

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.53 OF 2021

Farzana Ismail Rangrez (Mirchi) ... Petitioner

Versus

The State of Maharashtra & Ors. ... Respondents

Mr. Atul Damle, Sr. Adv. a/w. Mr. S. M. Sabrad, Mr. Amey C. Sawant, Ms. Neha Parte for the Petitioner.

Ms. M. P. Thakur, AGP for Respondent No. 1.

Ms. S. D. Ghaisas for Respondent No. 2.

Ms. Priyanka Chavan i/b. Mr. S. B. Shetye for Respondent No. 3.

**CORAM : S.J. KATHAWALLA, &
R.I. CHAGLA, JJ.**

DATE : 7TH JANUARY, 2021

P.C. :

1. By the above Writ Petition, the Petitioner - Farzana Ismail Rangrez (Mirchi) is seeking a direction against the Respondent No. 2 - Municipal Corporation of Bhiwandi, Nizampur, to permit the Petitioner to withdraw her Resignation Letter dated 26th October, 2020 tendered by her as the Commissioner of the Respondent No. 2 Corporation.

2. The Petitioner has in her Writ Petition made the following submissions, which are reiterated by the Learned Senior Advocate appearing for the Petitioner :

2.1. That the Petitioner is an active social worker. She has conducted various

medical camps and blood donation camps and was also in the forefront during the pandemic situation helping all those in need.

2.2. That the Petitioner as a candidate of the Indian National Congress (Congress-I) was elected by a huge margin as the Councilor of Respondent No. 2 Corporation from Ward No. 25 for a term of five years, i.e. 2012-2017.

2.3. That the Petitioner once again contested the election from Ward No. 9B for the period 2017-22 as 'A' candidate of the Indian National Congress (Congress-I) and was again elected as Councilor of Respondent No. 2 Corporation by a huge margin.

2.4. That the Petitioner is a short tempered person and gets angry very soon and at times goes into depression. The Petitioner is not in a position to understand the acts performed by her whilst she is in anger.

2.5. That on 25th October, 2020, she had a quarrel with her husband because of which she was very angry followed by depression and therefore immediately on the next date i.e. on 26th October, 2020, she went to the Office of Respondent No. 2 Corporation and tendered her resignation as the Councilor of Respondent No. 2 Corporation. In the said Letter dated 26th October, 2020, the Petitioner recorded that she is not tendering her resignation under any pressure but is giving her resignation of her own free will and volition and the same be accepted.

2.6. That after her husband and other family members came to know about the said resignation, they pacified the Petitioner and tried to cool her down. The

Petitioner after cooling down realized the blunder committed by her and on 3rd November, 2020 she issued a letter to the Respondent No. 2 Corporation with a request to permit her to withdraw the Letter dated 26th October, 2020 and not to take any action in pursuance thereto.

2.7. That on 3rd November, 2020, the Commissioner of the Respondent No. 2 Corporation called the Petitioner in his Office at 5.30 p.m. and the statement of the Petitioner came to be recorded stating that under depression she had tendered the Resignation Letter dated 26th October, 2020 and that she may be permitted to withdraw the same. The recording of the said statement was videographed pursuant to the direction of the Commissioner of the Respondent No. 2 Corporation.

2.8. That after submitting the Letter dated 3rd November, 2020, the Petitioner carried an impression that the Resignation Letter dated 26th October, 2020 tendered by her stood withdrawn. The Petitioner was shocked and surprised when on 2nd December, 2020 she learnt that the Respondent No. 2 Corporation had issued a letter to the Respondent No. 1 – State of Maharashtra, through its Town Planning Department to take action as per the provisions of the Maharashtra Municipal Corporations Act, 1959 ('the Act'). The Respondent No. 2 Corporation also issued an identical letter to the Respondent No. 3 – State Election Commission and therefore the Petitioner is of the view that Respondent No. 3 may hold an election for filling up the vacant post.

2.9. That the Respondent No.2 Corporation has not mentioned about the

Letter dated 3rd November, 2020 written by the Petitioner seeking to withdraw her Letter of Resignation dated 26th October, 2020 to Respondent No. 1, or Respondent No. 3, which clearly shows that Respondent No. 2 Corporation is acting vindictively and malafidely against the Petitioner.

2.10. That Respondent No. 3 ought to have considered that the resignation tendered by the Petitioner was under anger and depression and immediately after cooling down, the Petitioner vide her Letter dated 3rd November, 2020, sought to withdraw her letter of Resignation dated 26th October, 2020.

2.11. That the Commissioner of the Respondent No. 2 Corporation failed to consider that the term of the Councilor would come to an end in the year 2022 and thereafter fresh election would be held and therefore it is not be in the interest of anyone to hold an election at this stage for only one seat, thereby involving the entire machinery in the election process and also incur a huge expense.

2.12. That the Commissioner of the Respondent No. 2 Corporation has not taken into consideration that she has been elected for two consecutive terms as Councilor; that she is an active social worker who has conducted various medical camps and has helped the needy persons during the pandemic. Respondent No. 2 Corporation therefore ought to have permitted the Petitioner to withdraw the Resignation Letter dated 26th October, 2020. The Petitioner has therefore approached this Court seeking reliefs as sought in paragraph (1) above.

3. We have perused the above Writ Petition and the submissions made

therein, which are also reiterated by the Learned Senior Advocate appearing for the Petitioner.

4. Chapter - II of the Act pertains to the constitution of the Municipal Authorities. Section 7 of the said Chapter - II pertains to Resignation of the Councilor, and reads thus :

“7. Resignation of office by councillor.

Any councillor may resign his office at any time by notice in writing to the Commissioner and, on such notice being given, his office shall become vacant as from the date of the notice.”

The above provision makes it clear beyond any doubt, that upon any Councilor issuing a notice in writing to the Commissioner of the Corporation, conveying his / her resignation to the office of such Councilor, upon such notice being given / handed over, the seat of the Councilor forthwith becomes vacant i.e. from the date of the notice itself. There is no provision made in the above quoted Section 7 for the Councilor to withdraw his / her resignation at a later date, the same having been accepted immediately upon it being tendered under the law. It is not the case of the Petitioner that she has in her Letter of Resignation stated that her resignation would come into effect from a subsequent date mentioned in her Resignation Letter. If such would have been the case, the Petitioner certainly would have been able to withdraw her resignation prior to such date, her seat not having fallen vacant from the date of

her letter / notice.

5. The Commissioner of the Respondent No. 2 Corporation is not empowered in law to allow the Petitioner to withdraw her resignation only because the Petitioner was angry and depressed due to a fight with her husband. Even her being an active social worker, or being at the forefront during the current pandemic to help the needy would not come to her rescue in light of S. 7 quoted above, dealing with 'resignation of office by councillor'. In view of her seat having fallen vacant immediately upon receipt of her Letter of Resignation, the fact that the Commissioner of the Respondent No.2 Corporation did not mention that the Petitioner had withdrawn her Resignation Letter dated 26th October, 2020, by her subsequent Letter dated 3rd November, 2020, in his Letter dated 2nd December, 2020, addressed to Respondent No. 1 – State of Maharashtra and / or to the Respondent No. 3 – State Election Commission, can by no means be termed as malafide, or vindictive conduct on his part, since the subsequent withdrawal of her resignation is of no consequence as her seat stood vacant immediately on 26th October, 2020, i.e. upon receipt of her Resignation Letter by the Commissioner of the Respondent No. 2 Corporation in view of Section 7 of the Act. The question therefore of any interference by this Court under Article-226 of the Constitution of India, as sought by the Petitioner, does not arise and the above Writ Petition is dismissed with costs.

(R.I.CHAGLA, J.)

(S.J. KATHAWALLA, J.)