

(2012) 09 BOM CK 0040

In the Bombay High Court

Case No : Writ Petition No. 2046 of 2012

Kishor Tanaji Kharat and Others

APPELLANT

Vs

The Divisional Commissioner and Others

RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 10, 11, 12, 13, 14
Limitation Act, 1963 — Section 10, 11, 12, 13, 14

Citation : (2013) 2 ALLMR 544 : (2013) 1 MhLj 838

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

Bench : Single Bench

Advocate : D.P. Palokar, for the Appellant; S.D. Kaldate, AGP for Respondent Nos. 1 and 2, Mr. D.R. Kale, Advocate for Respondent No. 3, Mr. U.B. Bondar, Advocate for Respondent No. 4 and Mr. P.S. Shinde, Advocate, for the Respondent

Judgement

R.M. Borde, J.—Heard. Rule. Rule made returnable forthwith. With the consent of the parties, petition is taken up for final disposal at admission stage.

2. Petitioners are members of Village Panchayat Dahegaon, Tq. Gangapur, Dist. Aurangabad. Respondent no. 5 was elected as Sarpanch of Village Panchayat, however, she tendered resignation on 4-11-2011 to the Chairman of the Panchayat Samiti, Gangapur. Panchayat Samiti, Gangapur, directed to place the resignation for verification in the meeting of Village Panchayat. Accordingly, meeting of Village Panchayat was convened on 29-11-2011 and the resignation tendered by respondent no. 5 was accepted in her presence as well as in the presence of her husband who was also member of Village Panchayat. Respondent no. 5 presented dispute to the Additional Collector, Aurangabad, on 19-12-2011 objecting validity of acceptance of resignation. Alongwith dispute, she tendered application seeking condonation of delay in filing dispute. It is the contention of respondent no. 5 that infact she has not tendered resignation. Some blank papers were handed over by her to Sk. Kalim Sk. Fakir and Shrimant Raibhan Chape who have mis-used the same and prepared resignation letter fraudulently. It is also her contention that verification of resignation was conducted in her

absence. Although she attended the meeting on 29-11-2011, since she was not keeping good health, she left the meeting before consideration of her alleged resignation by members present in the meeting. She was admitted in hospital at Bombay and after returning back she got knowledge in respect of alleged resignation and its acceptance. Respondent no. 5 thus contends that delay occurred in presenting the dispute deserves to be condoned. Additional Collector, Aurangabad, who heard the matter opined that delay occurred in presenting the dispute is not liable to be condoned since the provisions of section 5 of the Limitation act are not applicable and, as such, proceeded to reject the application by order dated 22-12-2011. Being aggrieved by the judgment and order passed by the Additional Collector, Aurangabad, on 22-12-2011, respondent no. 5 presented appeal u/s 29(4) of the Bombay Village Panchayats Act, 1958, before the Divisional Commissioner, Aurangabad who allowed the same by order dated 13-2-2012 thereby remitting the matter back to the Additional Collector for reconsideration. The Divisional Commissioner in his order has observed that delay occurred in tendering the dispute is of a very short duration and therefore, the Sarpanch needs to be extended an opportunity of hearing. Judgment and order passed by the Additional Commissioner, Aurangabad is subject matter of challenge in this petition.

3. Heard arguments advanced by learned counsel for respective parties. Mr. Palodkar, learned counsel for petitioners contends that dispute contemplated u/s 29(4) of the Bombay Village Panchayat act is not in the nature of a suit and the Collector, considering the dispute is not a Court and as such, provisions of Limitation Act are not applicable. It is further contended by learned counsel for petitioner that Bombay Village Panchayat Act is a complete code in itself and applicability of provisions of Limitation act, more specifically, sections 4 to 24 of the said Act, are excluded. Learned counsel for respondents contend that in view of section 29(2) of the Bombay Village Panchayat Act, provisions of sections 4 to 24 of Limitation act are applicable and the Commissioner was justified in allowing the appeal. Section 29 of the Bombay Village Panchayat act provides for resignation of member and dispute regarding resignation. It reads thus:

29. Resignation of member and disputes regarding resignation:-

(1) Any member who is elected may resign his office by writing under his hand addressed to the Sarpanch and the Sarpanch may resign his office of member by writing under his hand addressed to the Chairman of the Panchayat Samiti. The resignation shall be delivered in the manner prescribed.

(2) On receipt of the resignation under sub-section (1), the Sarpanch or, as the case may be, the Chairman of the Panchayat Samiti shall forward it to the Secretary who shall place it before the meeting of the Panchayat next following.

(3) If any member or the Sarpanch whose resignation is placed before the meeting of the Panchayat wants to dispute the genuineness of the resignation, he shall refer such dispute to the Collector within seven days from the date on

which his resignation, is placed before the meeting of the Panchayat. On the receipt of dispute, the Collector shall decide it, as far as possible, within fifteen days from the date of its receipt.

(4) The member or Sarpanch aggrieved by the decision of the Collector may, within seven days from the date of receipt of the Collector's decision, appeal to the Commissioner who shall decide it, as far as possible, within fifteen days from the date of receipt of the appeal.

(5) The decision of the Collector, subject to the decision of the Commissioner in appeal, shall be final.

(6) The resignation shall take effect

(a) where there is no dispute regarding the genuineness, after the expiry of seven days from the date on which it is placed before the meeting of the Panchayat;

(b) where the dispute is referred to the Collector and no appeal is made to the Commissioner after the expiry of seven days from the date of rejection of the dispute by the Collector;

(c) where an appeal is made to the Commissioner, immediately after the appeal is rejected by the Commissioner.

4. On perusal of provisions of section 29 of the Bombay Village Panchayat Act it transpires that a Sarpanch may resign his office by submitting in writing under his hand and addressed to the Chairman of the Panchayat Samiti and the Chairman of the Panchayat Samiti is supposed to forward the resignation to the Secretary who is required to place the same before the next meeting of the Panchayat Samiti. The resignation of Sarpanch is required to be verified in the meeting of the Panchayat and, if the Sarpanch raises dispute in respect of genuineness of the resignation, the dispute is to be referred to the Collector within seven days from the date on which resignation is placed before the meeting of Panchayat. Section 29(6) provides that resignation takes effect where no dispute is raised regarding genuineness of the same, after expiry of period of seven days from the date on which it is placed before the meeting of Panchayat. In the instant matter, resignation has been tendered by Sarpanch on 4-11-2011. It was placed before the meeting of the Panchayat on 29-11-2011 and the same was verified and accepted. Limitation provided u/s 29(4) of the Act expires on 6-12-2011. Respondent no. 5/Sarpanch, however, tendered dispute before the Collector on 19-12-2011 which is obviously beyond the prescribed period of limitation. In view of section 29(6) of the Act, resignation tendered by respondent no. 5 becomes operative since 6-12-2011 and challenge raised thereto after 6-12-2011 is redundant. In this context, reliance can be placed on a Division Bench judgment in the matter of Shrikant Mallappa Ulegadi Vs. Gram Panchayat at Mouje Kadgaon, . The question that was posed before the Division Bench is when member of Gram Panchayat signed and sent notice of resignation

in the prescribed form, whether his resignation took effect and he ceased to be a member of the Gram Panchayat. It was held by the Division Bench that where there is no dispute regarding genuineness of the resignation, the resignation shall take effect after expiry of seven days from the date on which it is placed before the meeting of the Panchayat and the fact that dispute is raised thereafter does not arrest consequence laid down u/s 29(6) of the Act. It is observed in paragraph no. 3 of the judgment thus:

3. The petitioner having sent the notice of resignation voluntarily, disputed the same for the first time on 1st February 1985 i.e. more than seven days after it was actually delivered to the Gram Panchayat. Sub-section (3) of Section 29 provides that if any member or the Sarpanch whose resignation is placed before the meeting of the Panchayat, wants to dispute the genuineness of the resignation, he shall refer such dispute to the Collector within seven days from the date on which his resignation is placed before the meeting of the Panchayat. Sub-section 6(a) further provides that where there is no dispute regarding the genuineness, the resignation shall take effect after the expiry of seven days from the date on which it is placed before the meeting of the panchayat. The notice of resignation was received on 15-11-985 and it was placed before the meeting on 28-1-1985. He did not raise any dispute before the Gram Panchayat. When no such dispute is raised as laid down u/s 6, the resignation takes effect after the expiry of seven days from the date on which it is placed before the meeting of the panchayat. The fact that he has raised the dispute on 1st February 1985, does not arrest the consequence laid down u/s 6.

Considering the ratio laid down by the Division Bench in the judgment cited supra, resignation tendered by respondent no. 5/Sarpanch, in the instant matter, takes effect after expiry of period of limitation i.e. since 7-12-2011.

5. So far as question of applicability of provisions of section 5 of Limitation Act is concerned, it shall have to be borne in mind that Bombay Village Panchayat Act is a complete code in itself and in the absence of any reference under the special law, applicability of provisions of Limitation act is excluded. In this context, reliance can be placed on a judgment in the matter of Shri Umesh Tukaram Kamble and Others Vs. Shri Shamrao Sakharam Patil and Others, . In the reported matter, challenge was raised in respect of validity of election to Panchayat. Petition was presented beyond prescribed period of limitation i.e. 15 days as prescribed by section 15(1) of Bombay Village Panchayat Act. While considering the question as regards applicability of provisions of section 5 of Limitation Act, the learned Single Judge of this Court in paragraph no. 13 of the judgment has observed thus:

13. The State Legislature while enacting the provisions of the Bombay Village Panchayats Act, 1958, legislated a specified period of limitation for challenging the validity of an election. An application to question the validity of the election of a member of a Panchayat has to be brought within 15 days after the date of the declaration of the result of the election. The object underlying the

prescription of this period is that electoral disputes must be brought to adjudication on an expeditious basis. In a democracy, disputes in regard to the validity of elections must be resolved at the earliest. The necessity for repose is a matter of public policy. The resolution of electoral disputes cannot be relegated to an uncertain future. Elected representatives must be left unhindered in their task of governing. Section 15A furthers this object by enunciating that no election to a Panchayat shall be called in question except in accordance with the provisions of section 15 and no Court other than the Judge referred to in that section shall entertain any dispute in respect of such an election. Section 15 makes detailed provisions in regard to the manner in which the validity of an election will be determined by the Judge and in respect of the procedure which is to be followed. Sub-section (2) of section 15 undoubtedly provides that for the purposes of the enquiry, it is open to the Judge to exercise all the powers of a Civil Court. That however, refers to an enquiry upon which, as sub-section (2) provides, the Judge proceeds to pass an order confirming or amending the declared result or setting the election aside. In other words, sub-section (2) contemplates an election petition which is instituted within the prescribed period of fifteen days. The powers of the Civil Court that are conferred upon the Judge by sub-section (2) of section 15 cannot, by any logic, be extended to condonation of delay in bringing the election petition within the prescribed period of fifteen days from the date of the declaration of the result. A construction that would be opposed to the mandate of sub-section (1) and which would negate the underlying object of prescribing a period of limitation of fifteen days must be eschewed. In these circumstances, the provisions of section 5 and the underlying object lead to the conclusion that the applicability of the provisions of section 5 of the Limitation Act, 1963 stands expressly excluded by absence of an express reference under the special law, it is open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject matter and the scheme of the special law exclude their operation. The nature of the provisions contained in section 15(1), the nature of the subject matter and the scheme of the special law in the present case exclude the application of section 5 of the Limitation Act, 1963.

On perusal of the judgment cited supra, it is evident that applicability of provisions of Limitation Act is excluded so far as presentation of dispute challenging validity of election u/s 15 of the Bombay Village Panchayat Act is concerned. In similar fashion, it is required to be held that applicability of provisions of Limitation Act also stands excluded in respect of dispute u/s 29(4) of the Bombay Village Panchayat Act. It is also to be taken note of that the Collector deciding the dispute is not a Court but is an authority and as such the provisions of Limitation Act cannot be made applicable. In this context, reliance can be placed on a judgment delivered by learned Single Judge of this Court in the matter of Prabhakar Sabaji Kandalkar Vs. Tahsildar, Sangamner and Others, . It is recorded in paragraph no. 12 of the judgment thus:

12. The scheme of the Indian Limitation Act is that it only deals with the

application pending before the Courts. The word "Court" in section 5 of the Limitation Act, 1963 signifies a "Court" in stricto sensu. The quasi judicial tribunal and executive authorities are not "Courts". The authority referred in sub-section (3B) of section 35 of the Act of 1956 is not the Court. The dispute contemplated under sub-section (3B) of section 35 of the Act of 1958 is not a proceeding in the Court. Therefore, it prima facie appears to me that the provisions of section 5 of the Limitation Act, 1963 read with section 29 sub-clause (2) of the aforesaid Act are not attracted to the facts of the present case.

It is thus clear that the Collector acting under the provisions of Bombay Village Panchayat Act is not a Court and as such provisions of Limitation Act cannot be made applicable to the proceeding before the Collector.

6. In view of the reasons recorded above, I am of the view that the Commissioner has committed serious error in allowing the appeal presented by respondent and remitting the matter back to the Additional Collector for reconsideration. Order passed by the Divisional Commissioner, Aurangabad on 13-3-2012 is illegal and deserves to be quashed and set aside and the same is accordingly quashed and set aside. Rule is made absolute. In the facts and circumstances of the case, there shall be no order as to costs. Pending civil application, if any, does not survive and stands disposed of.