

(2008) 06 BOM CK 0105

In the Bombay High Court

Case No : Writ Petition No. 3406 of 2008

Aashabai Vilas Wagh and Others

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 11-06-2008

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 145(1A)

Citation : (2008) 6 ALLMR 825 : (2008) 5 BomCR 676

Hon'ble Judges : Patil Naresh H., J

Bench : Single Bench

Advocate : K.F. Shingare, for the Appellant; P.M. Shinde, A.G.P. for respondent Nos. 1, 2 and 3, U.B. Bondar and D.P. Palodkar, for respondent Nos. 5 and 7 to 12, for the Respondent

Judgement

Patil Naresh H., J.—Heard.

2. Leave to delete respondent No. 6.

3. Rule. By consent of the learned Counsel for the parties rule made returnable forth with and the matter is taken up for hearing.

4. The petitioners challenge order dated 9th May 2008 passed by the Divisional Commissioner, Aurangabad dissolving the Gram Panchayat Babra, Taluko Phulambri, District Aurangabad by exercising powers u/s 145(1-A) of the Bombay Village Panchayats Act, 1958.

5. The admitted position is that out of total 11 members 5 members had resigned. Out of the remaining members, one member was elected as member of Panchayat Samiti and another was elected to a seat of the Zilla Parishad. In the case of third member, he was disqualified on the allegation that after the cut off date he was blessed with third child. It is informed that against the disqualification order an appeal was preferred wherein order of status quo was already passed. Undisputedly on the date of the impugned order the strength of the village panchayat was of three members. The State Election Commission had

declared election programme for two seats which had fallen vacant due to election of two members as members of the Panchayat Samiti and the Zilla Parishad. Writ Petition No. 1414 of 2008 was preferred. By an order dated 28-2-2008 this writ petition was disposed of by directing the Divisional Commissioner to take final decision in accordance with law and accordingly the Commissioner passed the impugned order.

6. The learned Counsel for the petitioner has placed reliance on the reported judgments (1) Shivaji Maruti Shingate and Others Vs. State of Maharashtra and Others, and (2) Jahangir Yusuf Qureshi and Others Vs. State of Maharashtra and Others, to support his contention that the provisions of Section 145(1-A) of the Bombay Village Panchayats Act, 1958 (for short, "the Act") are held to be directory and not mandatory. The Commissioner has, in effect, exercised his jurisdiction treating the same to be mandatory. It is the discretion of the State Government to dissolve the entire Gram Panchayat or to fill in the vacant seats. The said discretion was not exercised reasonably, keeping in view the purpose of the provisions of Section 145(1-A) and the reported judgments of this Court.

7. The learned Assistant Government Pleader Shri. P.M. Shinde supported the order passed by the Commissioner and submitted that it is a reasoned order and the same is in consonance with the spirit of the provisions of Section 145(1-A) of the Act.

8. Shri Palodkar, learned Counsel appearing for respondents Nos. 5 and 7 to 12 submitted that the Commissioner had passed a reasoned order. It was decided to dissolve the Village Panchayat which discretion need not be interfered with by this Court in exercise of its writ jurisdiction. According to the learned Counsel the functioning of the Gram Panchayat was brought to a standstill due to resignation of the members, therefore, it was found necessary to seek a fresh mandate from the people to constitute the Village Panchayat.

9. The provisions of Section 145(1-A) of the Act read thus:

145(1 -A) If more than half the total number of seats in a panchayat have become vacant, the State Government may, by order in the Official Gazette, dissolve such panchayat.

The issue was considered by this Court in the reported judgments cited supra.

10. The principle underling exercise of powers u/s 145(1-A) is that though the statute provides that in case more than half of the members of the Gram Panchayat resign the State Government shall not exercise powers of dissolving the Gram Panchayat mechanically. It is obvious that the State is not bound to dissolve Panchayat unless situation is created where the functioning of the Panchayat is brought to a standstill. For assessing this situation an element of discretion is vested in the State which is required to be exercised after considering all the necessary aspects of the situation, the ground realities and the mechanism for effective functioning of Gram Panchayat which is a unit of

grass-root level democracy.

11. In the present case out of 11 members five had resigned. Some of the members approached the Commissioner. The Commissioner had detailed out these facts in the order. There is no dispute on the point that the Commissioner had issued notices to all the members before passing the impugned order. There is compliance of principles of natural justice. But, in my opinion, the order of the Commissioner lacks in appreciating as to whether this was a fit case for exercising discretion of the State in dissolving the Gram Panchayat rather than to get the vacant seats filled in. In the last two paragraphs of the reasoning part of the order the Commissioner observes that in view of the facts of the case as more than half of the seats of the village panchayat had fallen vacant powers are exercised in view of the provisions of Section 145(1-A) of the Act. The Commissioner ought to have provided independent reasons exhibiting his satisfaction that there is failure of functioning of the Gram Panchayat which could not be restored unless the Gram Panchayat was dissolved and fresh elections were held. Dissolution of Gram Panchayat in such situation could not be mechanically ordered. I am of the view that the Commissioner in the fact situation of the case has not taken into consideration all the necessary elements before passing the order of dissolution.

12. Considering the facts of the case I find that out of eleven members five members had resigned but as regards the remaining strength of members the State Election Commission had already declared election programme for filling in two seats which had fallen vacant due to the fact that those members were elected to the Panchayat Samiti and Zilla Parishad. In the case of third member a judicial proceeding was pending. Taking into consideration these aspects of the matter I am of the considered opinion that this was not a fit case for dissolution of the village panchayat. It would have been proper and reasonable for the State Government/Commissioner to get the vacant seats filled in by holding elections rather than dissolving the entire village panchayat. Therefore, I am not convinced that the exercise of power by the Commissioner in his discretion to dissolve the Village Panchayat was necessary and sustainable.

13. In the light of the view adopted by this Court in the reported judgments cited supra and in the facts of the case I am inclined to quash and set aside the order passed by the Commissioner.

14. The order dated 9th May, 2008 (Exhibit "F" to this petition) passed by the Commissioner is quashed and set aside. It is further directed that the State Government/the State Election Commission shall take necessary steps for holding elections to the vacant seats of the village panchayat as early as possible.

15. Rule is made absolute in the above terms. No order as to costs. At this stage the learned Counsel for the respondents Nos. 5 and 7 to 12 prays for stay to the order passed by this Court. I do not find any justifiable and convincing reason to stay my order. The prayer stands rejected.