
(2002) 11 BOM CK 0011
In the Bombay High Court
Case No : Writ Petition No. 2820 of 2002

Pushpa Salame

APPELLANT

Vs

Additional Commissioner and Others

RESPONDENT

Date of Decision : 27-11-2002

Acts Referred:

Bombay Village Panchayats Act, 1959 — Section 29(3), 29(4)

Citation : (2003) 2 ALLMR 640 : (2003) 2 BOMLR 544 : (2003) 1 MhLj 756

Hon'ble Judges : R.S. Mohite, J

Bench : Single Bench

Advocate : N.R. Saboo, for the Appellant; Anil Kilor, A.G.P., for the Respondent

Judgement

R.S. Mohite, J.—Rule. By consent rule is made returnable forthwith.

2. As respondent No. 2 has admittedly expired, advocate for the petitioner seeks leave to delete the name of respondent No. 2.

3. Leave granted. Respondent No. 2 be deleted.

4. Heard the parties. This writ petition challenges an order passed by the Additional Commissioner, Amravati Division by which the said Additional Commissioner has entertained an appeal filed by the Sarpanch of Nakhegaon Gram Panchayat against the order passed by the Additional Collector under the provisions of Section 29(4) of the Bombay Village Panchayats Act, 1958. After hearing the parties, I am inclined to allow this petition on the short ground that the Commissioner has no power to entertain an appeal u/s 29(4) as such appeal can only be filed by the Member or Sarpanch aggrieved by the decision of the Collector.

5. The reference to the word, "Sarpanch" in Section 29(4) is obviously to a Sarpanch who has resigned, as the provisions to Section 29(4) has to be read in harmony with the provisions of Section 29(1)(2) and (3). In the present case we were not concerned with the resignation of Sarpanch but with the resignation of

the Member. In such circumstance, the Sarpanch cannot file an appeal u/s 29(4) against the order of the Collector given u/s 29(3), and therefore, order given by the Commissioner has to be set aside as being without jurisdiction. I am fortified by the view taken by a Division Bench of this Court in the case of Uttamrao v. Village Panchayat 1991 Mh.L.J. 399 in which this Court has taken a view that under the provisions of Section 29 of the Bombay Village Panchayats Act, 1958, a right to challenge the acceptance of the resignation vests only in the Member or Sarpanch, who has resigned. Though this observation of this Court is in relation to Section 29(3) of the Act, in my opinion, the position as regards Section 29(4) of the Act can only be the same. The right to file a second appeal can only accrue to a Member or Sarpanch, who has resigned and who is aggrieved by the decision of the Collector, This interpretation of Section 29(4) of the Act would be in consonance with the scheme provided u/s 29 of the Act.

6. It has been contended on behalf of the respondents that the resignation of the petitioner has already taken effect since no appeal was filed before the Collector, within seven days. I am not inclined to make any observation regarding this submission in view of the fact that there is no prayer challenging the order of the Collector. It is clarified that the decision in this writ petition will not preclude any party from filing appropriate proceedings against the order of the Collector, if they so desire.

In the circumstances, rule is made absolute in terms of prayer Clause (i). There shall be no order as to costs.