

(2011) 05 BOM CK 0024

In the Bombay High Court

Case No : Writ Petition No. 486 of 2011

Dhanusingh Naik (Pawar) alias Comrade B.B. Naik and Others	APPELLANT
Vs	
The State of Maharashtra and Panchayat Samiti	RESPONDENT

Date of Decision : 06-05-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 — Section 60
Maharashtra Zilla Parishads (Councilors) and Panchayat Samitis (Members)
(Resignation) Rules, 1962 — Rule 2, 3, 3(1), 4, 4(1)
Maharashtra Zilla Parishads and Panchayat Samitis (Delivery of Notice of Resignation)
Rules, 1965 — Rule 3, 3(1), 3(2), 3(3)

Citation : (2011) 4 ALLMR 7 : (2011) 6 BomCR 48 : (2011) 113 BOMLR 1851 :
(2011) 4 MhLj 661 : (2011) 8 RCR(Civil) 2451

Hon'ble Judges : D.D. Sinha, J;A.P. Bhangale, J

Bench : Division Bench

Advocate : F.T. Mirza, for the Appellant; A.S. Fulzele, Assistant Govt. Pleader for Respondent No. 1, R.D. Tajne, for Respondent Nos. 2 and 4 and N.A. Padhye, for the Respondent

Judgement

D.D. Sinha, J.—Rule returnable forthwith. Heard finally with consent of Shri Mirza, learned Counsel for the Petitioners, Shri Fulzele, learned Assistant Government Pleader for the Respondent No. 1, Shri Tajne, learned Counsel for the Respondent Nos. 2 and 4, and Shri Padhye, Advocate for the Respondent No. 3.

2. Shri Mirza, learned Counsel for the Petitioners, has submitted that the Petitioners are elected members of Respondent No. 2 Panchayat Samiti, Mahagaon and Respondent No. 3 is Chairman thereof. The grievance of the Petitioners is against the communication dated 23/12/2010 issued by the Respondent No. 2 Block Development Officer, Panchayat Samiti, Mahagaon whereby Collector, Yavatmal was informed that resignations tendered by the Petitioners as members of the Panchayat Samiti have been accepted by the Chairman of Panchayat Samiti and, therefore, their posts fell vacant, hence,

appropriate steps to fill up vacancies according to law should be taken. It is submitted that acceptance of resignations alleged to have been given by the Petitioners by the Chairman of Panchayat Samiti is in violation of mandatory provisions of Section 60 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (hereinafter referred to as "the Act of 1961"), Rules 3, 4 and 6 of the Maharashtra Zilla Parishads (Councilors) and Panchayat Samitis (Members) (Resignation) Rules, 1962 (hereinafter referred to as "the Rules of 1962") as well as sub-rules (2) and (3) of Rule 3 of the Maharashtra Zilla Parishads and Panchayat Samitis (Delivery of Notice of Resignation) Rules, 1965 (hereinafter referred to as "the Rules of 1965") and, therefore, action of the Chairman of Panchayat Samiti is unsustainable in law.

3. It is contended by the learned Counsel for the Petitioners that the Petitioners neither tendered their resignations to the appropriate Authority, i.e. Chairman nor any acknowledgment was issued by the appropriate Authority and, therefore, there is a clear violation of provisions of Rules 3 and 6 of the Rules of 1962. It is submitted that this fact has not been disputed by the Respondent No. 3 and in para (4) of the affidavit-in-reply dated 23/3/2011 filed by Respondent No. 3, it has been specifically stated that the Petitioners submitted their resignations before Respondent No. 2 Block Development Officer, who is not the appropriate Authority. The appropriate Authority to whom the resignations were required to be tendered as per procedure prescribed, was Chairman of Panchayat Samiti and acknowledgment was not issued in this regard as required under Rule 6 of the Rules of 1962.

4. Shri Mirza, learned Counsel for the Petitioners, has submitted that procedure for submission of notice of resignation is prescribed under Rule 3(1)(d) of Rules of 1965, which requires notice of resignation shall be delivered to the Block Development Officer. As per Sub-rule (2) of Rule 3, such notice shall be in Form I as defined in Rule 2(ai) of the Rules of 1965. It is contended that notices of resignations of the Petitioners are not in 'Form I'. Similarly, Sub-rule (3) of Rule 3 of the Rules of 1965 provides issuance of acknowledgment of receipt of notice of resignation in 'Form II'. It is further contended that the Block Development Officer in para (6) of his affidavit dated 14/3/2011 has stated that it was not necessary to issue such acknowledgment. It is submitted that Respondent No. 2 in his affidavit has specifically mentioned that resignations were received by the Dispatch Clerk of his office, however, it is nowhere mentioned that the notices of resignations were ever received. The receipt of resignations by the Dispatch Clerk is contrary to the provisions of Rules 3(1)(i) of the Rules of 1962 and Rule 3(i)(d) of the Rules of 1965.

5. Shri Mirza, learned Counsel for the Petitioners, has further submitted that the Respondent Nos. 2 and 3 have given effect to the alleged resignations from the date of their submission, i.e. 23/12/2010 and, therefore, this action of Respondent Nos. 2 and 3 is contrary to the provisions of Rule 4 of the Rules of 1962. It is, therefore, contended that the impugned communication being in

violation of above referred provisions of the Act and Rules cannot be sustained in law and liable to be struck down. In order to substantiate his contentions, reliance is placed on the decision of the Apex Court in *Sau. Laxmi Verma Vs. State of Maharashtra and Others*, and decision of this Court in *Pramod Murlidhar Jagtap and Etc. Vs. State of Maharashtra and Others*, .

6. Shri Tajne, learned Counsel for the Respondent Nos. 2 and 4, on the other hand, has submitted that the Petitioners have tendered their resignations voluntarily. The resignations were tendered to the competent Authority as prescribed under the Rules framed in this regard. As per Rules of 1962 so also Rules of 1965, resignation needs to be delivered to the Block Development Officer, if the person tendering resignation is a member of the Panchayat Samiti. The Petitioners submitted their resignations to the Block Development Officer, who is designated as a competent Authority to receive resignations as per Rule 2 of the Rules of 1962 and Rule 3 of the Rules of 1965. It is, therefore, contended that challenge raised by the Petitioners on this count cannot be sustained in law.

7. Shri Tajne has further submitted that as per Rules 4 and 5 of the Rules of 1962, resignation shall be effective from the 7th day and before such date, resignation can be withdrawn by submitting letter of withdrawal by the person tendering such resignation. However, the Petitioners did not submit any letter of withdrawal of their resignations since they never intended to withdraw their resignations and, therefore, the provisions of Rules 4 and 5 of the Rules of 1962, in the present case, are neither attracted nor applicable.

8. Shri Tajne has further submitted that intention of framing Rules of 1965, particularly in relation to delivery of notice of resignation was to ascertain and determine whether the resignation tendered by the Member of Panchayat Samiti is voluntary. However, only the formal procedure in this regard is prescribed in the Rules of 1962 as well as Rules of 1965. It is contended that resignation can be delivered by registered post with acknowledgment due or personally by a person duly authorized in writing in this behalf by the person, who gives resignation. It is further contended that since there are different modes of submission of resignation, the contention of the Petitioners in this regard is misconceived. It is submitted that acknowledgment of receipt of the resignation, no doubt, is required to be issued in 'Form II', however, in the present case, resignations have been delivered personally by the Petitioners and signatures of the Petitioners on the said resignations are not disputed. It is submitted that resignations were submitted by the Petitioners in 'Form I' and endorsement of Respondent No. 2 on the same virtually amounts to issuance of acknowledgment in 'Form II' as prescribed under the Rules of 1965. It is, therefore, contended that contentions canvassed by the learned Counsel for the Petitioners are devoid of substance and the impugned communication is sustainable in law.

9. Shri Padhey, learned Counsel for the Respondent No. 3, has submitted that the Petitioners have not disputed the fact of tendering resignations. It is contended that it is not the case of the Petitioners that the resignations do not

bear their signatures or they were submitted by some other persons not authorized by them. On the contrary, in para (5) of the petition, the Petitioners have admitted that resignations were submitted in proper format and same were also addressed to the appropriate authority. Hence, from pleadings of the Petitioners, the following facts emerge:

- (i) the Petitioners in fact intended to tender their resignations,
- (ii) They also intended to submit it in proper format,
- (iii) the same were also intended to be tendered to the appropriate Authority.

It is submitted that all the above referred circumstances show that the Petitioners not only intended to resign, but in fact, tendered their resignations, which were voluntary and, therefore, Chairman of Panchayat Samiti was justified in accepting the same. Hence, the impugned action is sustainable in law.

10. Shri Tajne, learned Counsel for Respondent Nos. 2 and 4, and Shri Padhey, learned Counsel for Respondent No. 3, have taken a preliminary objection about maintainability of the petition on the ground that the Petitioners have suppressed material facts and, therefore, petition is liable to be dismissed. They have also prayed for dismissal of the petition at the threshold since the Petitioners have not paid requisite Court fee. It is submitted that since Petitioners are claiming different reliefs individually, they ought to have paid the Court fee separately for each Petitioner. The relief claimed by the Petitioners is not a common relief and, therefore, petition be dismissed for want of requisite Court fee.

11. We have given anxious thought to the various contentions canvassed by the respective Counsel for the parties. The issue involved in the petition needs to be considered in the light of the various provisions of the Act of 1961 and the Rules of 1962 and 1965.

12. Section 60 of the Act of 1961 provides the procedure for tendering resignation as Member of Panchayat Samiti and to whom it should be addressed and handed over. Section 60 contemplates that any member of Panchayat Samiti may resign his office by writing under his hand addressed to the Chairman of Panchayat Samiti and on tendering such resignation as per the procedure stipulated in Section 60 by the member of the Panchayat Samiti, the office of such member shall become vacant. Rule 3 of the Rules of 1962 stipulates that letter of resignation by the member of Panchayat Samiti shall be tendered to the appropriate Authority, i.e. Chairman of Panchayat Samiti as mentioned in Rule 2(b)(iv) of the Rules of 1962 either by delivering it personally or through any person duly authorized by him in this behalf or by registered post acknowledgment due. Similarly, Rule 6(1) of the Rules of 1962 stipulates that on receipt of letter of resignation, the appropriate Authority, i.e. Chairman of Panchayat Samiti shall forthwith acknowledge the same and such acknowledgment shall specify the time and date on which the letter of resignation was received. Rule 6(2) makes it obligatory on the appropriate

Authority to inform the person tendering the resignation, in writing by registered post, acknowledgment due, the date from which resignation shall become effective under Rule 4. Rule 4(1) of the Rules of 1962 contemplates that resignation tendered under Rule 3 shall take effect from the seventh day from the date on which it is received by the appropriate Authority.

13. In the instant case, it is not in dispute that the Petitioners are alleged to have submitted their resignations to Block Development Officer, Panchayat Samiti, Mahagaon and not to the Chairman of Panchayat Samiti as required under Rule 3 of the Rules of 1962. Rule 3(1) requires that letter of resignation by the member of Panchayat Samiti shall be tendered to the appropriate Authority, i.e. Chairman of Panchayat Samiti by delivering it personally or through any person duly authorized by him in this behalf. It is also not in dispute that letters of resignation were not delivered by the Petitioners personally or through any person duly authorized by them to the appropriate Authority, i.e. Chairman of Panchayat Samiti and these letters of resignation were handed over to the Block Development Officer and, therefore, tendering of alleged resignations by the Petitioners is not in conformity with Rule 3(1)(i) of the Rules of 1962. It is no doubt true that Section 3(1)(ii) of the Rules of 1962 also provides tendering of letter of resignation by the member to the Chairman by registered post acknowledgment due. However, in the instant case, this contingency does not arise since alleged letters of resignation were delivered personally by the Petitioners not to the Chairman, but to the Block Development Officer and, therefore, procedure adopted by the Petitioners for tendering their letters of resignation is in violation of the mandatory procedure stipulated in Rule 3(1) of the Rules of 1962.

14. It is the stand of the Respondents that since letters of resignation were addressed to the Chairman, Panchayat Samiti, though personally delivered to the Block Development Officer by the Petitioners, which were duly endorsed and acknowledged, it was not necessary to issue further acknowledgment in this regard. Rule 6(1) of the Rules of 1962 makes it obligatory that on receipt of letter of resignation, the appropriate Authority, i.e. Chairman shall forthwith acknowledge the same and such acknowledgment shall specify the time and date on which the letter of resignation was received. The Respondent No. 3 has also not followed this mandatory procedure. The stand taken by the Respondent No. 3 is that since resignation letters were handed over personally by the Petitioners and same were duly endorsed, it was not necessary for the Respondent No. 3 to issue such acknowledgment in this regard. It is not in dispute that the Respondent No. 3 has not issued acknowledgment specifying the time and date on which letters of resignation were received. Similarly, it was mandatory for the Respondent No. 3 in view of Rule 6(2) of Rules of 1962 after acknowledgment of letter of resignation is issued as contemplated under Rule 6(1), to inform the person tendering resignation, in writing by registered post, acknowledgment due, the date from which resignation shall become effective under Rule 4, which contemplates that the resignation tendered under Rule 3 shall take effect from

the seventh day from the date on which it is received by the appropriate Authority. The Respondent No. 3 has not followed this mandatory procedure. No information was given to the Petitioners by the Respondent No. 3 as required under Sub-rule (2) of Rule 6 of Rules of 1962. It is, therefore, clear that Respondent No. 3 has violated the mandatory procedure stipulated in Sub-rule (2) of Rule 6 of the Rules of 1962.

15. In the instant case, the letters of resignation were alleged to have been tendered by the Petitioners on 23/12/2010 and Respondent No. 3 gave effect to them from the same date, i.e. 23/12/2010. This act of the Respondent No. 3 is in complete violation of Rule 4(1) of the Rules of 1962, which contemplates that resignation tendered under Rule 3 shall take effect from the seventh day from the date on which it is received by the appropriate Authority. It is, therefore, evident that resignations alleged to have been tendered by the Petitioners were not as per mandatory procedure stipulated in Rule 3(1) of the Rules of 1962. The Respondent No. 3 also did not follow another mandatory procedure stipulated in Rule 6(1)(2) as well as Rule 4(1) of the Rules of 1962. There cannot be any quarrel with the proposition that when an obligation is created by the statute to perform an act in the manner as provided under the said statute, then in case of its non performance, the effect would be that the action taken by the Authority would be rendered invalid in law. In the instant case, it is difficult for us to hold that submission of resignations by the Petitioners and acceptance thereof by the Respondent No. 3 not being in conformity with Rules 3(1), 4(1) and 6(1) and (2) of the Rules of 1962, the office of the member of Panchayat Samiti shall become vacant and, therefore, the impugned communication is unsustainable in law.

16. Section 60 of the Act of 1961 also provides that member of Panchayat Samiti shall deliver notice of resignation in the manner prescribed. Rule 3(2) of the Rules of 1965 provides that every notice of resignation shall be in 'Form I' and shall be delivered by registered post, with acknowledgment due, or personally or through any person duly authorized in writing in this behalf by the person, who gives such notice of resignation and shall be delivered to the Block Development Officer. Rule 3(3) of the Rules of 1965 makes it mandatory for the Authority to which such notice is delivered to forthwith issue acknowledgment of receipt of such notice and such receipt must be in 'Form II'. In the instant case, the Respondents have given complete go-bye to the mandatory procedure stipulated in these Rules. Though learned Counsel for Respondent No. 3 has contended that merely because notice of resignation submitted by the Petitioners in the format similar to 'Form I', that by itself would not render the act of submission of letters of resignation by the Petitioners invalid in law and though receipt thereof is not issued by the Authority in 'Form II', the same also does not render the resignation letters voluntarily submitted by the Petitioners invalid in law, after perusing the letter of resignation, it is difficult for us to agree with the stand taken by the learned Counsel for the Respondent No. 3. We reiterate that if statute requires certain acts to be done in a particular manner, which is mandatory in nature, failure to comply with such mandatory procedure

undoubtedly would render such act of the Authority invalid in law.

Even otherwise, the procedure for submission of letter of resignation and acceptance thereof by the Respondent No. 3 as stipulated in the Act of 1961 and the Rules of 1962 and 1965 is in the form of check and balance to ascertain whether the letter of resignation submitted by the member of Panchayat Samiti is voluntary and acceptance thereof is valid in law. If submission of letter of resignation is not in conformity with the procedure stipulated in the Act and Rules applicable in this regard, then it may in a given case, would mean that it is not tendered voluntarily. Similarly, if acceptance thereof by the Authority is not in conformity with the procedure stipulated in the Act and Rules applicable in this regard as required to be followed by the said Authority, the act of acceptance would not be valid in law. In the instant case, neither the Petitioners submitted letters of their resignation as per procedure prescribed nor acceptance thereof is in conformity with the procedure applicable in this regard and, therefore, the impugned communication, in our view, cannot be sustained in law.

17. The contention canvassed by the learned Counsel for the Respondents that the Petitioners did not withdraw the letters of resignation within seven days from the date of tendering the same in view of Rule 4(1) of the Rules of 1962 and, therefore, the Respondent No. 3 was justified in holding that the Petitioners wanted Respondent No. 3 to act upon those letters of resignation by accepting them is misconceived. In the instant case, tendering of letters of resignation and acceptance thereof being completely in violation of the mandatory procedure stipulated in the Act of 1961 and the Rules of 1962 and 1965, it is difficult for us to hold that either the letters of resignation tendered by the Petitioners can be treated to be valid or their acceptance thereof by the Respondent No. 3 was as per mandatory procedure stipulated in this regard. If the letters of resignation cannot be treated to be valid being inconsistent with the mandatory procedure applicable in this regard, merely because the Petitioners failed to withdraw such letters of resignation does not render the action of Respondent No. 3 of accepting such letters of resignation valid since the same is not in conformity with the provisions of the Act of 1961 and the Rules of 1962 and 1965.

18. The preliminary objection raised by the learned Counsel for the Respondent No. 3 in view of allegation of Petitioners about forging of documents by Respondent No. 3 being a disputed question of fact, it cannot be gone into in exercise of jurisdiction under Article 226 of the Constitution and, therefore, preliminary objection raised by the Respondent No. 3 is rejected.

19. So far as preliminary objection raised by the learned Counsel for the Respondent Nos. 2 to 4 about non-payment of Court fee separately by the Petitioners is concerned, the Petitioners have challenged the common communication issued by the Respondent No. 2 Block Development Officer, Panchayat Samiti Mahagaon to the Collector whereby it was informed that Chairman of Panchayat Samiti has accepted the resignations tendered by the Petitioners, which has resulted in causing six vacancies and, therefore,

appropriate steps to fill up the same be taken. There are no individual orders passed in the case of each Petitioner and the challenge, which is raised, is to the common communication issued by the Respondent No. 2, which only shows that six vacancies are created due to acceptance of resignation letters by the Respondent No. 3. It is in this context, we are of the view that the preliminary objection raised by the Respondent Nos. 2 to 4 is not sustainable in law.

20. For the reasons stated hereinabove, acceptance of letters of resignation of the Petitioners by the Chairman of Panchayat Samiti (Respondent No. 3) is in violation of the Act of 1961 and the Rules of 1962 and 1965, hence, it is bad in law and, therefore, the impugned communication dated 23/12/2010 issued by the Respondent No. 2 also cannot be sustained in law and hence, the same is quashed and set aside.

21. The rule is made absolute in the above terms.

No order as to costs.