

PATNA HIGH COURT

Sukhdeo Narayan

Vs

Municipal Commissioners of Arrah

Misc. Judicial Case No. 38 of 1956

(Banerji and Choudhary, JJ.)

03.04.1956

JUDGMENT

Banerji, J.

1. This is an unusual petition. Five Municipal Commissioners of the Arrah Municipality have prayed for several writs against the Municipal Commissioners, themselves, and against the Executives. By one writ they want that the Commissioners be compelled to function under opposite party 2, who, according to them, still continues to be the Chairman. By another they want opposite party 2 to be restrained from vacating his office. By yet another writ they want that opposite party 3, who has been elected a Chairman in the meeting of the Municipal Commissioners, be asked to show cause under what authority he has been functioning and why he should not be prohibited from acting as Chairman. They further want a directive from this Court to compel opposite party Nos. 5 to 36, all Municipal Commissioners, to function under opposite party 2 and to be restrained from helping opposite party 3. The last writ sought for is on opposite party 4, President of the Municipality, for quashing his rulings given on the points of order raised in two meetings of the Municipal Commissioners held on the 7th and 09-01-1956.

2. The facts giving rise to an interesting situation like this require a little elaboration. I call it interesting because the petitioners want opposite party 2 to be restrained from vacating his office when it is manifest that he is only too eager to continue as Chairman of the Municipality and to that effect has filed his affidavit and his submissions in detail.

3. Opposite party 2, Sri Rameshwar Prasad Agarwal, was elected Chairman of the Arrah Municipality on 05-08-1952, and on the same day Sri Choudhri Sharafat Hussain, opposite party 4, and Sri Baghunath Prasad, opposite party 5, were elected 'President and Vice-Chairman, respectively. From 1952 to March 1955 was a period which may be described as peaceful in the administration of the Arrah Municipality.

Dissensions started sometime in March 1955, and it appears that the Municipality was divided in two hostile camps. Their hostility, which hampered the business of the Municipality, attracted the attention of the Government who, by its letter dated 10-6-1955, asked the Executives of the Municipality to take immediate steps to improve its administration and to relieve the District Magistrate from his present duties under Section 384, Sub-Section (3), Bihar and Orissa Municipal Act. It appears that the District Magistrate was appointed, in the meantime, by the Government to authorise expenditure from the funds of the Municipality in order to avert serious injury to the public. This letter of the Government was followed by another dated 08-11-1955 as, in its opinion, the warning issued on 10-06-1955 'could bear no fruit'. In the second letter it was stressed that, on account of the differences amongst the Municipal Commissioners, the budget estimates for 1955-56 could not be passed and the differences were so deep that there was little possibility of arriving at any satisfactory solution. Accordingly, by this letter, the Government asked the Commissioners of the Municipality under Section 385, Bihar and Orissa Municipal Act, hereinafter to be referred as the Act, to show cause why their offices should not be declared to be vacant. It may be stated here that a requisition meeting was called under Section 44(1) of the Act to be held on 28-11-1955 to pass a no-confidence motion on the Chairman (opposite party 2).

4. This letter created some stir, and the Municipal Commissioners met at a meeting held on 01-12-1955 to consider the same and to send a suitable reply. The reply is of the same date and was signed by opposite party Nos. 2, 4 and 5 and the Municipal Commissioners. Along with this letter, copy of which has been marked Annexure B, a copy of the resolution unanimously passed by the Municipal Commissioners after due consideration was enclosed. The relevant resolutions passed on this date and transmitted to Government are as follows :

"1. Three present executives that is the Chairman, Vice-Chairman and President have been good enough to signify their intention to resign their offices in order that the present deadlock may be solved.

2. The Commissioners have appreciated this generous act of the executive in the largest interest of the rate payers and the Municipality.

3. The Commissioners now propose to place their resignations for Board's consideration at a special meeting of the Board and to elect their new office bearers as well as to pass the budget, and to authorize the Chairman to incur expenditure under the Act.

(4) That the Commissioners confidently hope that there will be one homogenous group now and there will be no longer any rift amongst themselves.

6. That after the election of the office bearers is held and after the budget is duly passed and authorization sanctioned there will be no longer any necessity for continuance of the operations

of Section 384 of the Municipal Act." These resolutions were passed unanimously and it was prayed that the dissolution notice given by the Government might be withdrawn.

5. What happened between 01-12-1955, when it appears that the differences of the Municipal Commissioners were for once resolved, and 17-12-1955, when five Municipal Commissioners, namely, opposite party Nos. 6, 11, 12, 15 and 28, sent requisition to opposite party 2 to call a special meeting to consider the resignations, is shrouded in mystery. In this requisition, the agenda consisted of the following items :

- "1. To accept the resignation of the Commissioner or Commissioners.
2. To consider the circumstances under which the no-confidence motion against Shri Rameshwar Prasad Agarwal, Chairman, was withdrawn on 01-12-55, and to pass a suitable resolution regarding it; and also to pass the same which runs as follows :
In view of the persistent indulgence in acts of omission, commission, abuse of powers, disregard of the Government directions communicated to him from time to time, and gross discrimination by the present Chairman, Shri Rameshwar Prasad Agarwal, we hereby resolve to place on record our no-confidence in Shri Rameshwar Prasad Agarwal as the Chairman of the Board; and by virtue of the powers vested in us under Section 34 of the Act we resolve to remove him from the office of the Chairman, and further that he be deemed to be removed from his office from, today.
3. To consider the resignation of the executives (viz. : the Chairman, the Vice-Chairman, and the President of this municipality) tendered by them before the Commissioners at their meeting held on 01-12-1955.
4. To elect the executives viz. : (a) the Chairman, (b) the Vice-Chairman, and (c) the President, in the place of the out-going ones, according to the provisions of the B. and O. Municipal Act.
5. To consider the budget estimates for the year 1955-56.
6. To authorize the expenditures of any sum provided in such estimates,.....
7. To consider the situation arising out of the act of Shri Rameshwar Prasad Agarwal, Municipal Commissioner-Chairman, where he has been persistently refusing to act or has become incapable of acting by not carrying out the mandatory provisions of Section 43 of the Act." On receipt of this requisition, opposite party 2 passed an order on 29-12-1955, that a meeting of the Commissioners would be held on 07-01-1956. On the same day, opposite party 2 wrote to the President (opposite party 4) and later handed over the copy to him informing that he had not tendered his resignation on 01-12-1955, or afterwards and that he was surprised to receive the requisition of the five Municipal Commissioners on 17-12-1955. According to the petition and the affidavit filed by opposite party 2, he merely signified his intention, to resign and

did never submit his resignation in writing. It is further stated that, if any act of his amounted to tendering of his resignation, he withdrew from the same in express terms. On 02-01-1956, the five requisitionists, on the failure on the part of opposite party 2 to call a special meeting under Section 44 of the Act, issued notices to all Municipal Commissioners to hold a special meeting on 09-1-1956. On 06-1-1956, a Resolution of the Government, dated 04-01-1956, was passed and, by this Resolution, the Governor of Bihar, in exercise of the powers conferred by Section 385 of the Act, was pleased to declare the Commissioners of the Arrah Municipality to be incompetent to perform the duties imposed upon them and gave notice of his intention that he proposed to pass an order directing that the offices of the Commissioners should be deemed to be vacant with effect from 02-04-1956, and that a fresh election should be held on or before that date.

6. On 07-01-1956, the Municipal Commissioners assembled in the meeting called by opposite party 2 and a resolution was tabled to postpone the same. The resolution was opposed, but ultimately it was carried by 23 against 12 votes, and it was decided to hold both the meetings on 09-01-1956. The Municipal Commissioners again met on 09-01-1956, which was the date of the meeting called by the requisitionists. An objection was raised by one of the petitioners against holding of two meetings. This objection was overruled by the President. There after, the items of the agenda, given in the requisition were taken one by one. The no confidence resolution against opposite party 2 was carried by 23 against 9 votes. Resolution 3 was then moved to this effect that the resignation of the Chairman (opposite party 2) on 01-12-1955, be accepted and the resignation tendered by the Vice-Chairman and the President be not accepted in the interest of the Board and rate-payers. After it was seconded, the President left the meeting, and the chair was then occupied by Dr. Vishnu Shankar (opposite party 8). The opposite party 2 then produced a letter addressed to the President and there was discussion with respect to the fact of resignation by the opposite party 2. The resolution was put to vote and was carried by 22 votes against 7. Resolution 4 was then taken up, and Sri Mahesh Chandra Prasad Sinha (opposite party 3) was elected to be the Chairman of the Municipality. Items 5 and 6 on the agenda were also passed unanimously. These refer to budget estimates and authorization of the expenditure of the sums provided in the budget. The next item on the agenda, namely, No. 7, was then moved and passed unanimously. By this resolution, the Government was requested to take steps under Section 35, Sub-Section (2)(a) of the Act to remove opposite, party 2 from the office of Commissioner of the Arrah Municipality. The important resolutions to be considered in this case are, therefore, resolutions 2, 3 and 7.

7. The sum-total of the resolutions passed in the meeting held on 09-01-1956 was the deposition of opposite party 2 as Chairman of the Board, accession of opposite party 3 in that office and a move to prevent opposite party 2 from taking any part in the municipal affairs. The present petition, therefore, is nothing but a step on the part of the supporters of opposite party 2 with his full concurrence to undo what has been done by the majority of the Municipal Commissioners on 09-01-1956, and to restore the position as it was before 01-12-1955. Naturally, therefore, the

petitioners have prayed that the meeting of 09-01-1956 on the requisition of the other five Municipal Commissioners belonging to the rival group should be declared illegal and void, and the overruling on the points of order raised by one of the petitioners in both the meetings of 07-01-1956 and 09-01-1956 should be declared illegal and without jurisdiction.

8. The petitioners have, as indicated before, prayed for a writ of mandamus on all the Municipal Commissioners to function under opposite party 2, who, according to them, is still the Chairman; a writ of prohibition on opposite party 2 restraining him from vacating his office; a writ of quo warranto on opposite party 3 to show cause under what authority he has been functioning as Chairman and why he should not be prohibited from doing so; a writ of mandamus on opposite party Nos. 5 to 36 (all Municipal Commissioners) to function under opposite party 2 and a similar writ prohibiting them from assisting opposite party 3; and a writ of certiorari on opposite party 4 (President) quashing his rulings on the points of order raised in the meetings of the 7th and 09-01-1956.

9. The main controversy, therefore, centres round the question whether the meeting on 09-01-1953 held on the requisition of five Municipal Commissioners was illegal or void. Mr. S.N. Dutta, appearing on behalf of the petitioners has urged that the meeting of 09-01-1956 was void for two outstanding reasons : firstly, the provisions of Section 44 of the Act had not been complied with, and secondly, there was contravention of the provisions of Section 34 of the Act. I shall take up the two points one by one.

As regards the first one, it is argued that the meeting on 09-01-1956, which was convened by the requisitionists on 02-01-1956, was without jurisdiction as the Chairman (opposite party 2), on receiving a requisition under Section 44(1) of the Act, had called a meeting to be held on 07-01-1956. The contention on behalf of the petitioners is that the Chairman had complied with the requirements of Sub-Section (1) of Section 44 and, for this reason, the requisitionists had no right to call a special meeting under Sub-Section (2) of the same Section as there was no failure on the part of the Chairman to call a special meeting within 15 days. It has been argued further that the two sub-sections are mutually exclusive and, when the requirements of one have been fulfilled, the other does not come into play at all. Section 44 of the Act relates to meetings on requisition by Commissioners and is in the following terms :

"44. (1) The Chairman or, in his absence, the Vice-Chairman, shall call a special meeting on a requisition signed by not less than three of the Commissioners.

(2) If the Chairman or the Vice-Chairman fails to call a special meeting within fifteen days after any such requisition has been made, the meeting may be called by the persons who signed the requisition."

Mr. S.N. Dutta wants to interpret the word "call" to mean 'announce a meeting to be held'. According to him, if the Chairman had announced within 15 days of the receipt of the requisition that a meeting was going to be held irrespective of the fact whether that date fell within or

without the period of 15 days from date of the receipt of the requisition, he has satisfied the requirements of Section 44, Sub-Section (1) and, accordingly, the requisitionists had no jurisdiction to call a meeting. It may be remembered that the requisition was submitted by the five Municipal Commissioners on 17-12-1955, and on 29-12-1955, the Chairman passed the order that the meeting would be held on 07-01-1956. The order of the Chairman was within 15 days from the receipt of the requisition, but the meeting to be held was beyond that period. It has to be determined, therefore, whether, according to the law laid down in the Act, the Chairman was justified in convening a meeting beyond 15 days of the receipt of the requisition. If he was not, the requisitionists would be justified in law to call the special meeting under Section 44(2). The word "call" has been given the meaning "summon" in the Oxford English Dictionary which will signify issuing of summons for assembly. It is true that the word "call" and the word "hold" are not exactly synonymous, but, in my opinion, they convey the same meaning. A meeting is 'held' by persons attending it and, therefore, the word (hold) could not be used with exact accuracy in the Section. The power to have a meeting held was in the Chairman or the Vice-Chairman under this Sub-Section and they alone, could call a special meeting, that is to say, summon the Commissioners to be present at a meeting. If the interpretation as given by Mr. Dutta is allowed, then the position will be that the Chairman or the Vice-Chairman would be legally justified to summon the special meeting after six months or one year of the receipt of the requisition. This, certainly, could not have been the intention of the Legislature as the very necessity for holding a special meeting would thereby be absolutely frustrated. The position may also receive some clarification from the wordings of Section 43, Sub-Section (2) and Section 47, Sub-Section (1) of the Act.

10. Section 43, Sub-Section (1) provides that the Commissioners shall meet for the transaction of business at least once in every month and as often as a meeting may be called by the Chairman or, in his absence, by the Vice-Chairman, and Sub-Section (2) lays down that, if there be no business to be laid before the Commissioners at any monthly meeting, the Chairman shall, instead of calling the meeting, give notice of the fact to each Commissioner three days before the date which is appointed for the monthly meeting. Similarly, Section 47, Sub-Section (1) states that no business shall be transacted at any meeting of the Commissioners unless such meeting has been called by the Chairman or Vice-Chairman or under Section 44 by persons signing a requisition. In all these Sections the word "call" has a special significance, meaning 'summon, convoke or convene'. I cannot but give the only interpretation to this word' to mean that, when a requisition is received by the Chairman or, in his absence, the Vice-Chairman under Section 44(1) of the Act, he is bound to summon a meeting to be held within 15 days from the date of the receipt of such requisition, and, on his failure to get a meeting held within that period, a special meeting may be called by those persons who had signed the requisition. In view of this interpretation, the Chairman (opposite party 2) had no jurisdiction to call a meeting on the 07-01-1956, which was beyond the 15 days limit from 17-12-1955, the date on which he received a requisition from opposite party Nos. 6, 11, 12, 15 and 28. It follows, therefore, that the meeting of 09-01-1956 was a valid and duly constituted one. The proceedings in this meeting cannot,

therefore, be challenged by the petitioners. In this view of the matter, the proceeding of the meeting held on 07-01-1956 should be entirely ignored. It further becomes idle to discuss or consider the legality of the holding of the adjourned meeting on 09-01-1956 and the meeting called by the requisitionists at one and the same time. In law there was but one valid meeting, that is, the meeting held on 09-01-1956, on the requisition of the five-members of the opposite party as stated above.

11. The other objection raised in this connection by Mr. Dutta, is that in the meeting of 09-01-1953, the Municipal Commissioners were not entitled to discuss or pass a resolution for the removal of the Chairman. His contention is that Section 34 alone- provides the conditions in which a Chairman or a Vice-Chairman may be removed from his office and that these conditions were not fulfilled. Section 34 recites as follows :

"34. A Chairman appointed under Section 21 or elected under Section 20, Section 30 or a Vice-Chairman may at any time be removed from his office by a resolution, of the Commissioners in favor of which not less than two-thirds of the whole number of the Commissioners have given their votes at a meeting specially convened for the purpose."

According to Mr. Dutta, a meeting must be-specially convened for the purpose of removal of a Chairman or Vice-Chairman and in the special meeting called by the requisitionists this subject, could not be broached. If the requisitionists wanted to remove the Chairman, they were bound in law to convene a special meeting for this purpose alone. There appears to be no very marked difference-between 'calling a special meeting' and 'a meeting-specially convened for the purpose.' As a safeguard against possible vagaries on the part of the Municipal Commissioners, provisions are made in Section 34 that a meeting must be specially convened to consider the question about the removal of a Chairman or Vice-Chairman, so that the attention of all the persons assembled in that meeting be focussed on only one subject and not divided, to other subjects as well. There can hardly be any doubt that such a meeting is of exceptional importance where the Municipal Commissioners are required to apply their mind on a very serious subject to find out whether, in the circumstances, the head of the Executives, who had been running the institution, was not fit to act as such and, therefore, should be removed forthwith. There is no impediment in the Act preventing the Commissioners submitting a requisition under Section 44(1) or to call a special meeting under Section 44(2) in which the subject for consideration is the removal of a Chairman or a Vice-Chairman. Mr. Dutta contends that the agenda was a multi-purpose one and, therefore, it contravened the provisions of Section 34. I have already set out the items on the agenda which were seven in number, and a mere glance at it would show that the main item related to the removal of the Chairman from his office and the other items were those which were subservient or ancillary to it. After the removal of the Chairman in a specially convened meeting, the Municipal Commissioners have forthwith to decide how the administration of the Municipality would proceed. Consequent upon the removal of the Chairman, they have to find out and elect another Chairman in his place and also to find out who will be the other two Executives, namely,

the President and the Vice-Chairman. They have also to consider the budget estimates and make provision for authorisation of expenditure. Item No. 7 was also one which followed from the situation created by the Chairman, and consideration of that item cannot be said to be absolutely foreign or antagonistic to the main item, namely item No. 2, which related to the removal of the Chairman.

Indeed, the two items, considered jointly, may form one resolution. I am not, therefore, in a position to hold that the items on the agenda were for several purposes unconnected with the removal of the Chairman. In my opinion, the condition laid down in Section 34 of the Act has substantially been followed on the facts and in the circumstances of this case and there was no breach of the condition laid down in it that such a meeting should be specially convened for the sole purpose of removal of the Chairman or the Vice-Chairman. When there has been substantial compliance of the provisions of Section 34, the meeting held on 09-01-1956, on the requisition of some of the Municipal Commissioners does not suffer from any inherent lack of jurisdiction. The Municipal Commissioners were, therefore, entitled in law to consider the vital question regarding the removal of the Chairman and in its wake to further consider the other subsidiary items which necessarily followed as consequence to their resolution passed on item No. 2.

12. Item No. 3 of the agenda, too, relating to consideration of the resignation of the Executives tendered by them at the meeting held on 01-12-1955, cannot also be said to be one which either clashed with item No. 2 or was a matter quite different from it. Virtually, item No. 3 was but a part of item No. 2, as, if the Chairman had resigned from his office on 01-12-1955, and that resignation was lawful, he, possibly, could not continue in his office further. In my judgment, therefore, items Nos. 2, 3 and 7 practically related to one and the same matter and the other three items, namely, items 4, 5 and 6, naturally and necessarily emanated from them and, therefore, constituted the same subject. Accordingly, I may be allowed to repeat that the meeting held on 09-01-1956, on the requisition of the five Municipal Commissioners was a valid and lawful one. This finding, however, does not solve the problem raised by the parties, and it has to be considered further if the resolutions passed in that meeting were valid and lawful. A meeting specially convened for the purpose of removal of a Chairman or a Vice-Chairman may be valid, but the Section requires that at least two thirds of the whole number of Commissioners have given their votes at that meeting in support of the resolution. From the proceedings of the meeting held on 09-01-1956, it appears that item No. 2 of the resolution was carried by 23 votes to 9 votes. The total number of the Commissioners of the Arrah Municipality is 40, and, therefore, the requisite majority for the removal of the Chairman was 27. According to the petitioners as only 23 Municipal Commissioners voted in this meeting for removal of the Chairman, the resolution was not a valid one and the Chairman, in that circumstance, could not be lawfully removed from his office. On the other hand, it has been argued by Mr. Ghose, appearing on behalf of the opposite party-Municipal Commissioners, that, if the resolution in that, meeting was backed by two thirds of the number of Commissioners present at that meeting, the requirement of Section 34 was fulfilled.

I am unable to agree with this view. Section 34 provides that a Chairman or a Vice-Chairman

may be removed from his office by a resolution of the Commissioners in favor of which not less than two-thirds of the whole number of Commissioners have given their votes at a meeting specially convened for the purpose. The emphasis is clearly on the expression "the whole number of the Commissioners". I am unable to hold that the Chairman or the Vice-Chairman could be removed by a resolution of Commissioners in favor of which not less than two-thirds of the Commissioners present at the meeting gave their votes. It is only natural for the Legislature to apply a very strict test in an important matter which concerned the two highest Executives of a Municipal Board. The construction of this part of Section 34 may also be judged with reference to the wordings of Section 35, Section 38, Section 386A. of the Act.

Section 35 relates to removal of Commissioners, and the relevant, portion of this Section is the same as that of Section 34 requiring the votes of two-thirds of the whole number of Commissioners at a meeting specially convened for the purpose. The language of Section 38, however, is different. Section 38, clause (1) runs as follows :-

"The Commissioners, at a meeting specially convened for the purpose, by a resolution, in favor of which not less than two-thirds of the Commissioners present at such meeting shall have voted may."

The Section makes it clear that the resolution requires the support, of two-thirds of the Commissioners present at such meeting. The expression "in favour of which not less than two-thirds of the whole number of Commissioners have given their votes" does not find place in this Section. The same is the position when one has to interpret clause (b) of Section 386A which is silent with regard to the requirement of the support of two-thirds of the whole number of Commissioners. The word "whole" in Section 34, Section 35 therefore, plays an important role in construing whether such a resolution requires the votes of two thirds of the entire body of the Municipal Commissioners or two-thirds of the votes of the Municipal Commissioners who happen to be present at a meeting. In my view, therefore, the requisite majority was 27 and as the votes given in the meeting of 09-01-1956, fell short by 4, the resolution on item No. 2 of the agenda was illegal and the Chairman could not be deemed to have been removed from his office by this resolution.

13. I shall now advert to item No. 3 which was on the question of resignation of the Chairman in the meeting held on 01-12-1955. It was resolved that the resignation of the Chairman tendered on 01-12-1955, be accepted. This resolution was carried by 22 votes to 7. It has been argued by Mr. Dutta that this resolution could not be passed by the Municipal Commissioners present at that meeting as the Chairman (opposite party No. 2) had not laid any notice in writing of his intention to do so according to the terms of Section 33, Sub-Section (2) of the Act. Section 33, Sub-Section (1) relates to the resignation of an appointed Chairman and has no connection with the present matter in issue. Sub-Sections (2), (3) and (4) are however, important and they are as follows :

"(2) An elected Chairman may resign by laying notice in writing of his intention to do so

before the Commissioners at a meeting.

(3) A Vice-Chairman, a President or a Commissioner may resign by notifying his intention to do so to the chairman who shall forthwith lay such notice before the Commissioners at a meeting.

(4) On a resignation under Sub-Section (2) or (3) being accepted by the Commissioners at a meeting, the Chairman, Vice-Chairman, President or Commissioner, as the case may be, shall be deemed to have vacated his office."

It would appear, therefore, that, when a Vice-Chairman or a President or a Commissioner intends to resign from his office, he has to notify his intention to the Chairman who is the Supreme Executive of the Board. The Chairman not being under any Executive and being the head of the administration, is responsible only to the Municipal Commissioners and, if he intends to resign, his intention has to be expressed in the form of laying a notice in writing before the Commissioners at a meeting. It has to be considered, accordingly, whether the requirement of Sub-Section (2) of Section 33 was fulfilled in a meeting of 01-12-1955. There is no challenge of the validity of the meeting on that date. It was an adjourned meeting to consider especially the Government letter dated 08-11-1955, in which the Government had asked the Municipal Commissioners to show cause why their offices should not be declared to be vacant. The proceedings of this meeting on 01-12-1955, are given in Annexure-A. A resolution was moved by the Chairman (opposite party No. 2) himself and it was on his motion that resolutions were carried and passed unanimously by all the Municipal Commissioners present at that meeting. The resolutions were in the form of showing cause to the Government, and it was prayed that, in view of the resolutions passed, the notice for dissolution of the Municipality might kindly be withdrawn. The first three resolutions are important for this issue. They are :

"1. Three present executives, that is, the Chairman, Vice-Chairman and the President have been good enough to signify their intention to resign their offices in order that the present deadlock may be solved.

2. The Commissioners have appreciated this generous act of the executives in the largest interest of the rate-payers and the Municipality.

3. The Commissioners now propose to place their resignations for Board's consideration at a special meeting of the Board and to elect their new office bearers as well as to pass the budget and to authorise the chairman to incur expenditure under the Act." There is not a tittle of doubt anywhere that opposite party No. 2 by these resolutions signified his intention to resign unequivocally on 01-12-1955. A copy of these resolutions was sent to the Government through the District Magistrate of Shahabad under a letter dated 01-12-1955, signed by the Chairman (opposite party No. 2), the Vice-Chairman, the President and all the Municipal Commissioners. The letter stated that the signatories forwarded jointly under their signature a copy of the resolution unanimously passed by them after due consideration of the show cause notice at their

meeting held on 01-12-1955, specially called for the purpose. It has been stated on behalf of the opposite party Municipal Commissioners that the resolution of 1-12-1955, was not only moved by opposite party No. 2, but the wordings had been corrected at places by himself. There can be no doubt, therefore, that the Chairman (opposite party No. 2) did lay a notice, that is, place his intention to resign before the Commissioners, at the meeting held on 01-12-1955. It is true that his intention has not been expressed in writing, but, in the circumstances of the case, when he had himself moved the resolution signifying his intention to resign, corrected the form of the resolution and subsequently under his signature sent the copy of the resolution to the Government, it may be lawfully deemed that he had complied with the requirement of Section 33, Sub-Section (2). In my opinion, there was sufficient compliance of this Sub-Section, and it is too late for opposite party No. 2 now to resile from that position and state that he had merely signified his intention to resign, but had not actually done so at the meeting of 1-12-1955. What a Court has to consider according to the facts and circumstances of each case is whether the Chairman had unequivocally expressed his intention of resigning from his office by giving information of the same to the Municipal Commissioners present at a meeting. If, in the circumstances of the case, there was no notice in writing, it was a mere breach of technicality which did not affect in any way the substance of the requirement by law. I hold, accordingly, that on the facts of this case there was sufficient compliance of Section 33, Sub-Section (2) of the Act. Upon this finding, it is hardly necessary to discuss the statements made by the petitioners in their application that their chairman (opposite party No. 2) subsequently wrote to the President that he had not resigned from his office and that he had merely signified his intention to do so.

14. The office of a chairman cannot, however, be terminated by his unequivocal expression of intention to resign as laid down in Section 33, Sub-Section (2) as that resignation has to be accepted by the Commissioners at a meeting. The resolution No. 3 in the proceeding of 01-12-1955, indicated that the resignations of the Chairman the Vice-chairman and the President would be placed at a special meeting of the Board. This meeting was not convened by the Chairman and nothing was done by him until he received a requisition under Section 44(1) of the Act. The meeting on 09-01-1956 being the only valid meeting, it was lawful for the Municipal Commissioners in that meeting to consider item No. 3 of the agenda relating to the resignation of the Chairman tendered on 01-12-1955 after the resignation of the Chairman was accepted by a majority of votes, it would be deemed under Section 33, Sub-Section (4) that the Chairman had vacated his office from that date.

15. Yet another argument on this point has been advanced by submitting that, even if it is held that the Chairman had resigned on the previous meeting, he unequivocally withdrew from the same on or before 09-01-1953. It is contended that in view of withdrawal of the resignation, there was nothing left for the Municipal Commissioners to accept at the meeting of 09-01-1956. This argument is misconceived on a finding that the act of resignation had already been accomplished, and there is no provision in Section 33 or any other Section of the Act, conferring power on the Chairman to withdraw his resignation. After resignation, the only matter that the law requires is

that it should be accepted by the Commissioners under Sub-Section (4) of Section 33 before the office is deemed to be vacant. The reason for enacting this provision is clear. The Commissioners as a body are the Supreme authority in the municipal administration and the executives, being subordinate to them have yet to render explanation for their acts and omissions. The Municipal Commissioners will be in a helpless position in the matter of getting any explanation from the executives and no suitable measure can be passed by them in any of their meetings once it is held that the Executives or the Commissioners are absolved from all responsibility immediately on their resignation. The Act confers power on the Municipal Commissioners as a body to pass suitable measures against the Executives or a member of their own body for anything done by them, and this they will be unable to do if ipso facto these offices are held to be vacant merely on their resignation. I hold, accordingly that the withdrawal of the resignation of the Chairman (Opposite Party No. 2) as expressed in his letters, has no effect in law and the Municipal Commissioners, in their meeting on 09-01-1956, had jurisdiction to proceed on the question whether they should accept it or not.

16. On the finding with respect to the legality of the meeting of 09-01-1956, it follows that the resolutions passed on item Nos. 4, 5, and 6 on the agenda were valid ones as they were not in contravention of any provision of the Act. The same consideration cannot, however, arise with respect to item No. 7 on the agenda. Item No. 7 related to consideration of the situation arising out of the act of opposite party No. 2 as he had been persistently refusing to act or had become incapable of acting by not carrying out the mandatory provision of Section 43. The Municipal Commissioners, after considering this item and the situation arising out of the acts and omissions of opposite party No. 2 as Municipal Commissioner, further resolved that Government be requested to take steps under Section 35(2)(a) of the Act, and remove him from the Commissionership of the Arrah Municipality. The latter part, of the resolution passed by the Municipal Commissioners was not included in the original item No. 7 and, further it was not supported by two-thirds of the whole number of Commissioners constituting the Board as required under Section 35 of the Act. The resolution on item No. 7 on the agenda was therefore quite illegal as the Municipal Commissioners in that meeting had no jurisdiction to recommend to the Government for the removal of opposite party No. 2 from the office which he held by virtue of being a Municipal Commissioner.

17. In the result, therefore, no writ of quo warranto can lie against opposite party No. 3 as he cannot be said to be a usurper. On the findings given above, there is no question of issuing any writ of mandamus, prohibition of certiorari on anybody. The application fails and is dismissed with costs. The hearing fee is assessed at Rs. 150/-.

Chaudhary, J.

18. I agree.

Application dismissed.