public, or those to whom the authority is confided, are satisfied that the office is in

⁸(1831) 4 Dev. 1 (29)

a proper state to be left, and the officer discharged."

This common law rule very clearly brings out the difference between the obligations of a holder

of a public office towards the public and the obligations of a servant towards his master. As between a master and servant, the obligations of a servant arise out of a contract and he has the right to resign from the service subject to the usual rule of complying with the requirement of the requisite notice. In the case of the holder of an office in a corporate body like a town area, the relation between him and the public differs fundamentally from the relation arising from the contract of servant between a servant and a master. The analogy of the right of a servant to resign from service cannot, therefore, be applied when considering the right of resignation of the holder of a public office. In fact, it appears to me that, in considering the right of resignation by an officer holding a public office, no analogy can be drawn by reference to the principle of offer and acceptance under the Law of Contract.

Under that law, an offer can be withdrawn at any time before it is accepted. That is because the proposer, who gives the offer has an absolute right either to give the offer or not to do so and until the offer is accepted, he has been given by law an absolute right to withdraw that offer. This position could only arise if, under the common law rule, the holder of a public office also had been granted an absolute right to offer his resignation in which case it might also have been possible to hold that he had an absolute right to withdraw the resignation. The holding of a public office entails duties and obligations and it is clearly in consonance with public policy of limiting the right to decline to hold the office or to resign after the office has already been held for some time. No such considerations of public policy arise with regard to the right of withdrawing an offer under the law of contract.

39. In England, this common law rule has been gradually altered. The first step introduced by legislative amendments to the common law rule was to permit the holder of a corporate office to resign subject to the payment of a fine. Later still, the Parliament, under the Local Government Act, 1933, abolished the provision relating to fine and gave the right to any person, elected to any office under that Act, to resign at any time his office by writing a letter signed by him and delivering it to the person named in that law. Provision has further been made that the resignation is to take effect upon the receipt of resignation by that person. The present position in England thus is that the holder of a corporate office has an absolute right to resign from the office. In India, however, it appears that the common law rule is still applicable and has not been abrogated or modified by legislative changes. This is clear from the fact that, under the Town Areas Act a resignation by a chairman does not take effect until it has been accepted by the District Magistrate. In India, therefore, it is clear that the right to resign from an office like the office of a chairman of a town area committee is not an absolute right of the person holding the office. If he desires to vacate the office, he can submit his resignation but the resignation does not become effective until the District Magistrate, in exercise of his discretion, accepts and communicates the acceptance to the town area committee. It appears to me that, when the right of resignation is itself not an absolute right which can be exercised by the chairman at his will, the converse right of withdrawing a resignation already submitted, which may or may not be accepted at the discretion of the District Magistrate, also cannot be held to be an absolute right, taking away the discretion of the District Magistrate to accept or not to accept the resignation.

Once a chairman of a Town Area Committee sends his resignation to the appropriate authority, viz., the District Magistrate, the further action on that resignation is at the discretion of that authority and, if the person sending the resignation desires that the resignation should not be acted upon, he certainly has the right to apply to the District Magistrate for withdrawal of the resignation. The existence of the right of applying for withdrawal does not, however, imply that the District Magistrate is bound to accede to the desire of that person that the resignation should not be acted upon thereafter. The question having once come within the scope of the District Magistrate it must be open to the District Magistrate either to accept the resignation or to act in accordance with the subsequently expressed desire of that person, allow the withdrawal and refuse to accept the resignation. The discretion having once vested in the District Magistrate under the law, it would not be correct to hold, that it can be taken away and fettered at the sweet will of the person whose by his act, set the law in motion so as to vest the discretion in the District Magistrate. Where the statute law does not expressly confer any power, the negative power of rescinding an act already done must, in my opinion, be held to be of the same nature as the power of doing that positive act.

40. A Division Bench of this Court, of which I was a member, while dealing with the resignation of a patwari held in AIR 1954 Allahabad 338 (B) that

"even if his withdrawal of resignation application had been received before the resignation was accepted, he could not claim an absolute right to withdraw his resignation. The resignation was unconditional, and whether he would be permitted to withdraw that resignation was a matter within the discretion of the appointing authority. We do not want to express any opinion on the question whether if the resignation had been conditional, the party tendering it could, claim a right to withdraw it, as the point has not arisen in this case."

A similar view was expressed by a Division Bench of the Rajasthan High Court in AIR 1952 Rajasthan 53. The learned Judges 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 unprovoked 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."

I am, therefore, led to the conclusion that after a Chairman of a Town Area Committee has sent his resignation to the District Magistrate he can apply for withdrawal to the District Magistrate and, to that extent, his right of withdrawal of resignation is in existence but that right is not an absolute right and it will be at the discretion of the District Magistrate either to accept the resignation or to act on the letter of withdrawal and reject it. This discretion has, of course, to be

exercised in the interests of the general public for whose benefit the statute created the corporate body. It is based on principles of justice, equity and good conscience so as to recognize the prime importance of the interests of the public which are given preference over the desire or conveniences of the holder of the office of the Chairman.

In the present case, the District Magistrate chose to act on the resignation submitted by the petitioner and to disregard his letter of withdrawal. In the affidavits filed on behalf of the opposite-parties, attempt has been made to show that it was in the interests of the general public that the District Magistrate chose to adopt this course. Circumstances, under which the resignation was given by the petitioner as well as those under which it was sought to be withdrawn, have been brought out in the affidavits. According to these affidavits, the discretion was exercised by the District Magistrate in consonance with the public policy of securing the interests of the general public. It is, in any case, not the function of this Court, while exercising its powers under Article 226 of the Constitution, to go into the question whether the discretion has been exercised by the District Magistrate rightly or wrongly. As long as the discretion is vested in him under law, no writ can issue so as to quash the exercise of the discretion by him in one way or another. On this ground, therefore, this petition must fail.

41. In this connection, it appears to me that a close examination of the scheme laid down by the Legislature in Clause (5) of Section 8-A of the Town Areas Act further clarifies the position. Under this provision of law, three different stages are envisaged when a chairman wishes to resign. As a first step, the chairman has to forward his resignation in writing to the District Magistrate. The second step contemplated by the law is that the District Magistrate may accept the resignation or may, in his discretion, refuse to accept it, depending on the course considered appropriate by him on grounds of public policy. The third step arises when the resignation has already been accepted by the District Magistrate and he has to convey information of the acceptance to the Town Area Committee. It is only after this last step has been taken and information of the acceptance of the resignation by the District Magistrate has been received by the Town Area Committee that the chairman vacates his office. The contention, in this case, has been that the chairman must be held to have an absolute right to withdraw his resignation until the resignation has already taken effect and the chairman has ceased to hold that office, and it is on this ground that it has been urged that the chairman must be deemed to have an absolute right to withdraw his resignation until the District Magistrate actually accepts it. There may be a case where the resignation sent by the chairman may have been accepted by the District Magistrate but information of that acceptance may not have been received by the Town Area Committee, so that the chairman, under law, still continues to hold the office and cannot be deemed, to have vacated it. At that stage, the chairman may send a letter, withdrawing his resignation. Can it be said that the resignation can be withdrawn even after its acceptance by the District Magistrate? If the right of withdrawing a resignation be held to be an absolute right of the chairman exercisable until his resignation has actually been acted upon and has taken effect, it would be necessary to hold that, even after the acceptance of the resignation by the District Magistrate, the withdrawal will operate so as to nullify the acceptance of the resignation by the District Magistrate. This

anomalous position very clearly brings out the fact that the analogy of the Law of Contract as regards offer and acceptance cannot be applied to the case of a resignation and its withdrawal by a chairman of a Town Area Committee where the considerations that arise are entirely different from those governing the rights of parties entering into a contract.

Once a chairman has submitted his resignation, the law vests in the District Magistrate the discretion to accept or not to accept the resignation and to give effect to it by conveying the acceptance to the Town Area Committee and, consequently, at that stage, as I have said earlier, it is not possible to hold that the chairman has an absolute right of withdrawing the resignation so as to take away this discretion which is already vested in the District Magistrate and which has to be exercised by him keeping in view the public policy and principles of justice, equity and good conscience.

42. For the reasons given above, I would dismiss the petition with costs.

BY THE COURT

We allow this petition and quash the order of the District Magistrate purporting to accept the petitioner's resignation as also his order communicating his acceptance to the Town Area Committee. We also quash the declaration of a vacancy in the office of Chairman and the entire proceedings relating to the election to the office of the Chairman. A writ of mandamus should also issue to the opposite party No. 2 to refrain from claiming to be a Chairman of the Town Area Committee of Pahasu and to act as such and also to Opposite Party No. 1 to allow the petitioner to act as the Chairman of the said Committee. The petitioner is entitled to his costs from opposite party No. 2.

Writ issued.