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**(1986) 11 BOM CK 0023**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 203 of 1986**

Rajesh Jaiswal and Others

APPELLANT

Vs

Village Panchayat, Wadi

RESPONDENT

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**Date of Decision :** 24-11-1986

**Acts Referred:**

Bombay Village Panchayats Act, 1958 — Section 29

**Citation :** (1987) 1 BomCR 528

**Hon'ble Judges :** S.W. Puranik, J;G.G. Loney, J

**Bench :** Division Bench

**Advocate :** S.P. Dharmadhikar, for the Appellant; R.S. Deo, for the Respondent

**Final Decision :** Allowed

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## Judgement

S.W. Puranik, J.—The petitioners herein are the elected Members of the Village Panchayat, Wadi, having been elected in the elections held in the year 1984. The term of Office expires in the year 1989.

2. For some reason or the other the petitioners, seven in number, tendered resignations from the Panchayat Committee on 4-11-1985, before the Chairman of the Village Panchayat. Under the provisions of section 29 of the Bombay Village Panchayats Act, 1958 (for short the Act) if there is no dispute raised regarding the genuineness of the resignations, then the said resignation letters become effective seven days after the same are placed before the meeting of the Committee. In the present case, the resignation letters dated 1-11-1985, which were tendered on 4-11-1985 were in fact placed before the meeting of the Committee on 11-11-1985. The petitioners were present at the proceedings of the said meeting held on 11-11-1985. When the item regarding the scrutiny of the resignation letters was taken up, all the petitioners one after the other expressly stated that they have no intention to press for the resignation, and they also expressed that they are withdrawing the resignation letters. This fact has been recorded in the proceedings of the meeting, which are at Annexure-2 filed by the Village Panchayat.

3. In spite of the specific withdrawal of the resignation letters well before the date they were supposed to become effective, the petitioners have not been summoned for any of the Panchayat Samithi meeting since November 1985. The petitioners also addressed a representation to the Collector who has the supervising authority over the working of the Panchayat Samithi. However, there has been no reply to their representation also since long and the petitioners are, therefore, constrained to present this petition under Article 226 of the Constitution of India.

4. Shri Dharmadhikari, Counsel for the petitioners, argued that u/s 29 of the Act, the resignation does not become effective immediately on its tender, but there is a programme chalked out under the said section as to when it becomes effective. In any case, in the present case, there was no dispute about the tender of the resignations as such or about its genuineness. Ordinarily, the resignations in the present case would have become effective on 18-11-1985 under sub-clause (6) of section 29 of the Act. But the petitioner having specifically withdrawn their resignation letters on 11-11-1985 itself, they continued to hold their respective offices.

5. Shri Deo, appearing for the Village Panchayat contended that there is no specific provision in the Act contemplating any withdrawal of any resignation once tendered. He, therefore, submitted that there is an implied bar to such withdrawal and in the absence of any dispute regarding the genuineness of the resignation letters they have become effective as from 18-11-1985. Alternatively, he submitted that the petitioner ought to have preferred an appeal or revision before the Collector and Commissioner of the Division.

6. It is true that there is no specific provision regarding the withdrawal of resignation. But in our view such a provision is not necessary. In fact, tendering of resignation is a matter within the volition and unilateral discretion of the Member itself and it only expresses his intention to vacate the Office which he occupies. There is, however, a provision in the Act that even after the expression of such an intention to withdraw from Office, the resignation does not become effective forthwith, but has to be placed before the subsequent Committee meeting of the Village Panchayat and it becomes effective only seven days after it is placed before the Committee Meeting and that too in case there is no dispute regarding the genuineness of the resignation letters. The right to tender resignation and the right to withdraw the resignation are inter-related since both these acts depend on the discretion of the person tendering the resignation. However, if there is a specific bar in the statute itself that a resignation once tendered cannot be withdrawn then it is an entirely different matter. In the present Act there is no such specific bar and it cannot be brought in even impliedly.

7. The view expressed by the Supreme Court in the case of Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, are pertinent. In paragraph-51, it has been stated as follows:---

51. It will bear repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, a Prospective resignation can be withdrawn at any time before it become effective, and it becomes effective when it operates to terminate the employment or the office-tenure of the resignor. This general rule is equally applicable to Government servants and constitutional functionaries.

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In our view, the above decision equally holds good for Members elected to Village Panchayat also.

8. In the result, the instant petition will have to be allowed and is allowed. Rule is made absolute. The respondent-Village Panchayat, Wadi is directed to issue notices of the meetings of the Village Panchayat to the petitioners as they continued to be the Members of the Village Panchayat, Wadi.