
(2016) 11 BOM CK 0080
In the Bombay High Court
Case No : Writ Petition No. 10757 of 2016

Mahadeo Gopala Ghogare

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 23-11-2016

Acts Referred:

Bombay Village Panchayats Act, 1959 — Section 29(3), Section 29(4)
Constitution of India, 1950 — Article 226

Citation : (2017) 3 AIRBomR 350 : (2017) 2 ALLMR 729 : (2017) 2 BCR 111 :
(2017) 2 MhLJ 350

Hon'ble Judges : T.V. Nalawade, J.

Bench : Single Bench

Advocate : Mr. A.S. More h/f Mr. S.L. Bhapkar, Advocates, for the Petitioners; Mr. S.K. Tambe, A.G.P, for the Respondent Nos. 1 and 2; Mr. H.D. Deshmukh, Advocate, for the Respondent Nos. 4 to 6

Final Decision : Allowed

Judgement

T.V. Nalawade, J. (Oral) - Rule. Rule made returnable forthwith. Heard both sides by consent for final disposal.

2. The present proceeding is filed to challenge the order made by Additional Collector in Dispute Application No. 85 of 2016 which was pending before the Additional Collector, Ahmednagar. Said dispute application was filed by present Respondent No.4 ? Vandana Gaware ? Sarpanch of Village Panchayat, Kokangaon, Tahsil Karjat, District Ahmednagar. She had raised the dispute that resignation of her post was not genuine. The dispute application is allowed by Collector.

3. The present proceeding is filed by six members of the village panchayat to challenge the decision of the Additional Collector and the decision is challenged only on the ground that the dispute application itself was not filed within the prescribed period of seven days.

4. Learned Counsel for Respondent No.4 ? Sarpanch submitted that appeal is available to challenge the decision given by Additional Collector in view of Section 29(4) of the Maharashtra Village Panchayats Act, 1959 and so present proceeding cannot be entertained.

5. Firstly this Court would like to deal with the objection taken by learned Counsel for Sarpanch about the tenability of present proceeding. The entire provision of Section 29 needs to be considered in this regard and it reads as under :

" 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 subsection (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 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."

6. Section 29(3) shows that the member or Sarpanch who has tendered resignation and whose resignation was placed before the meeting of panchayat is

entitled to file dispute within seven days from the date on which the resignation was placed before the meeting of panchayat. This right of filing dispute is given only to "the member" or "the Sarpanch" who had tendered the resignation. Provision of Section 29(4) again shows that the terms "the member" and "Sarpanch" are used and it is made clear that if the member or the Sarpanch is aggrieved by the decision of the Collector he may file appeal before the Commissioner. This point was considered by the Division Bench of this Court though this point was not squarely involved, in the case reported as 2002(4) All. M.R. 741 (Kavita Sakharam Chavan and Others v. Commissioner, Kokan Division, Navi Mumbai and Others). In that case the facts were little bit different. Four members of village panchayat had tendered resignations and they had accepted in the meeting of village panchayat that they had resigned from their posts. The village panchayat was then dissolved as there were not 50% of the members available and this decision was then challenged by Sarpanch. Thus the decision of dissolution of village panchayat was in dispute and in that proceeding contention was made by Sarpanch that the proceeding could have been filed under Section 29(4) to challenge the resignation. In response to that submission, the Division Bench held that members who had tendered resignation had themselves admitted that they had resigned and so there was no question of filing any proceeding after the meeting. This decision was referred by Single Judge of this Court in the case reported as 2003(2) All.M.R. 640 (Smt. Pushpa Pundlik Salame v. Additional Commissioner and Others). In that case, the learned Single Judge interpreted the aforesaid provision by using observations made by the Division Bench and held that if the proceeding is decided in favour of member or Sarpanch who had filed dispute, the other side cannot challenge that decision by filing appeal before the Commissioner. This Court holds that such interpretation needs to be accepted in view of wording of Section 29 which is already quoted. Thus appeal was not available before the Commissioner against the decision of the dispute given by the Collector and so it cannot be said that present petition cannot be entertained.

7. On the point of limitation, it can be said that the meeting of village panchayat was held on 26th September, 2016 which was Monday. The first day of the meeting i.e. 26th can be excluded for counting statutory period of seven days given under Section 29(3). If that day is excluded, then seventh day falls on 03rd October, 2016. On 3rd October, 2016 it was Monday and so it was the last day for filing dispute as provided under Section 29(3) of the Act. However, admittedly the dispute was filed on 04th October, 2016. Thus within the statutory period, the dispute was not filed by the Sarpanch but the dispute was entertained and allowed by the Collector.

8. On the point of limitation, learned Counsel for present petitioner placed reliance on case reported as 1986 Mh.L.J. 514 (Shrikant Mallappa Ulegadi v. Gram Panchayat at Mouje Kadgaon and Others). In this case the Division Bench of this Court has considered the provision of Section 29(1), (3) and (6) of the aforesaid Act and it is held that the resignation tendered becomes effective on

completion of seven days after the meeting and any dispute raised thereafter is of no use. In other case decided by learned Single Judge of this Court reported as 2013(7) Bom.C.R. 865 (Kishor Tanaji Kharat and Others v. Divisional Commissioner and Others), this Court has reiterate the aforesaid position of law.

9. Learned Counsel for respondent ? Sarpanch placed reliance on case of this Bench reported as 2006(6) Bom.C.R. 595 (Ravindra Bhaskar Lumpataki v. Chairman and Others). The facts of that case were totally different and observations were in different context. The said case is not on the point of limitation. In the present case, as the dispute was not filed within seven days. In view of provisions of Section 29(3) and 29(6) of the Act, it needs to be presumed that after completion of seven days from the date of meeting of village panchayat, the resignation had become effective. Thus the dispute itself could not have been entertained and allowed by the Collector.

10. In the result, the petition is allowed. The decision given by the Collector in the aforesaid dispute application is hereby set aside and dispute application stands rejected as it was not filed within the statutory period of seven days. Rule made absolute in the aforesaid terms.