
(2014) 12 BOM CK 0088
In the Bombay High Court
Case No : Writ Petition No. 10324 of 2014

Vithal Laxman Shirsath

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 03-12-2014

Acts Referred:

Citation : (2015) 1 ALLMR 1 : (2015) 3 BomCR 672 : (2015) 1 MhLj 928

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

Bench : Single Bench

Advocate : B.S. Kudale, Advocate for the Appellant; G.K. Naik Thigle, Addl.G.P, Advocate for the Respondent

Judgement

R.V. Ghuge, J.—I have heard the learned Advocate for the petitioners and the learned A.G.P. on behalf of respondent Nos. 1,2 and 3 at length.

2. These are 5 petitioners who have been elected as a members of the Gram Panchayat of village Jalki Bazar, Tq.Sillod, Dist.Aurangabad. There are in all 7 members. The post of Sarpanch and Upa-sarpanch has been reserved for the women category. Respondent Nos. 4 and 5 are the Sarpanch and Upa-sarpanch of the said Gram Panchayat, respectively.

3. The petitioners contend that there are certain allegations against the Sarpanch. They have never contended that being a woman Sarpanch, 3/4th majority is required for passing a No Confidence Motion against her and that the petitioners don't have such majority. The petitioners hasten to clarify that they never had any intention to move No Confidence Motion against the Sarpanch and Upa-sarpanch.

4. On 02/07/2014, all the petitioners tendered their resignation from their post and submitted the same to respondent Nos. 3 and 4. The same was placed in a meeting convened on 24/07/2014 and the resignations of the petitioners were discussed, verified and were accepted by passing a resolution. The petitioners re-iterate that their resignations were voluntary, by their own free will and desire.

The same have not been tendered either under force, duress or coercion.

5. The Tahsildar submitted the said resolution and the resignations to the District Collector, Aurangabad, who is the appropriate authority, on 13/08/2014. In turn, the Collector prepared his report u/s. 145(1A) of the Maharashtra Village Panchayats Act and submitted the same to the Divisional Commissioner, Aurangabad, Division Aurangabad.

6. On 21/10/2014, after receiving the proposal from the Collector's Office, the Divisional Commissioner has issued notices to the parties. The petitioners have submitted their reply and accorded reasons behind their resignations and have expressed a grievance about the lady Sarpanch. By an order dated 29/10/2014, the Divisional Commissioner, Aurangabad directed holding of bye elections for filling in the vacancies caused due to the resignations of the petitioners. The said decision has been challenged in this petition.

7. Contention of the petitioners is that since there are allegations against the Sarpanch, respondent No. 2 Divisional Commissioner was under an obligation to exercise his powers u/s. 145(1A) and thereby dissolve the entire Gram Panchayat. Further contention is that when 5 members have resigned, the Gram Panchayat would not have been in a position to perform its functions in a manner as is expected.

8. Reliance is placed upon the judgment of the learned Single Judge of this Court in the matter of Aashabai Vilas Wagh and Others Vs. State of Maharashtra and Others, , the Division Bench judgment of this Court in the matter of Omprakash Kawaduji Desai and Others Vs. State of Maharashtra and Others, , and the Division Bench judgment of this Court in the case of Sou. Jamuna Mahadeo Dalvi and Others Vs. The State of Maharashtra and Others, .

9. Learned Addl. G.P., appearing on behalf of the said respondents, submits that there is no mandate of law that the discretion vested in the Divisional Commissioner, ought to be exercised only by passing an order of dissolution. It is not that the Divisional Commissioner can not apply his mind and come to a decision in his wisdom. He submits that the Divisional Commissioner has considered the report of the Collector and has taken into account the fact that the Collector has not submitted a report that the Gram Panchayat should be dissolved as is misconstrued by the petitioners.

10. He, therefore, submits that the Divisional Commissioner, upon application of mind and after hearing the concerned parties including the petitioners, who had in fact resigned and were no longer in their position as a member of the Gram Panchayat, has concluded that bye elections to the vacancies created on account of the resignations of the petitioners, appears necessary and imminent. Learned Additional G.P. further submits that the Divisional Commissioner has relied upon the observations of this Court in the matter of Daulat s/o Sheku Gadekar Vs. The State of Maharashtra, in Writ Petition No. 8011/2012 decided on 29/11/2012.

11. Having considered the submissions of the learned Advocates, I have gone through the petition paper book with their assistance and have considered the judgments cited.

12. It appears from the contentions of the petitioners that they are under an impression that the Collector, Aurangabad, by his report dated 22/09/2014, has re-commended to the Divisional Commissioner, the dissolution of the Gram Panchayat. I have gone through the said report threadbare. It clearly emerges from the said report that the Collector has submitted his report indicating that 5 Gram Panchayat members have resigned and their posts have fallen vacant. Since there is a vacancy, the Divisional Commissioner is required to advert to Section 145(1A) of the Maharashtra Village Panchayats Act and take a decision as to whether the Gram Panchayat should be dissolved or that the elections be ordered so as to fill in the vacancies.

13. The impugned order dated 29/10/2014 is a well reasoned order. The Divisional Commissioner has heard all the parties concerned and has once again gone into the factum of the resignations of the petitioners.

14. Two of the petitioners namely Sau.Manglabai Ganesh Dandge and Shri Vithal Laxman Shirsath have submitted representations dated 21/10/2014 to the Divisional Commissioner in order to impress upon him that the petitioners have resigned because they are fed up with the Sarpanch Sau.Devshala Rajendra Dandge. Reasons set out are such that they require proper investigation and enquiry. Mere allegations being made, would not mean that the Sarpanch is guilty of having committed mis-deeds or mis-demeanors.

15. Considering the whole issue with due circumspection, the Divisional Commissioner finally arrived at a conclusion that there seems to be antipathy in the minds of the petitioners as against the lady Sarpanch.

16. A motion of No Confidence u/s. 35(3) of The Maharashtra Village Panchayats Act and the Rules of 1959 and 1975 applicable, mandates 3/4th majority for passing the No Confidence Motion. With the given strength of members of the said Gram Panchayat, six persons were required to constitute 3/4th majority, which the petitioners did not have since the remaining two persons are the Sarpanch and Upa-sarpanch. Nevertheless, he has considered the situation and has ordered that the elections be held so as to fill in 5 vacancies which have been created on account of the resignations of the petitioners.

17. In the case of Aashabai w/o Vilas Wagh (supra), 5 members out of 11 had resigned. Some members had approached the Commissioner. Notices were issued to all the members and they were heard. Discretion was exercised by the Commissioner in dissolving the Gram Panchayat. This Court came to a conclusion that the Commissioner ought to have assigned independent reasons while drawing a conclusion that dissolution of the Gram Panchayat was the only option available by which the remaining elected representatives were unseated. This Court, therefore, quashed the decision of the Commissioner of dissolving the

Gram Panchayat.

18. In the Division Bench judgment of this court in the case of Omprakash Kawaduji (supra), the Divisional Commissioner had exercised his discretion and dissolved the Gram Panchayat when 7 out of 13 members had resigned and the same were accepted. The decision of the Commissioner was upheld since he had made specific observations to the effect that the work of the Village Panchayat could be hampered and therefore the dissolution ordered to hold fresh elections, was, in his discretion, a better option.

19. The judgment of the Division Bench of this Court in the case of Jamuna Mahadeo Dalvi (supra) is also on similar lines. 1/2 of the members of the Gram Panchayat tendered their resignations and did not withdraw the same. Upon enquiry, it appeared that the resignations were given voluntarily. Statements of the resigned members were recorded. The issue as regards the dissolution of the Gram Panchayat was not before the Court in the said case.

20. The Divisional Commissioner, in the instant case, while issuing the impugned order, has relied upon an order of this Court passed on similar set of facts dated 29/11/2012, in the case of Daulat Sheku Gadekar (supra). Out of 7 members, 4 had resigned. The resignation was held to be voluntary after conducting an enquiry. The Divisional Commissioner opined not to dissolve the Gram Panchayat so that elections to the vacancies could be held.

21. This Court, in the case of Daulat Sheku Gadekar (supra) has observed and I agree with the same, that there was no evidence which could establish that the remaining members had abused their powers and had committed default in performance of their duties. This Court held that merely because the petitioners so desire, remaining members who are duly elected by following the Rule of Democracy, could not have been unseated by dissolving the Gram Panchayat.

22. This Court further noted that Section 145 of the Act gives ample discretion to the Government, either to dissolve the Panchayat or declare elections. Dissolution is not the only option available. Holding elections only to the extent of filling in the vacancies, is supported by a good reason that the expenditure on the part of the Government could be avoided and that the elections were held only 2 years ago and the remainder tenure was practically of 3 years.

23. Upon taking an overall view of the matter and in the light of the judgments cited, I find that the judgment in the case of Omprakash Kawaduji (supra), does not assist the petitioners since it was a case wherein the dissolution decision was upheld. In the case of Aashabai w/o Vilas Wagh (supra), the decision to dissolve the Gram Panchayat was interfered with and set aside since this Court concluded that dissolution was not the only option and was not necessary when elections to fill in the vacancy could be held. In the case of Jamuna Mahadeo Dalvi (supra), the issue of dissolution was not before the Court.

24. It appears from the record before this Court that the petitioners are targeting

the Sarpanch. Being a lady Sarpanch and supported by another lady Upa-sarpanch, these 5 petitioners have come together hoping that their resignations would lead to the dissolution of the Gram Panchayat. From the representation dated 21/10/2014, filed by 2 of the petitioners to the Divisional Commissioner, clearly indicates that the desire of the petitioners was to oust the Sarpanch indirectly, which they could not have done directly by resorting to Section 35 in passing a No Confidence Motion against her as the petitioners did not have 3/4th of majority as required under the proviso to Section 35(3).

25. I am unable to accept the contention of the petitioners that the Divisional Commissioner ought to have dissolved the Gram Panchayat as 5 out of the 7 members had resigned and that no reasons have been assigned to support the impugned order. In my view, the Divisional Commissioner would be required to assign strong reasons and state the compelling circumstances, if the Gram Panchayat is to be dissolved. The petitioners have resigned and therefore are no longer members. Their desire cannot overbear the wisdom and discretion of the Divisional Commissioner in coming to an appropriate decision.

26. To their misfortune, the desire of the petitioners was not fulfilled when the Divisional Commissioner rightly exercised his discretion u/s. 145(1A) of the Maharashtra Village Panchayats Act and refused to dissolve the Gram Panchayat. Their design to resign boomeranged on them.

27. In the light of the above, the petitioners have failed in making out a case of perversity or error in the decision of the Divisional Commissioner. The petition is devoid of merits and is therefore dismissed. Though I find that this is a fit case for imposing costs, the learned Advocate for the petitioners has prayed that no costs be imposed. Hence, no order as to costs.