

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 2234 OF 2016

...

ABASAHEB APPASAHEB PANDE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Mr P P More

AGP for Respondents No.1,2 : Mr N B Patil

Advocate for Respondent 3 : Mr S B Solanke

Advocate for Respondent 9 and 10 : Mr. Y.K.Bobade

...

CORAM : V.K. JADHAV, J.

Dated: February 26, 2016

...

PER COURT :-

1. The election of the Grampanchayat, Dhanora (BK), Tq. Ambajogai, District Beed, was held in the year 2012. The petitioner and respondents no. 3 to 10 are the elected members of the Grampanchayat. The petitioner is thereafter elected as Up-sarpanch. Respondents no. 3 to 8 moved a motion for no confidence against the petitioner on 23.12.2015 after giving such notice thereof to respondent no.2, Tahsildar, Ambajogai. Accordingly, respondent no.2-Tahsildar, Ambajogai, conveyed a special meeting of Panchayat for consideration of the motion of no confidence at the office of Panchayat on 28.12.2015. At such a special meeting on the given

date, after discussion, six members out of nine members voted in favour of the no confidence motion. Being aggrieved by the same, the petitioner has preferred a dispute before the respondent no.1 Additional Collector, Ambajogai, Dist Beed. The learned Additional Collector, Beed, by his impugned order dated 5.2.2016 dismissed the appeal. Hence, this writ petition.

2. Learned counsel for the petitioner submits that, there are several illegalities and irregularities while passing no confidence motion. Learned counsel further submits that, as per the provisions of Rule 2 Sub Rule (2) of the Maharashtra Village Panchayat (No Confidence Motion), Rules 1975, nine copies of notice are required to be issued. Though it was mandatory, respondent no.2 failed to submit nine copies alongwith the proposal and therefore, 'No Confidence Motion' is required to be vitiated on this ground, alone. The learned counsel submits that, respondent Shantabai Kalunke submitted a resignation of membership of Grampanchayat on 18.12.2015 and meeting for discussion of the said

resignation was fixed on 27.12.2015, however, said meeting came to be postponed because of the non-availability of the quorum. Learned counsel submits that, since Shantabai Kalunke had submitted a resignation, she is not entitled to submit the proposal for carrying out no confidence motion nor she is entitled to participate in the said no confidence motion. Learned counsel submits that, once the person has resigned his post, he/she ceases to act as a member of Grampanchayat and, therefore, participation of the respondent Shantabai in a Special meeting is illegal and on this count alone, the entire motion is vitiated. Learned counsel for the petitioner, in order to substantiate his submissions, places reliance on the judgment in the case of **Kishor Tanaji Kharat and others Vs. Divisional Commissioner and others**. Reported in **2013 (7) Bom.C.R. 865**.

3. Learned A.G.P. appearing for respondents no.1 and 2 submits that, there is no illegalities in carrying out the no confidence motion. The learned A.G.P. submits that, majority of the members voted in favour of the 'No

Confidence Motion'. The learned AGP submits that, there is no substance in the writ petition, and writ petition is liable to be dismissed.

4. Learned counsel for respondent no.3 and learned counsel for respondent nos.9 and 10 supported the order passed by the learned Additional Collector, Ambajogai, dated 5.2.2016.

5. Section 29 of the Maharashtra Village Panchyats Act (Act No.III of 1959) provides for resignation of member and dispute regarding resignation. It reads thus :-

[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 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. On bare reading of section 29 of the Maharashtra Village Panchayats Act, it appears that, on receipt of the resignation under sub-section (1), the Sarpanch or, as the case may be, Chairman of the Panchayat Samiti shall forward it to the Secretary who shall place it before the meeting of the Panchayat next following. In view of the provisions of Sub-section 3 of Section 29 of the Act, 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 from seven days from the date on which his resignation, is placed before the meeting of the Panchayat. On receipt of the dispute, the Collector shall decide it, as far as possible, within 15 days from the date of its receipt. Section 29 (6) provides that, the resignation takes effect where no dispute is taken regarding genuineness of the same after expiry of seven days from the date on which it is place before the meeting of the *Panchayat*.

7. In the case in hand, meeting of the panchayat was not held for want of quorum and consequently, resignation allegedly tendered by the respondent Shantabai Kalunke was not verified and accepted. In the case Kishor Tanaji (supra) relied upon by the learned counsel for petitioner, resignation was placed in the meeting of the panchayat and the same was verified and accepted. Delay occurred in tendering the dispute and the same was under challenge in the case cited. In the case cited above, reliance is placed on the judgment in the case of Shrikant Malappa Ulegadi Vs. Gram

Panchayat at Mouje Kadgaon, reported in 1986 BCI page 90 :1986 MH.L.J. 514, wherein the Division Bench held that, when there is no dispute regarding the genuineness of the resignation, the resignation shall take effect after expiry of seven days from the date on which it is placed before the meeting of the Panchayat and the fact that dispute raised thereafter does not arrest consequence laid down u/s 29 (6) of the Act.

8. In light of the ratio laid down by the Division Bench, this Court has held in the cited case, that resignation of the Sarpanch in that case takes effect after expiry of the limitation. In the case in hand, the facts are altogether different.

9. The learned Additional Collector, Ambajogai, has, therefore, rightly held that, respondent Shantabai Kalunke had every right to sign the proposal of no confidence motion and also to participate in the No Confidence Motion meeting. Learned counsel for respondent no.3 has further pointed out that respondent Shantabai had subsequently withdrawn her

resignation.

10. So far as the issue of supply of nine copies which is mandatory in terms of the provisions of the Rules is concerned, I do not find any fault in the observations made by the learned Additional Collector, Ambajogai that the post of the Sarpanch was vacant and therefore, no confidence motion cannot stand vitiated by mere defect in furnishing the additional copies of no confidence.

11. Learned counsel for respondent no.3 has rightly placed his reliance on the judgment in the case of **Arjun Sambhaji Khade and others. Vs. Mangal Ankush Kharmate and others**, reported in 2003 (Supp) Bom.C.R. 552, wherein it is held that non supply of the additional copies to Standing Committee could be an irregularity, but will not vitiate resolution.

12. In view of the above, there is no substance in the writ petition. The impugned order calls for no interference, and, there is no substance in the writ

petition. Writ Petition is thus, liable to be dismissed.
Hence, following order.

ORDER

- I. Writ Petition is hereby dismissed.
- II. In the circumstances, there shall be no order as to costs.

(V.K. JADHAV, J.)

...

aaa/-