
(2015) 02 BOM CK 0084
In the Bombay High Court
Case No : Writ Petition No. 358 of 2015

Manjulabai Govind Dhumal	Vs	APPELLANT
The Collector and Others		RESPONDENT

Date of Decision : 13-02-2015

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 29, 29(1), 29(3)

Citation : (2015) 4 ABR 684 : (2015) 4 ALLMR 361 : (2015) 3 BomCR 462 :
(2015) 3 MhLj 565

Hon'ble Judges : R.V. Ghuge, J.

Bench : Single Bench

Advocate : M.K. Bhosle, Advocate holding for P.V. Barde, for the Appellant; K.M. Suryawanshi, A.G.P., Advocates for the Respondent

Final Decision : Dismissed

Judgement

R.V. Ghuge, J.—Heard. Rule. Rule made returnable forthwith and heard finally by consent of the parties.

2. The grievance raised by the petitioner in this petition is that a "no confidence" motion was passed against her and such Village Panchayat members, who had resigned as members, had voted in the said special meeting in favour of the motion.

3. The petitioner was the Sarpanch of Grampanchayat Kantekur, Taluka Omerga, District Osmanabad. There are eight members elected to the said Village Panchayat besides the Sarpanch (in all nine members).

4. On 22-08-2014, the respondent Nos. 3 to 7 (five members) resigned as members of the Grampanchayat by submitting their resignations to the petitioner. However, on 10-09-2014, the respondent Nos. 3 to 9, members of the Grampanchayat submitted a requisition to the Tahsildar declaring their intention to introduce a "no confidence" motion against the petitioner. The five members who had tendered their resignation, had also signed the requisition.

5. On 11-09-2014, the Tahsildar issued a notice for convening a special meeting on 16-09-2014 in accordance with Section 35 of the Maharashtra Village Panchayat Act (MVP Act). On 12-09-2014, the petitioner informed the Tahsildar that five members have resigned and, therefore, the special meeting be cancelled.

6. On 15-09-2014, the petitioner moved an application to the Collector requesting him to disqualify one of the members Mahesh Birajdar on the ground that he has three children. On 16-09-2014, resignation of one of the members Sandhya Kulkarni was forwarded by the petitioner to the Tahsildar.

7. The special meeting was convened on 16-09-2014 and the motion was carried by 7 : 2 vote count.

8. The grievance of the petitioner is that five members of the Village Panchayat had resigned and, therefore, they were disentitled from attending the meeting, participating in the business transacted in the meeting and thereby voting on the "no confidence" motion.

9. Learned A.G.P. Shri K.M. Suryawanshi appearing on behalf of respondent Nos. 1 and 2 and the learned Advocate appearing on behalf of respondent Nos. 3 to 10 have opposed the petition. Their contention is that though respondent Nos. 3 to 7 had tendered their resignations to the petitioner, the same was never forwarded to the Tahsildar and no meeting was convened for considering the said resignations. Any resignation given by a member indicates the intention to resign. However, the said member can withdraw the resignation prior to its acceptance.

10. It is submitted that till the date of moving the requisition on 10-09-2014, the petitioner did not place the resignations for the consideration of the Grampanchayat. Until resignations are accepted, the members of the Grampanchayat would continue to occupy their position and are not precluded from discharging their functions only on the ground that the resignation has been submitted. The role of respondent Nos. 3 to 5 as members of the Grampanchayat would end only after their resignations are accepted. It is therefore, submitted that the petition is devoid of merits and deserves to be dismissed.

11. The contentions of the petitioner need to be tested in the light of the Maharashtra Village Panchayats Act, 1963 (MVP Act) and the Rules framed thereunder. Section 29 of the MVP Act 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 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 on 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]."

12. It, therefore, flows from Section 29(1) of the MVP Act that any member who is elected, may resign by submitting a resignation to the Sarpanch. Section 29(2) of the MVP Act indicates that the Sarpanch, upon receipt of the resignation, shall forward it to the of the Grampanchayat and shall place it before the next meeting of the Panchayat. It is undisputed that the meeting convened for considering the "no confidence" motion under Section 35(2) of the MVP Act is a special meeting meant only for the purpose of considering the "no confidence" motion.

13. It flows from Section 29(3) that the resignation of a member when placed before the meeting of the Panchayat, is open to be disputed as regards its genuineness. If such a dispute is raised, the resignation shall be forwarded along with the dispute raised to the Collector within seven days from the date on which such resignation was placed before the meeting of the Panchayat. On receipt of the dispute, the Collector shall decide the dispute within fifteen days. Section 29(4) and 29(5) pertain to the decision of the Collector and an appeal therefrom to the Commissioner.

14. In Pushpa Salame Vs. Additional Commissioner and Others, , it has been held by this Court that the acceptance of resignation can be challenged only by

the concerned member / Sarpanch who has resigned. In the case of Kishor Tanaji Kharat and Others Vs. The Divisional Commissioner and Others, , it has been laid down that the resignation of the Sarpanch will have to be verified in the meeting of the Panchayat and if the Sarpanch raises a dispute, the same would be referred to the Collector within seven days from the date on which the resignation was placed in the meeting of the Panchayat.

15. In the case of Ravindra Lumpataki Vs. The Chairman, Panchayat Samiti, The Group-Gram Panchayat and The Additional Commissioner, Nashik Division, , this Court has observed that the expression "genuineness" of the resignation will have to be interpreted in wider terms. The resignation cannot become effective immediately on the date mentioned in the resignation letter.

16. In Shrikant Mallappa Ulegadi Vs. Gram Panchayat at Mouje Kadgaon, and in the case of Anil Kalgonda Patil, Sanjay Narasgonda Patil and Gopal Bhimrao Koli Vs. The Gram Panchayat and Others, , this Court has held that the resignation letter has to be placed in the meeting of the Grampanchayat. When no dispute is raised under Section 6 of the Act (Section 6 has been deleted by Maharashtra Act 21 of 1994), the resignation takes effect after the expiry of seven days from the date on which it was placed before the meeting of the Panchayat.

17. It would apposite to produce paragraph Nos. 2 and 3 of the Shrikant 's Judgment (supra) (Division Bench of this Court) as under :-

"2. Though there was some attempt to put up before the Collector a case that this notice was not sent voluntarily and knowingly, the petitioner having admitted before the Collector that he had in fact sent a notice of resignation voluntarily, it is not now open to him to raise that question in these writ proceedings. Once it is held that he has sent the notice of resignation, the only question that requires to be considered is whether it amounts to resignation within the meaning of Section 29(1) of the Bombay Village Panchayats Act, 1958? Section 29(1) does not speak of notice of resignation. It only provides that 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. It further provides that the resignation shall be delivered in the manner prescribed. The manner prescribed under the aforesaid rules is to send the resignation or the notice of resignation in Form-I prescribed under Rule 3(2). The notice sent by the petitioner, of course, does not state that he has tendered the resignation, but recites "I hereby tender the notice of my resignation from the office of Gram Panchayat." It must be noticed that the rules do not require a notice of resignation to be accompanied by any further letter of resignation. In other words, what is required of a person resigning is to sign the form and deliver it to the prescribed authority. Evidently where the person intends to resign forthwith he will say I am tendering resignation and where one intends to resign from a particular date gives notice of resignation. In either case, the form is the same, the intention is to resign and

the consequence is vacancy in the office. That requirement has been fulfilled and consequently petitioner shall be deemed to have resigned and cannot now dispute his resignation.

3. The petitioner having sent the notice of resignation voluntarily, disputed the same for the first time on February 1, 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 January 15, 1985 and it was placed before the meeting on January 28, 1985. He did not raise any dispute before the Gram Panchayat. When no such dispute is raised, as laid down under Section 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 February 1, 1985, does not arrest the consequence laid down under Section 6. In as much as no dispute was raised regarding the genuineness of the notice of resignation, either before the Gram Panchayat or before the Collector, the petitioner ceased to be a member of the Gram Panchayat. The resignation, therefore, took effect on the expiry of seven days. There is no merit in the writ petition. The petition is accordingly rejected."

(Emphasis supplied)

18. As such, it is apparent from Section 29(3) and the judgment in the case of Shrikant (supra) and Anil Kalgonda Patil and others (supra) that once an elected member resigns from his office by addressing a resignation to the Sarpanch of the Panchayat, the Sarpanch is under an obligation to forward it to the Secretary so as to be placed before the Panchayat in the next meeting.

19. The intent and object of the legislature is quite clear. In order to rule out any mischief or force, duress or coercion in relation to the resignation of a member or a Sarpanch, the said resignation is placed before the Panchayat wherein the author of the resignation has the liberty to dispute the resignation. It cannot be ruled out that such a member who has tendered his resignation, could withdraw the same before its acceptance by the Panchayat. If he raises a dispute as regards its genuineness, the same is then to be decided by the Collector.

20. In the light of the above, I have no hesitation in concluding that a resignation tendered by a member of the Grampanchayat or Sarpanch / Up-Sarpanch, shall not stand automatically accepted upon it being tendered. The said resignation will have to be placed before the Village Panchayat in a meeting and there cannot be a presumption of its acceptance. As such, the contention of the petitioner in

this case that the resignations of respondent Nos. 3 to 5 would preclude them from participating in the special meeting convened for considering "no confidence" motion, merely on the ground that the resignations have been tendered and therefore automatically accepted, is grossly misconceived.

21. The petitioner sat over the resignations submitted by respondent Nos. 3 to 7 and never placed them before the Panchayat. Consequentially, the said resignations were kept in dormant state. Had they been placed before the Panchayat, the consequences as regards their acceptance or any dispute raised by either of the member, would have followed. In view of the ratio laid down by this Court in the case of Pushpa w/o Pundlik Salame (supra) and Ravindra s/o Bhaskar Lumpataki (supra) and Shrikant Mallappa Ulegadi (supra), the resignations of respondent Nos. 3 to 7 were never accepted by the Grampanchayat and as such, their membership did not cease automatically.

22. In so far as the "no confidence" motion is concerned, the same has been passed by 3/4th majority as seven members out of the maximum nine members of the Grampanchayat have voted in favour of the "no confidence" motion.

23. In this fact situation, I do not find any merit in this petition and the same is, therefore, dismissed. Rule is discharged, no order as to costs.