DELHI HIGH COURT

Y. K. Mathur

Vs.

Delhi Muncipality

Civil Writ Petn. No. 1130 of 1973

(Rajindar Sachar and T. V. R. Tatachari, JJ.)

2.3.1973

JUDGEMENT

Rajindar Sachar, J.

1. This is a somewhat unusual case where public issues instead of being debated objectively by the public representatives and in a calm atmosphere of chamber have been made the subject-matter of challenge and counter-challenge with further consequences possibly not anticipated even by the participants.

2. These are two writ petitions by voters of different wards of the Municipal Corporation of Delhi seeking a writ of quo warrant for a declaration that the two municipal councilors Shri Bhagwan Dass Verma (Respondent No. 3 in Writ Petition No. 1130/72 and respondent No. 6 in Writ Petition No. 1263/72) and Sri Om Prakash (Respondent No. 4 in Writ Petition No. 1130/72 and respondent No. 5 to Writ petition No. 1263/72) who had resigned their seats are not entitled to continue as councilors and that their seats be declared, vacant. The facts being common this judgment will dispose of both these writ petitions. By consent facts haw been taken from C. W. 1130/72. The resignation letters are as follows:-

'Respondent No. 3:

The Mayor. M. C. D. (Municipal Corporation of Delhi).

I hereby tender my resignation from the membership of the Corporation. Please accept it,

Sd/- Bhagwan Das Verma,

16-11-72.'

'Respondent No. 4;

Mayor through

Commissioner.

I resign from my seat. Please accept.

Sd/- Om Prakash Jain.

16-12.'

3. Section 3 of the Delhi Municipal Corporation Act, 1957 (hereinafter called the Act) constitutes a Municipal Corporation to be known as the Municipal Corporation of Delhi charged with the Municipal Government of Delhi. The Corporation is to be composed of councilors and aldermen. Councilors are to be chosen by direct election on the basis of adult suffrage and aldermen are chosen by councilors from amongst the persons Who are qualified to be councilors but who are not councilors themselves.

4. The last general election of the Municipal Corporation of Delhi was held in May 1971. As a result of that election Jana Sangh party obtained majority in the Delhi Municipal Corporation while the Congress is the main opposition party. Respondent No. 3 is a councilor belonging to the Congress whereas respondent No. 4 is a councilor belonging to the Jana Sangh.

5. Section 3 of the Delhi Administration Act, 1966 (hereinafter called the 1966 Act) constitutes a Metropolitan Council of Delhi Members of the Metropolitan Council are to be elected by direct election from, territorial constituencies. Power is also given to the Central Government to nominate not more than five persons to be members of the Metropolitan Council. The result of that last general election in 1971 was that the Congress obtained the majority while the Jana Sangh is the main opposition party.

6. Section 27 of the 1966 Act provided for an Executive Council consisting of not more than four members one of whom shall be designated as Chief Executive Councilor and others as Executive Councilors The members of the Executive Council are to be appointed by the President and hold office during his pleasure. The 1966 Act does not require that only elected members of the Metropolitan Council can be executive councilors. Sri Radha Raman, a nominated member is the Chief Executive

Councilor and belongs to the Congress.

7. The term of office of a member of Municipal Corporation is four years. For efficient performance of its functions, a number of committees have been constituted under the Corporation Act : one of them being Standing Committee. The Standing Committee consists of 14 members who shall be elected by the councilors and aldermen from amongst themselves. Both respondents 3 and 4 are members of the Standing Committee also. A weekly meeting of the Standing Committee was to be held on 16-11-1972. Section 81 of the Act provides that the Commissioner or any Municipal Authority authorized by him in this behalf may attend the meeting of the Corporation or any of the Standing Committees. As the Commissioner could not attend the meeting on that day he had asked the Deputy Commissioner. Shri Virendra Prakash, to attend the meeting on his behalf. The Deputy Commissioner accordingly attended the meeting. In those days the strike had been called and was going on by the Municipal Safai Karamcharis who are the employees of the Corporation. There was natural anxiety about it and the council and other people were naturally concerned with it. It appears that in the meeting of the Standing Committee on that day i.e. 16-11-1972 heated discussion took place with charges and counter-charges being made by both sides i.e. by the Congress and Jana Sangh. According to the affidavit filed by the Deputy Commissioner accusation and counter-accusations were being made and in the heat both respondents 3 and 4 wrote out letters purporting to be the resignations: and placed them on the papers lying on the table in front of him and soon thereafter left the meeting. After sometime the Commissioner's Private Secretary came and collected those letters from him.

8. The Commissioner, respondent No. 2 in his affidavit in reply has stated that on that day, he could not attend the meeting though he was in the office of the Corporation. On hearing recrimination, threats and counter-threats between the members of the Standing Committee on the question of Sweepers' strike, he sent his Private Secretary to the meeting hall to find out what was going on. The Private Secretary brought the document purporting to be the letters of resignation of respondents 3 and 4. But as he was in doubt whether or not the seats held by the councilors had become vacant he sought legal advice and thereafter wrote to the Mayor on 17-11-1972 informing him that as letters of resignation had not been given personally to the Commissioner he was unable to hold that the seats of respondents 3 and 4 had become vacant. He on the same day also informed respondents 3 and 4 to this effect. This led to the filing of the present writ petitions. Version given by respondent No. 3 as to what transpired in the

meeting of the standing committee on 16-11-1972 as per affidavit in reply is that in the meeting after a statement on the sweepers' strike had been made by the Deputy Commissioner, respondent No. 4 was the first speaker on behalf of Jana Sangh party who criticized the Congress for its role in the sweepers' strike and stated that the popularity of the congress was on its lowest ebb because of its role in the strike. As a result of this challenge he asked respondent No. 4 to tender resignation from the Municipal Corporation of Delhi and also offered to resign his seat on the condition that respondent No. 4 vacated his seat first. This purported offer of resignation was then placed on the table of the Deputy Commissioner and Chairman of the Standing Committee who shared the same table. He maintains that he did not give instructions about the delivery of the letter to the Commissioner or any other authority. He confesses ignorance as to how the letter written by him reached the Commissioner, as his intention was to ensure that his letter reaches the Mayor only after the letter of respondent No. 4 had reached the Mayor and had become effective. As he did not authorize any one to send his letter to the Commissioner his seat has not fallen vacant and his resignation has not become effective.

9. Version, as given in the reply affidavit filed by respondent No. 4 is that in his speech he blamed the Congress for instigating the strike, and to test the public opinion on this issue he suggested an opinion poll. He even suggested that the chief executive councilor. Sri Radha Raman who incidentally is a nominated member of the council and has been elevated to the position without contesting the proper election should come forward and in that case he would be willing to resign his seat from the Corporation and contest with Sri Radha Raman to know the public opinion and vindicate his party's stand no the sweepers' strike. This contingent wager and challenge was on the assumption and condition that Sri Radha Raman would seek election against him. Thereafter respondent 3 rose to speak and said that he was also prepared to resign his seat and seek re-election. Respondent 4 maintains that in order to prove his bona fide of challenge he wrote a post dated chit dated 16-12-72 thus giving enough time to the Congress party and Sri Radha Raman to decide during the ensuing period to accept his challenge or not. Respondent No. 3 also wrote a chit the contents' of which he did not see. Both he and respondent No. 3 left those chits on the table of the chamber without any instructions either to the chairman or to the Deputy Commissioner. After this he went out and when he came back he found that the meeting had been adjourned. It is also maintained that the resignation was not to take effect at least till 16-12-72 but as Sri Radha Raman did not accent his challenge to contest election and as the sweepers' strike had been called off on 13-12-1972 fully

vindicating his stand he saw no reasons to keep his challenge and wager pending. He, therefore, delivered a formal letter to the Commissioner on 15-12-1972 intimating to him to treat his wager as annulled and withdrawn as it was never meant to be acted upon without the assumptions and conditions being fulfilled by the Congress party. He thus maintains that at no time had he ceased to be a member of the Corporation. It is reiterated that at no time he had authorized the chairman of the standing committee or the Deputy Commissioner. Shri Virendra Prakash or any other person to hand over the said chit to the Mayor or to the Commissioner. It is also stated that the letter dated 16-12-1972 was liable to be revoked and withdrawn and this is what was done before the 16th December. It is thus not in dispute that the resignation letters were written voluntarily by respondents 3 and 4 when they were attending the meeting of the Standing Committee and they themselves placed them before the Deputy Commissioner. Question arises whether the resignations comply with Section 33(1)(b) of the Act which reads as under :-

'33(1) If a councilor or an alderman:-

(a) xx xxx xx

(b) resigns his seat by writing under his hand addressed to the Mayor and delivered to the Commissioner his seat shall thereupon become vacant."

9A. The suggestion of respondents 3 and 4, however, is that these resignations were delivered unauthorized and without their consent to the Commissioner. We do not agree. Atmosphere in which the resignations were written and in the context in which they were placed before the Deputy Commissioner leaves no manner of doubt that they were intended to be delivered to the Commissioner. It is nobody's case that at any time after the resignation letters had been placed before the Deputy Commissioner any attempt was made by respondents 3 and 4 to withdraw them before they reached the Commissioner or that they gave any instructions not to deliver them to the Commissioner. As a matter of fact we find that on the very next day i.e. 17th November, 1972, respondent No. 3, who Had by then been informed that resignations had been rejected on technical ground wrote to respondent No. 4 again reiterating that he had accepted the challenge of Respondent and tendered his resignation, and also suggesting that both of them might tender their resignations again to test public opinion as both of them had made public commitments. He asked respondent No. 4 to accompany him to the Commissioner and tender his resignation personally to test the public opinion. This letter has been filed by the petitioner as annexure to the rejoinder.

Neither respondent No. 3 nor respondent No. 4 has in any manner denied the writing or receiving of this letter. At no stage prior to the filing of these petitions, has any grievance been made that these resignation letters reached the Commissioner unauthorized and without the consent of these two respondents. It is, therefore, futile now for the respondents to assert that these resignation letters were delivered to the Commissioner without their consent. We can see no reason or purpose in writing these resignation letters which were unambiguous if they were not meant to be delivered to the Commissioner. In the normal course if the Commissioner had attended the meeting and resignations had been placed before him delivery would have been complete. The fact that they were placed before the Deputy Commissioner who attended the meeting at the making of the Commissioner was with no other purpose except that they be delivered to the Commissioner as required by Section 33(1)(b) of the Act. We must, therefore, reject the contention that the delivering of the resignation letters to the Commissioner was unauthorized and does not bind respondents 3 and 4. We must also reject the further contention that as these resignation letters were based on certain assumptions, they were incomplete till those assumptions were carried out. The resignation letters were unconditional and it is not now open to the respondents (Nos. 3 and 4) to incorporate their mental processes in them for the contention that they should not be treated as resignation letters.

10. The next limb of the argument by the counsel for respondents 3 and 4 for ursine that these resignation letters were ineffective was that as these resignation letters were not delivered personally to the Commissioner they did not comply with Section 33(1)(b) of the Act and as such the view taken by the Commissioner was correct.

11. Counsel for the petitioners bad in this connection contended that as the resignation letters were delivered to the Deputy Commissioner it must be taken that they were delivered to the Commissioner personally as the Deputy Commissioner was deputizing for the Commissioner. We cannot accept the argument that the delivery of the letters by respondents 3 and 4 to the Deputy Commissioner can be treated as delivery to the Commissioner. The Deputy Commissioner attended the meeting of the Standing Committee because he was authorized to do so by the Commissioner by virtue of the power under Section 81 of the Act But that did not make the Deputy Commissioner the Commissioner because the Commissioner is a person who is appointed by the Central Government under Section 54 of the Act. To accept the argument of the petitioners would mean that during the time that the Deputy Commissioner was attending the meet ins of the Standing Committee he should be

deemed to be the Commissioner. This would obviously lead to anomalous result, and to the assertion that there would be more than one Commissioner during that period and that a person would be the Commissioner even when the Central Government has not appointed him as specifically provided by Section 54 of the Act. In our view thus contention is plainly untenable as there cannot be Commissioner unless he is appointed by the Central Government. Nor was there any delegation of the Commissioner's power with respect to Section 33(1)(b) of the Act as has been deposed to by the Commissioner. This contention, therefore, fails.

12. It is not disputed that resignation letters were collected from the Deputy Commissioner by the Private Secretary of the Commissioner and were delivered to him (Commissioner). The contention of the counsel for respondents 3 and 4, however, is that this delivery to the Commissioner is not in conformity with Section 33(1)(b) of the Act and what is required is that the resignations should have been delivered personally to the Commissioner. Now it will be seen that there is no requirement in the section that resignation should be delivered personally to the Commissioner but it is contended that even though the word 'personally' does not occur, the same should be read impliedly in the statute. Now one of the meanings given of the word 'Deliver' in The Oxford English, Dictionary is to hand over, transfer, commit to another's possession or keeping spec, to give or distribute to the proper person or quarter (letters or goods brought by post, carrier, or messenger).

13. Webster's Third New International Dictionary gives one of the meanings as 'give transfer, make or hand oven."

14. In Hawaii Dear Baja v. Jabalpur University, AIR 1967 Madhya Pradesh 239. where the requirement of Section 18 of the University Act was that any member of the Court may at least 24 hours before the time fixed for the meeting of the court 'deliver to the Registrar' a written notice, the view taken was that the section did not require the delivery of a notice personally to the Registrar. In cases dealing with notice under Section 80 Civil Procedure Code the view has been taken that even if initially notice has not been served on the proper authority according, to law but if ultimately it either reaches the proper authority or is dealt with and action taken upon it within due time it is a good and valid notice according to law, vide Union of India v. Chanan Shah Mahesh Dass (AIR 1955 Pepsu 51).

15. A reference to the various other statutes would show that whenever the legislature or the rule making authority wanted delivery of any notice in writing to be made

personally it was careful to specifically provide for it. Section 106 of the Transfer of Property Act which requires a notice to be given for termination of tenancy specifically provides that every notice under that section must be in writing signed by or on behalf of the person giving it and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party Similarly Rule 15 of the Delhi Municipal Corporation (Election of Councilors) Rules 1962 provides that on or before the date appointed each candidate shall, either in person or by his proposer, between the hours of 11'O clock in the forenoon and three O'clock in the afternoon deliver to the returning officer a nomination paper Sub-rule (4) of Rule 15 further provides that on the presentation of a nomination paper, the returning officer shall satisfy that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral roll. This rule specifically provides that the delivery of a nomination paper should be either in person or by his proposer and as sub-rule (*) requires the returning officer to satisfy himself on presentation of the nomination paper it inevitably follows that the nomination paper has to be handed over personally to the returning officer. Section 33(1)(b) of the Act if split up shows that one of the ways to which vacation of seat takes place is

(1) If a councilor

(a) Restarts his seat by writing

(i) Under his hand,

(ii) Addressed to the Mayor, and

(iii) Delivered to the Commissioner.

It will be apparent that for resignation to take effect all that is required is that the writing which is addressed to the Mayor should be delivered to the Commissioner. There is no limitation on the mode of delivering the writing to the Commissioner 'Deliver' in its normal meaning would include any mode including a delivery made personally. The statute does not indicate any restricted mode. Is then anything in the context or any special reason why only one restricted mode of delivering personally be read in this section. There is none Had legislature wanted writing to be delivered personally to the Commissioner it would have incorporated the word 'personally between the words 'delivered' and the words 'the Commissioner' in the sentence 'delivered to the Commissioner.'

16. We were referred to Section 38 which provides that the Mayor may by writing under his hand addressed to the Deputy Mayor and delivered to the Municipal Secretary, resign his office and the Deputy Mayor may by writing under his hand addressed to the Mayor and delivered to the Municipal Secretary resign his office. Sub-section (3) of Section 38 lays down that a resignation shall take effect from the date on which it is delivered. Similarly Section 48 provides that any member of the Standing Committee may resign his office writing under his hand addressed to the Chairman and the Chairman may resign his office by writing under his hand addressed to the Mayor Sub-Section (2) provided that a resignation shall take effect from the date specified for the purpose in the writing referred to in that Sub-Section or if no such date is specified, from the date of its receipt by the Chairman or the Mayor as the case may be. The argument is that Sub-Section (3) of Section 38 provides that a resignation shall take effect from the date on which it to delivered to the Municipal Secretary and as there is no requirement in Section 33(1)(b) as to the date from which resignation is to be effective it necessarily means that when Section 33(1)(b) talks of writing being delivered to the Commissioner it contemplates that it would be delivered personally to the Commissioner. The same argument is also sought to be invoked by referring to Section 48(2) of the Act. We do not see what relevancy Sections 38 and 48 have to the question whether the word personally can be read in Section 33(1)(b) of the Act. It is true that in Section 38(3) by providing specifically that resignation shall take effect from the date on which it is delivered it is made clear that the moment a resignation is delivered to the Municipal Secretary, resignation shall be effective irrespective of the fact whether in the case of Deputy Mayor, the writing reaches the Mayor or not. It seems to us that no assistance can be derived from Section 38(3) or Section 48(2) of the Act Section 33(1)(b) says that if a member resigns the seat by writing addressed to the Mayor and delivered to the Commissioner, his seat shall, thereupon become vacant. The same consequences are provided for though worded differently.

17. Reference to the various visions in the Act would also show that the word 'delivery' has been used at various places, but the context does not suggest that the word personally has to be added as being implied therein.

18. Section 74 of the Act provides that a list of business to be transacted at every meeting except at an adjourned meeting shall be sent to the address of each councilor and alderman at least seventy-two hours before the time. Proviso to this section lays down that any councilor or alderman may send or deliver to the Municipal Secretary

notice of any resolution going beyond the matters mentioned in the notice given of such meeting so as to reach him at least forty-eight hours before the date fixed for the meeting and the Municipal Secretary shall with all possible dispatch take steps to circulate such resolution to every councilor and alderman in such a manner as he may think fit. If the words 'deliver to the Municipal Secretary' are to be read delivered personally to the Municipal Secretary it would necessitate the municipal Secretary to be present on his duty all the 24 hours as it cannot be eradicated as to what time a member may come to deliver notice. We do not see any logic why it should not be considered sufficient if member delivers or sends to the office of the municipal Secretary a notice within the required time and what purpose would a delivery personally especially serve.

19. Section 166 of the Act provides that no remission or refund of the tax shall be made unless a notice in writing that the land has become vacant has been given to the Commissioner and no remission shall take effect in respect of any period commencing more than fifteen days before delivery of such notice. If the argument of the counsel for the respondent was to be accented it would mean that in order to claim remission delivery of the notice must be given to the Commissioner personally. It needs no elaboration to appreciate, how unproductive and cumbersome it would be if every house owner was expected to deliver personally a notice to the Commissioner.

20. Section 206(3) provides that after the commencement of each year the Municipal Chief Auditor shall deliver to the Standing Committee report of the municipal accounts for the previous year. Obviously it cannot be suggested that the Chief Auditor has to deliver personally to each member of the standing committee a copy of the report and that the requirement will not be satisfied by the Chief Auditor sending a copy of the report so that it reaches the member.

21. Section 343 of the Act provides that where the erection of any building or execution of any work has been commenced or is being carried on or has been completed without or contrary to the sanction referred to in Section 336 of the Act the Commissioner may, in addition to any other action that may be taken under this Act make an order directing that such erection or work shall be demolished by the person at whose instance the erection or work has been commenced or is being carried on or has been completed within such period not being less than 5 days and not more than 15 days, from the date on which a copy of the order of demolition with a brief statement of reason thereof has been delivered to that person. The consequence of notice for demolition being delivered to the person are obviously very serious, yet

Section 444(1)(d) provides that where any notice or order is to be served or issued by or on behalf of the Corporation to a person shall be deemed to be duly served if the document is addressed to the person to be served and is given or tendered to him, or if such person cannot be found is affixed on some conspicuous part of his last known place of residence or business, if within the Union Territory of Delhi or is given or tendered to some adult member of his family or is affixed on some conspicuous part of the land or building or is sent by registered post to that person. This provision contemplates order of demolition being delivered to the person concerned even by the mode of registered post and does not insist on being delivered personally.

22. Reference was then made to Section 346(1) which provides that every person who employs a licensed architect shall after the completion of erection of the building or execution of the work deliver or send or cause to be delivered to the Commissioner a notice to writing of such completion. The argument was that as Section 346 specifically provides that notice may be caused to be delivered, this rules out delivery personally to the Commissioner We do not think that this is a correct way of reading it. because caused to be delivered has only relevance to the person who has to deliver it. It has no relevancy whether the notice to be delivered to the Commissioner has to be to the Commissioner personally or not. If the argument of the respondents is correct then even this requirement of completion certificate being delivered or caused to be delivered must mean that a completion certificate whether taken by a person himself or through a messenger must nevertheless be delivered personally to the Commissioner. This would mean placing the Commissioner in such a situation where it would lead to the whole work of administration being bogged up. The Commissioner has multifarious functions to perform and if it was interpreted that all these requirements of notices etc are to be delivered personally to him it would mean that he would haw to make himself available in the office at all times and do nothing but receive notices etc personally. Such an interpretation would lead to so much absurdity and inconvenience that by all rules of interpretation it must be avoided.

23. Reference was then made to Gujarat Electric it Board v. Girdharlal Motilal AIR 1969 Supreme Court 263 where the observations of the Privy Council in Nazir Ahmad v. King Emperor (AIR 1936 PC 253 (2)) to the effect that where the legislature has prescribed a mode for the exercising of the power and hence that power can be exercised only in that manner and in no other manner were referred to and it was sought to be contended that 45 Section 33(1)(b) of the Act require that writing should be delivered to the Commissioner it can be complied only in that manner i.e. by

delivering it personally to the Commissioner. We are afraid this argument bees the question which is whether the delivery to the Commissioner means that it must be delivered to the commissioner personally or that resignation letter in order to be effective must be delivered to the commissioner meaning thereby that it should reach the commissioner, the mode of delivery being of no consequence so long as the writing reaches the commissioner. We can understand the argument that Section 33(1)(b) would only be complied with when the resignation letter is delivered to the commissioner. That is to say if in the present case when the resignation letter was placed on the table of the Deputy Commissioner it could not be said to have been delivered, to the commissioner at that point of time. But there is no merit in the contention that even when the resignation letters were delivered to and were in the hand of the commissioner they cannot be said to have been delivered to the commissioner within the meaning of Section 33(1)(b) of the Act.

24. We are not suggesting that if the member had written a resignation letter and had kept it in his own pocket or at his own table without intending at any time to deliver it to the commissioner, but someone surreptitiously removes it from him and delivers it to the commissioner, it will be valid delivery. The reason is that in such a case resignation was never meant to be delivered and would therefore not be a free act of the member. The infirmity in that case will be that the person whose writing it is supposed to be has never intended delivery to the commissioner. It was also urged that as the consequences of a writing under Section 33(1)(b) are so serious that no sooner is the writing delivered to the commissioner the seat shall become vacant it was necessary to read personally in the section to avoid a forged letter purporting to be that of a member being delivered to the commissioner. We do not appreciate the argument.

25. We do not see how the question about the genuineness of a letter is solved even if writ me was delivered personally to the commissioner. It cannot be suggested that if a resignation letter purporting to be of a councilor is delivered personally to the commissioner the resignation would be complete even if the councilor took up the plea and proved that the resignation letter was not genuine. So the mere, fact that the resignation letter is delivered personally to the Commissioner will not per se rule out the possibility of a forged resignation letter being delivered to him. It will depend on the facts of each case. The argument, therefore that the word 'personally should be read in the statute even though it is not there as it will eliminate the possibility of any forged resignation being delivered has no basis, and must be rejected Article 190(3) of the Constitution provides that if a member of a house of the Legislature of a State

resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be his seat shall thereupon become vacant. The wording of Section 33(1)(b) of the Act has been bodily lifted from that Article except for the addition of the requirement of the writing being delivered to the Commissioner Various houses of Legislatures in the States have framed procedure with respect to the resignation to be given under Article 190(3) of the Constitution. The procedure provides that on receipt of letter of resignation the Speaker on being satisfied about the genuineness and voluntary nature thereof shall inform the House of the factum of resignation that such and such member has resigned his office. It also provides that if any dispute arises the same shall be determined by the Speaker. It is significant to note that there is no requirement that the resignation letter has to be delivered personally to the Speaker. That means such a resignation letter could be left either at the office of the Speaker or may be sent to him even by post. It cannot be disputed that the Office of a member of the legislative assembly is of no less importance if not more than that of the member of the Corporation. If therefore there is no requirement of resignation letter being delivered personally to the Speaker it is not understood on what logic or principle it can be urged by the counsel for the respondents that there is something special in the Act that even though the word 'personally does not figure in Section 33(2)(b) of the Act we must nevertheless read it as impliedly being there. Neither any precedent nor any principle of law has been cited in support of such a contention. We, therefore, do not find any justification in reading the word 'personally' in Section 33(1)(b) when it does not find a mention there, because it is well settled that, if the language of the enactment is clear and unambiguous it would not be legitimate for the Courts to add any words thereto and evolve there from some sense which may be said to carry out the supposed intentions of the legislature. The intention of the Legislature is to be fathered only from the words used by it and no such liberties can be taken by the Courts for effectuating a supposed intention of the Legislature; vide Sri Ram Ram Narain Medhi v. State of Bombay (AIR 1950 Supreme Court 459). 'The Court cannot out into an Act words which are not expressed and which cannot reasonably be implied on any recognized principle of construction. That would be a work of legislation not of construction and outside the province of the Court' Vide, Kamalaranian Roy V. Secy of State (AIR 1938 PC 281).

26. It was also contended by the counsel for respondent No. 3 that even if the commissioner has taken a wrong view that the resignation letter had to be given personally to him we should still not interfere because this was not an error apparent on the face of record and where two views are possible this court would not interfere,

vide V.V. Iyer v. Jasjit Singh (AIR 1973 Supreme Court 194). In our view there is a fallacy in the argument. Commissioner is not given any authority to consider this matter as a quasi judicial authority because there is no question of any adjudication to be done by him. Certain consequences follow inevitably from the resignation being sent if it is in compliance with Section 33(1)(b) and it is not open to the Commissioner to give himself jurisdiction to refuse the resignation by taking a manifestly wrong view of the law. That apart, we do not think that on the plain reading of Section 33(1)(b) of the Act it is possible to take a view that the resignation should be delivered personally to the Commissioner. This contention therefore, fails.

27. We would, therefore, hold that the resignation letters of respondents 3 and 4 were delivered to the commissioner as required by Section 33(1)(b) of the Act.

28. On our finding that resignation letters of respondents 3 and 4 were delivered as provided under Section 33(1)(b) of the Act the consequence in both the cases should normally be the same. But there are certain features which distinguish the case of respondent No. 4 and it is, therefore, proper to deal with it separately. The resignation letter of respondent No. 4 is dated 16/12. The first question that arises is whether this date i.e. 16/12 was put down inadvertently as the letter was admittedly written on 16/11. The contention of the counsel for the petitioners is that this must be taken to be an inadvertent mistake and therefore, the letter though purporting to bear the date 16/12 should be taken to bear 16/11. We are afraid that there is no merit in this contention Respondent No. 4 has taken a categorical stand in his reply affidavit that he deliberately dated the letter of resignation as 16/12 because it wan supposed to be contingent one and he did not want it to be effective immediately. There is no other material on record to hold that though this letter which bears the date 16/12 should be considered to be dated 16/11.

29. We are not concerned with the motive of it being dated 16/12, just as we are not concerned with the motive behind the resignation letters Counsel for the petitioners had contended that respondent No. 4 by dating it 16/12 was committing breach of faith with respondent No. 3 as the whole thing was expected to be a joint one. It is unnecessary for us to go into that question which concerns the political morality and expediency. Whether respondent No. 4 dated it as 16/12 because of the reason he now advances or did it to trick respondent No. 3 (as was suggested by the counsel for the petitioners) is beside the point. We must proceed on the basis of the existing fact namely that the resignation letter by respondent No. 4 is dated 16/12.

30. Another contention in this connection was that as the year was not given, therefore, it cannot be taken to be a properly dated one. The further corollary to this is that as it was admittedly written on 16/11 (though dated 16/12) it would be operative immediately. This argument is too spacious. Many a time documents or letters are written without giving the year. Moreover even if the year is not mentioned, it does bear the date 16/12. It is apparent that some meaning has to be given to 16/12. The only meaning that can be given is that as the letter is dated 16/12 respondent No. 4 was wanting to resign from that date, though this letter was delivered to the commissioner on 16/11. The necessary result would be that this letter of resignation would be incomplete and ineffective till 16/12 when alone it will become effective. Till 16/12 respondent No. 4 could not have been prevented from attending a meeting of the Corporation on the plea that he had vacated his seat since 16/11. This contention therefore fails.

31. The next question is whether a councilor can resign a seat from a future date and whether he can after ending it withdraw it before that date. It is the free volition of the councilor concerned as to the date from which he wishes to resign. There is no logic in saving that even though a councilor deliberately mentions in his resignation letter that it should be effective from a given future date, he would nevertheless be deemed to have resigned from an earlier date i.e. date on which the letter is delivered. This would be contrary to the deliberately expressed intention of the councilor to resign from a particular future date. But is there any prohibition that once the resignation letter has been sent which is to be effective from a future date it cannot, be withdrawn even before that date. The statute does not in any way limit the authority of the councilor who has sent his resignation from a prospective date to withdraw it before that date is reached. The resignation which is to be effective from a future date necessarily implied that if that date has not reached it would be open to the councilor concerned to withdraw it.

32. In Jai Ram v. Union of India (AIR 1954 Supreme Court 584) the Supreme Court held that it was open to a government servant who had 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 a long as he continues in service and not after it has terminated.

33. In Raj Kumar v. Union of India (AIR 1969 Supreme Court 180) it was held that till the resignation is accented by the appropriate authority in consonance with the rules

governing the acceptance, the public servant concerned has locus penitentiae and not thereafter. We do not see any reason why the same rule will not be applicable in the present case.

34. It is true that there is no provision in Section 33(1)(b) of the Act for acceptance of a resignation, and if intended to have immediate affect it would become effective when it is delivered to the commissioner. But in a case where the resignation is to take effect from a future date, we cannot see any logic or reason which should deny the councilor concerned the implicit and inherent authority to withdraw his own resignation as it is his own free act which is to bind him.

35. There is no law which compels a councilor to give his resignation if he does not want it. Does it, therefore, stand to reason that merely because the Councilor has sent his resignation prospectively but which has not yet become effective, should be debarred from withdrawing it if he so chooses (but always of course before it has become effective). We can see no principle in taking such a view. One reason attested by counsel for the petitioners was that if it was open to a councilor to send in his resignation from a future date and then to withdraw it before that date reaches, the councilor may play jokes with the corporation and the electorate by sending in his resignation and withdrawing it at the last minute with the result that everything would remain in a fluid state. We are afraid this is a political argument and the courts are not concerned with that aspect. It may be that if a hypothetical councilor was to behave in such a manner the matter will have to be dealt with, not by courts, but at the political level whether by the electorate or by the political parties. It was also maintained that if a resignation has been sent prospectively the only effect is that the seat would become vacant from that date but the resignation would be effective from the date it was delivered to the commissioner. We do not agree. Under Section 33(1)(b) both the resignation and, the vacancy of the seat are effective from the same time. There cannot be different times, one for resignation and the other for vacation of seat. Vacancy will only occur when resignation is effective, and if it is from future date both resignation and vacation of seat will be effective simultaneously. We cannot accent the argument of the counsel for the petitioners that it is possible to split up the act of resignation and the vacancy of the seat into such separate compartments.

36. Reference was made to The Queen v. The Mayor and Town Council of Wigan (1885 14 QBD 908) The facts are totally different. In that case Section 36 of the Municipal Corporation 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. Such a letter of resignation was sent by the councilor on 30-1-1885 to the Town Clerk. Later on 4th February on the persuasion of some friends, the councilor was allowed to withdraw it and the corporation refused to declare the office vacant as they were bound to under Sub-Section (2) of Section 36. This action having been challenged the court held that by the delivery of letter, the resignation had been completed and it was not thus open to the councilor to withdraw it. But the case of respondent No. 4 is distinguishable because before the resignation could become effective from 36/12. he has withdrawn it on 15/12.

37. The next case referred to was Finch v. Oake (1896-1 Ch. D. 409). That was a case of a member of voluntary trade protection society who wrote to the secretary intimating that he desires to retire from the society. After the letter had reached the secretary he wanted to withdraw the same. This plea was not allowed as the court held that no acceptance of resignation is required, and there was no law that a resignation must be accepted before it can take effect. This case has no relevance.

38. Reference was made to Glossop v. Glossop (1907-2 Ch. D. 379). In that case Article 85 of the Company provided that the office of the Managing Director shall be vacated upon the happening of any of the contingencies mentioned in clause 84 which provided that the office of the director shall be vacated 'if by notice in writing to the company resigns his office. Proviso to Article 85, however, laid down that vacation of office .....shall not take effect unless the directors pass a resolution that the managing director has vacated his office. On 16-5-1907 the managing director sent in his resignation but a week later he wrote another letter by which he wanted to withdraw his resignation letter sent earlier. It was held by the learned judge that a combined reading of Articles 48 and 85, it wan clear that the director could resign and the same was not dependent upon the acceptance by the company and the moment he sends that notice he has vacated his office though by proviso the effect of that vacation is not immediate but is suspensary and does not take effect until the resolution has been passed by the directors but that this was a different matter from saving that the director cannot vacate his office until such a resolution has been passed. It was in these circumstances that it was held that the resignation has become effective though the vacancy of office had not become effective. In the present case there in no such requirement under Section 33(1)(b) that any declaration has to be given by any one before the seat becomes vacant on the contingencies happing in Section 33(1)(b) of the Act. Section itself provides that thereupon the seat shall become vacant. This case

is clearly distinguishable.

39. A reference was also made to Shamsuddin v. State of Rajasthan (AIR 1952 Rajasthan 53). In that case a member of the Nagaur Municipal Board had sent in resignation and had later on also sent a letter withdrawing the resignation but in spite of this the Government accepted the resignation. This was challenged before the High Court which however, took the view that the Municipal Board Act made no provision for resignation and this matter is left entirely unproved for and in absence of any law it was unable to issue a writ. This case is of no assistance to the petitioners.

40. Reference is then made to Sukhdeo Narayan v. Municipal Commrs. of Arrah, (AIR 1956 Patna 367) In that case the chairman of the Municipal Corporation had sent in his resignation on 1-12-1955 but later on 6-1-1956 he wrote a letter that he, did not intend to resign and in spite of this the commissioners held a meeting on 9-1-1956 in which they accepted his resignation. The court held that in view of Section 33(2) which provided that 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 and therefore, when the notice is sent all that is left is in terms of Sub-Section (4) of Section 33 that on resignation being accepted by the Commissioners, the chairman, vice-chairman or the commissioner shall be deemed to have vacated his office. The court held that there was no provision in Section 33 conferring power on the chairman to withdraw the resignation. There was no discussion in this case and no reasons are given for holding why a resignation cannot be withdrawn. This proposition seems to have been taken as self-evident. We regret we cannot accept this position to be self-evident. In this connection reference may be made to Bahori Lal Paliwal v. District Magistrate Buland Shahr (AIR 1956 Allahabad 511. (FB)). In that case the chairman of the town area committed submitted his resignation to the District Magistrate on 22-4-1955 but before it could be accepted he wrote to the District Magistrate withdrawing his resignation, but in spite of the receipt of the withdrawal the District Magistrate accepted the resignation on 13-8-1955. It was this action of the District Magistrate which was challenged before the Full Bench. The relevant provision in the U.P. Town Area Act was Section 8(a)(5) which provided that if the chairman wishes to resign he shall forward his resignation in writing to the District Magistrate and 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. The majority held that there was no principle which provided that a resignation could not be withdrawn before it was accepted and it was therefore, held

that as the petitioner in that case had withdrawn his resignation there was nothing left which could be accepted by the District Magistrate and the order of District Magistrate purporting to accent a resignation was nullity. Reference was also made to Shamsuddin v. State of Rajasthan. (AIR 1952 Rajasthan 53) and The Queen v. The Mayor and Town Council of Wigan (1884-85-14 Q. B. D. 908), Pease v. Lowden (1899-1 Q. B. 386) and it was held that these cases were of no assistance. The third learned Judge also did not accept the contention of the opposite party that the moment the resignation was sent it became effective and that there could be no subsequent withdrawal of the resignation by the petitioner and to this extent agreed with the majority. His lordship specifically held that even if the resignation has been sent it is open to apply for the withdrawal to the District Magistrate and to that extent his right to withdraw the resignation is in existence. His Lordship differed only to the limited extent by holding that right to withdraw resignation is not absolute and it would be within the discretion of the District Magistrate either to accent the resignation or to act on the letter of withdrawal of resignation. The reason for arriving on this conclusion was that his Lordship took the view that in India the right to resign from office of a municipal councilor is not an absolute right of holding office as it is dependent on the resignation being accepted by the District Magistrate and, therefore, when the right of resignation is subject to the discretion to be exercised by the District Magistrate, it de facto follows that though a right of withdrawal of the resignation is there, the same cannot be held to be absolute right taking away the discretion of the District Magistrate. It is however important to note that in the present case Section 33(1)(b) of the Act gives an unfettered right to resign without the necessity of any acceptance and therefore there is no discretion in outside Â authority and hence right of withdrawal cannot be hedged in by any limitations.

41. We may refer to Mohan Chandra v. Institute of Chartered Accountants of India (AIR 1972 Delhi 91) wherein dealing with a case under the Chartered Accountants Act it was held that the President of the Institute of Chartered Accountants of India had inherent right to send in the resignation even if there was no specific provision in the Act and also till the resignation, was accepted he had the right to withdraw the same.

42. In M. Kunjukrishna Nadar v. Hon'ble Speaker Kerala Legislative Assembly. Trivandrum (AIR 1964 Kerala 194) a member of the assembly had written on 23-11-1963 a letter to the speaker asking him to treat his letter as resignation to take effect from 1-12-1963. On 29-11-1963 he sent another letter to the Speaker withdrawing his

earlier letter of resignation of 23-11-1963. The question arose whether such a prospective resignation could be sent and the answer was given in the affirmative. Further question was whether it was open to the member to withdraw his resignation. It was held in that case that it was open to a member to tender his resignation on a prior date to take effect, from a subsequent specified date and if the member withdraws the same in writing addressed to the Speaker before the specified date when it is to take effect, the withdrawal nullifies the letter of resignation. His Lordship further observed as under:

"Viewed thus, the petitioner's letter at November 23, 1963, has to be held a letter resigning his seat in the Assembly on December 1, 1963. It remains a mute letter till December 1, 1963, when alone it can speak with effect. On November 23, 1963, the petitioner has withdrawn that letter by writing under his hand addressed to the Speaker himself and the counter-affidavit on behalf of the Speaker admits receipt of the latter letter by him on November 30, 1963. It is in effect the neutralization of the latent vitality in the former letter deposited with the Speaker. The withdrawal nullifies the entrustment or deposit of the letter of resignation in the hands of the Speaker, which must thereafter be found to have become non est in the eye of law. The absence of a specific provision for withdrawal of prospective resignation in the Constitution or the Rules is immaterial as basic principles of law and procedure must be applied wherever they are relevant."

43. It will be seen that it is only in two sets of eventualities that it has been held by courts that a person has no right of withdrawing his resignation. One in those cases where the right of resignation is subject to it being accepted by some other authority. The second is where, as in England under the Municipal Corporation Act resignation is complete on its being delivered in the prescribed manner. But no case has been cited to us where resignation was to operate in future and was not subject to its being accepted by any authority and vet it might have been that he would be debarred from withdrawing the resignation which was still to operate from a future date. We see no justification to lead any implied limitation in the right of a councilor who has sent his resignation to operate from a future date so as to debar from withdrawing it before that date reaches. Admittedly respondent No. 4 delivered personally to the commissioner a letter dated 15-12-1972 in which he asked him (i.e. commissioner) to treat the note of 16/12 as withdrawn, cancelled annulled, redundant and revoked and of no effect whatsoever and to return it to him. It is not in dispute that the letter of 15-12-1972 was delivered on the same day to the commissioner. We are not concerned with the motive

which impelled respondent No. 4 to do so Counsel for the petitioners had objected that it would be improper for respondent No. 4 to withdraw his letter of resignation because the resignations were given by respondents Nos. 3 and 4 as a part of mutual bargain and understanding. But that again is an argument relating to the political propriety and conduct of respondent No. 4 and not a legal argument, and hence outside the ambit of consideration by this court in these proceedings. For a grievance of this nature the forum must be other than the law courts. The position therefore is that once respondent No. 4 had delivered the letter of 15th December, 1972 to the Commissioner the resignation letter which was to operate from 16th December never got life and remained ineffective. After the receipt of this letter of 15th December, 1972 it was obviously not permissible in law for the commissioner to hold that respondent No. 4 had resumed or that his seat had become vacant.

44. Counsel for the petitioners had also contended that as this letter of 15-12-1972 was addressed only to the commissioner and was not addressed to the Mayor there was not proper withdrawal. It was urged that as the resignation has to be addressed to the Mayor it necessarily implies that the withdrawal letter should also have been addressed to the Mayor. We do not agree. The letter of resignation has to be addressed to the Mayor and delivered to the Commissioner because that is the requirement of Section 33(1)(b) of the Act. There is no provision in the Act which requires that the withdrawal letter should also be addressed to the Mayor. No doubt as the resignation letter has to be delivered to the Commissioner the withdrawal also must be delivered to him in order that it can be acted upon. Admittedly the withdrawal letter of 45-12-1972 was delivered to the commissioner. Even if, therefore letter of 15-12-1972 was not addressed to the Mayor : but as it was delivered to the commissioner and specifically requested him to return the resignation letter of 16-12-1972 it would not have been open to the commissioner to act upon the letter of resignation as the same stood withdrawn by this letter of 15-12-72. It has therefore to be held that there was a valid and proper withdrawal of the resignation by respondent No. 4 when he delivered to the commissioner letter dated 15-12-1972 even though it was not addressed to the Mayor.

45. As a result we would hold that the resignation letter of respondent No. 3 was delivered to the commissioner as contemplated under Section 33(1)(b) of the Act. We would, therefore, quash the order of the commissioner, dated 17-11-1972 in so far as he held that the seat of respondent No. 3 had not become vacant and also issue a writ of quo warranto declaring that respondent No. 3 had resigned and that his seat had

become vacant.

46. With regard to respondent No. 4 though we hold that his resignation letter was also delivered to the commissioner as contemplated by Section 33(1)(b) of the Act but as he had withdrawn the same by his letter of 15-12-1972 he cannot be deemed to have resigned nor can his seat be said to have become vacant. No relief therefore, can be given against respondent No. 4.

47. The petitions qua respondent No. 3 are, therefore, allowed but dismissed with respect to respondent No. 4. There will be no order as to costs in both the petitions.

Order accordingly.