
(2015) 04 BOM CK 0280

In the Bombay High Court

Case No : Writ Petition Stamp No. 9733 of 2015

Ashok Maruti Dhamnase

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 28-04-2015

Acts Referred:

Citation : (2015) 04 BOM CK 0280

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : C.G. Gavnekar and Suhas Deokar, for the Appellant; S.D. Rayrikar, A.G.P., Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

R.M. Savant, J.—At the outset the learned counsel appearing on behalf of the Petitioner shri C.G. Gavnekar seeks deletion of the Respondent Nos. 4 and 5 who in the context of the challenge raised in the above Petition are not the contesting parties. Leave granted. Amendment to be carried out forthwith.

2. Rule, with the consent of the learned counsel for the parties made returnable forthwith and heard.

3. The writ jurisdiction of this Court is invoked against the order dated 18/3/2015 passed by the Divisional Commissioner, Konkan Division, Konkan Bhavan by which order the Appeal filed by the Respondent No. 6 herein Smt. Vaishali Prabhakar Chinke came to be allowed and resultantly the order dated 12/11/2014 passed by the Additional Collector, Raigad came to be set aside.

4. It is not necessary to burden this order with unnecessary details. Suffice it to state that the controversy in the above Petition is as regards the alleged resignation tendered by the Respondent No. 6 from the post of Sarpanch of the Grampanchayat of village Pui, Tal. Kolad, District Raigad. After the elections to the Grampanchayat of village Pui were held in the year 2012 for the term 2012-2017 and since the post of Sarpanch was reserved for a woman from the

Other Backward Class category, the Respondent No. 6 contested for the post of Sarpanch and was elected as such on 2/12/2012.

5. On the ground that the Respondent No. 6 has tendered her resignation from the post of Sarpanch by letter dated 2/12/2013 which was forwarded to the Chairman of the Panchayat Samiti, Roha in the prescribed form No. I which provided that the signature is required to be verified by two witnesses, the Petitioner being one of them and other being the Respondent No. 5, the proceedings in question came to be triggered off on account of the said alleged resignation of the Respondent No. 6. It seems that after the alleged resignation of the Respondent No. 6 was forwarded to the Chairman of the Panchayat Samiti, Roha, he in turn forwarded it to the Gramsevak. The Gramsevak was further directed to act in accordance with the said resignation. A meeting of the Grampanchayat was convened on 13/12/2013 by the notice dated 9/12/2013. In the agenda of the said meeting the resignation of the Respondent No. 6 was one of the items. The notice of the said meeting was served on all the members of the Grampanchayat. In the said meeting dated 13/12/2013, 6 out of 7 members of the Grampanchayat were present and since the resignation of the Respondent No. 6 was one of the items, the Respondent No. 6 stated that she has given her explanation by her letter dated 9/12/2013 about the genuineness of her resignation and claimed that her signature was forged and she never intended to resign. She further stated that subject to what has been stated in the said letter, she has nothing to say in the matter. The alleged resignation of the Respondent No. 6 was considered in the said meeting and a resolution accordingly came to be passed on 13/12/2013 on the ground that the Respondent No. 6 had resigned from the post of Sarpanch.

6. The Respondent No. 6 thereafter approached the Additional Collector by filing a Dispute under Section 29(3) of the Maharashtra Village Panchayats Act on the ground that the signature on the resignation letter was not genuine and that the Respondent No. 6 never intended to resign from the post of Sarpanch. In the context of the present Petition it is required to be noted that the said Dispute was adjudicated upon by the Additional Collector, Raigad. The Additional Collector by relying upon the statement made by the Respondent No. 5 and the Petitioner who stated that the Respondent No. 6 had signed the resignation letter in their presence held that the signature on the resignation letter dated 2/12/2013 was that of the Respondent No. 6. It is also required to be noted that before the Additional Collector the two letters both dated 9/12/2013 which letters were addressed to the Chairman of the Panchayat Samiti and the Gramsevak wherein the Petitioner has stated that she had never signed the resignation letter and the same be deemed to have been cancelled were not considered by the Additional Collector though the submission to the said effect made by the advocate appearing for the Respondent No. 6 was recorded by the Additional Collector. The Additional Collector therefore rejected the Dispute raised by the Respondent No. 6 as regards the genuineness of her signature by his order dated 12/11/2014.

7. The Respondent No. 6 aggrieved by the said order dated 12/11/2014 carried the matter in Appeal to the Commissioner, Konkan Division, Konkan Bhavan. The Commissioner having regard to the said two letters both dated 9/12/2013 addressed to the Chairman of Panchayat Samiti and the Gramsevak came to a conclusion that the resignation tendered by the Respondent No. 6 was withdrawn and that since the said two letters were not taken into consideration by the Additional Collector, the Appeal was required to be allowed and has by the impugned order dated 18/3/2015 accordingly allowed the Appeal and set aside the order dated 12/11/2014 passed by the Additional Collector. As indicated above, it is the said order dated 18/3/2015 which is taken exception to by way of the above Petition.

8. It would be apposite at this stage to refer to Section 29 of the Village Panchayats Act. Subsection-3 of Section 29 covers a case of a dispute being raised in respect of the resignation which dispute in terms of the said provision has to be raised before the Collector. In the context of the present Petition the defining provision would be subsection (6) of Section 29 of the Panchayats Act which postulates as to when the resignation is to take effect. In terms of clause (a) of subsection (6) of Section 29 the resignation takes effect after expiry of 7 days from the date on which it is placed before the meeting of the Panchayat, if there is no dispute regarding the genuineness of the resignation. In so far as clause (b) is concerned, it covers the case where there is a dispute raised about the resignation and in such a case it takes effect after the expiry of 7 days from the date of rejection of the dispute by the Collector if no appeal is preferred to the Commissioner; and the 3rd contingency is covered by clause (c) where an appeal is filed before the Commissioner and the resignation in such a case takes effect immediately after the 7 days of the rejection of the appeal by the Commissioner. In the instant case as indicated above the Respondent No. 6 had raised dispute as regards the genuineness of the resignation before the Collector. The Additional Collector as indicated above has rejected the said Dispute raised by the Respondent No. 6. However, the Commissioner has allowed the said Dispute.

9. The issue as to whether a resignation tendered by a Sarpanch could be withdrawn is a subject matter of two decisions rendered by the Division Benches of this Court. The first decision is the judgment reported in *Rajesh Jaiswal and Others Vs. Village Panchayat, Wadi*, (1987) 1 BomCR 528 . The second decision is the judgment of another Division Bench of this Court reported in *Kumudini Ratilal Bhagat (Sou.) and Others Vs. State of Maharashtra and Others*, (1987) 1 BomCR 634 : (1987) MhLj 462 . In both the judgments the Division Benches have held that though there is no specific provision regarding withdrawal of resignation since the resignation is a matter within the unilateral discretion of the member, the same does not become effective forthwith and becomes effective until it is placed in the meeting called for the said purpose and 7 days after it is so placed before the Committee Meeting and that too in case there is no dispute regarding the genuineness of the resignation letters. Hence having regard to the

Scheme of Section 29, the right to withdraw the resignation before the meeting has therefore been accepted by the Division Benches.

10. At this stage it would also be apposite to refer to the judgment of a learned Single Judge of this Court reported in Ravindra Lumpataki Vs. The Chairman, Panchayat Samiti, The Group-Gram Panchayat and The Additional Commissioner, Nashik Division, (2006) 6 BomCR 595 : (2006) 6 MhLj 747 . The said judgment also concerns the resignation tendered by a Sarpanch. The facts in the said case can be said to be identical to the facts of the present case as the Sarpanch in the said case had also contended that he had not written the resignation letter nor did he tender it. In the said case a resolution was passed by the House affirming that the Sarpanch had resigned and that the same was voluntarily. The Collector on a enquiry under Section 29(3) of the Panchayats Act rejected the contention of the Sarpanch and also dismissed the Appeal. It is against the said rejection of the Dispute as well as the Appeal that a Writ Petition was filed. The learned Single Judge held that the resolution was wrongly passed as the Members of the Grampanchayat concentrated on only the fact that resignation was tendered and did not think it necessary to discuss the matter further. The learned Single Judge of this Court further held that since the Petitioner in the said case had raised an objection as regards his resignation, the same shows his unwillingness to resign. The learned Single Judge held that the authorities below have not applied their mind to this aspect and failed to apply judicial mind to the contentious issue. The learned Single Judge further observed that the authorities have not taken pains to verify this aspect. The learned Single Judge lastly observed that the term "genuineness of resignation" in Section 29 of the Act would have to be interpreted broadly.

11. In the instant case the learned counsel for the parties have urged submissions for and against the impugned order. While it is the contention of the learned counsel appearing on behalf of the Petitioner Shri Gavnekar that the Commissioner could not have passed the order that he had passed viz. that the Respondent No. 6 had withdrawn her resignation having regard to the fact that the Dispute raised by the Respondent No. 6 as regards her resignation has been rejected by the Additional Collector. However it is the contention of the learned counsel appearing on behalf of the Respondent No. 6 Shri Gavand that the order passed by the Commissioner need not be interfered with in view of the fact that the letters dated 9/12/2013 were not considered by the Additional Collector though he had recorded the submission made on behalf of the Respondent No. 6 based on the said letters.

12. In my view, it is not necessary for this Court to enter into the arena of deciding the genuineness or otherwise of the resignation tendered by the Respondent No. 6. The facts of the instant case disclose that the Respondent No. 6 had raised a dispute as regards the genuineness of her resignation before the Additional Collector by invoking Section 29(3) of the Panchayats Act. Prior thereto the Respondent No. 6 had addressed two letters both dated 9/12/2013 to

the Chairman of Panchayat Samiti and the Gramsevak raising a dispute as regards the said resignation and asking the said authorities to treat the said resignation as cancelled. The Additional Collector, as indicated above has relied solely on the statement made by the Petitioner herein and the Respondent No. 5 that the Respondent No. 6 had signed the said resignation letter in their presence. This is the sole ground on which the Additional Collector has come to a conclusion that the signature on the said resignation letter is of the Respondent No. 6. The Additional Collector has not gone into the aspect as to whether it was the intention of the Respondent No. 6 to resign which the Additional Collector ought to have deciphered from the attendant circumstances viz two letters dated 9/12/2013 in terms of the judgment in Ravindra Bhaskar Lumpataki's case (supra). The said aspect was required to be considered by the Additional Collector. The Commissioner in turn had ventured to consider the Appeal not on the basis of the findings recorded by the Additional Collector in the Dispute but on the basis that the Additional Collector had not taken into consideration the said two letters both dated 9/12/2013. If the Commissioner was of the view that the material which was required to be taken into consideration was not taken into consideration by the Additional Collector he ought to have remanded the matter back to the Additional Collector for a denovo consideration.

13. In my view, the impugned order dated 18/3/2015 passed by the Commissioner as also the order dated 12/11/2014 passed by the Additional Collector would have to be quashed and set aside and are accordingly quashed and set aside, and the matter is relegated back to the Additional Collector, Raigad for a denovo consideration of the application filed by the Respondent No. 6 under Section 29(3) of the Panchayats Act.

14. In so far as the charge of the post of Sarpanch is concerned, it is required to be noted that the above Petition had come up for admission before this Court on 8/4/2015 and this Court had granted ad-interim relief in terms of prayer clause (c) on the basis that the letter dated 25/3/2015 issued by the Block Development Officer to the Gramsevak is not implemented as on the said date. The learned counsel for the Respondent No. 6 Shri Gavand has tendered the compilation to which are annexed the letter dated 27/3/2015 addressed by Gramsevak to the Block Development Officer by which letter the Gramsevak has informed the Block Development Officer that action to hand over the charge of the post of Sarpanch to the Respondent No. 6 would have to be carried out in view of the order passed in the Appeal filed by the Respondent No. 6. Thereafter a notice came to be issued of the meeting of the Grampanchayat dated 8/4/2015 which was also issued in the name of the Respondent No. 6 who has signed it as the Sarpanch. The aforesaid documents therefore indicate that after the impugned order dated 18/3/2015 was passed by the Divisional Commissioner, the same was implemented and the Respondent No. 6 was put back in charge of the post of Sarpanch. Since the interim order was passed on the basis that the said letter dated 25/3/2015 is not implemented the interim relief granted in view of the aforesaid facts would be ineffective and that the Respondent No. 6 would

continue as Sarpanch of the Grampanchayat, Pui. The same would obviously be subject to the decision that would be rendered by the authorities on remand of the Dispute under Section 29(3) of the Panchayats Act. On remand the Additional Collector Raigad to decide the said Dispute expeditiously and not later than 30/6/2015. The parties to appear before the Additional Collector, Raigad on 11/5/2015. The Additional Collector, Raigad to decide the dispute within the outer limit fixed by this Court. The parties would be at liberty to produce additional documents if they so desire before the Additional Collector, Raigad. The Additional Collector, Raigad would take the material as well as the contentions of the parties into consideration and thereafter pass appropriate orders in accordance with law. The above Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs of the Petition.

15. All concerned parties to act upon an ordinary copy of this order duly authenticated by the Court Sheristedar.