

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9577 OF 2013

Babanrao Uttamrao Jadhav,
Age : 48 Years, Occu. : Agri. / Sarpanch,
R/o. : Borgaon Bk., Tq. : Georai,
Dist. : Beed

.. **Petitioner**

Versus

1. The Additional Collector,
Beed, Dist. : Beed
2. The Tahsildar,
Georai,
Tq. : Georai, Dist. : Beed
3. Presiding Officer / Circle Inspector,
Georai, Election of Sarpanch, Borgaon Bk.,
Grampanchayat Tq. : Georai, Dist. : Beed
4. Chairman,
Panchayat Samiti, Georai,
Tq. : Georai, Dist. : Beed
5. The Block Development Officer,
Panchayat Samiti, Georai,
Tq. Georai, Dist. : Beed
6. The Gramsevak,
Grampanchayat Boirgaon Bk.,
Tq. : Georai, Dist. : Beed
7. Anuradha Vishnu Dukare,
Age : 23 Years, Occu. : Up-Sarpanch,
R/o. : Borgaon Bk., Tq. : Georai,
Dist. : Beed
8. Anuradha Narayan Jadhav,
Age : 25 Years, Occu. : Member,
R/o. : Borgaon Bk., Tq. : Georai,
Dist. : Beed

9. Anita Sajay Jadhav,
Age : 35 Years, Occu. : Member,
R/o. : Borgaon Bk., Tq. : Georai,
Dist. : Beed
10. Shobha Bharat Jadhav,
Age : 34 Years, Occu. : Member,
R/o. : Borgaon Bk., Tq. : Georai,
Dist. : Beed
11. Bhagubai Motiram Nimbore,
Age : 50 Years, Occu. : Member,
R/o. : Borgaon Bk., Tq. : Georai,
Dist. : Beed
12. Sambhaji Shivajirao Jadhav,
Age : 25 Years, Occu. : Member,
R/o. : Borgaon Bk., Tq. : Georai,
Dist. : Beed
13. Sandip Babasaheb Jadhav,
Age : 33 Years, Occu. : Member,
R/o. : Borgaon Bk., Tq. : Georai,
Dist. : Beed
14. Kanifnath Uttam Gaikwad,
Age : 30 Years, Occu. : Member,
R/o. : Borgaon Bk., Tq. : Georai,
Dist. : Beed

.. Respondents

Shri Ravindra Vitthal Gore, Advocate for the Petitioner.
Smt. A. V. Gondhalekar, A. G. P. for Respondent Nos. 1 to 3.
Shri A. R. Tapse h/f Shri Prashant D. Suryawanshi, Advocate for
Respondent No. 4.
Respondent No. 5 to 8 served.
Shri A. A. Nimbalkar, Advocate for Respondent Nos. 9 to 11, 13
and 14.
Respondent No. 12 served.

**CORAM : S. V. GANGAPURWALA AND
K. K. SONAWANE, JJ.**

CLOSED FOR JUDGMENT ON : 30.06.2016.
JUDGMENT PRONOUNCED ON : 05.08.2016.

JUDGMENT (Per S. V. Gangapurwala, J) :-

1. The present Petitioner is the Sarpanch of Gram Panchayat, Borgaon. On 13.09.2013 the Petitioner gave letter of resignation to Respondent No. 4 i.e. Chairman of Panchayat Samiti, Georai. The same was placed in the meeting on 28.09.2013. In the said meeting the Petitioner withdrew his resignation. The said fact is recorded in Resolution No. 5 of the meeting dated 28.09.2013. On 19.10.2013 Petitioner filed representation before the Collector communicating that he has withdrawn the resignation in the said meeting and the same was not accepted. The Respondent No. 6 gave a report to the Block Development Office on 22nd October, 2013 intimating that the Petitioner has withdrawn his resignation in the meeting dated 28.09.2013. The Respondent No. 1 passed an order on 11th November, 2013 declaring the post of Sarpanch vacant and directing election for the post of Sarpanch. The same is assailed in the present petition.

2. Mr. Gore, the learned counsel for the Petitioner submits that, the Petitioner on 28.09.2013 before the said resignation was accepted has withdrawn the resignation. The same is recorded vide Resolution No. 5 of the meeting dated 28.09.2013. According to the learned counsel, once the resignation is withdrawn before it is accepted there is no resignation in the eyes of law. The resignation has not taken effect. As such, no question arises of the post becoming vacant. The learned counsel submits that, the Petitioner is not disputing the genuineness of his resignation. The Petitioner categorically accepts that he has tendered the resignation vide resignation letter dated 13.09.2013. However,

before the same was placed in the meeting for acceptance as per Sub-section 6 of Section 29 read with section 34 of the Maharashtra Village Panchayats Act, 1958 the Petitioner withdrew the resignation. It was erroneous on the part of the Collector to declare the post having become vacant. According to the learned counsel, even if, there is no specific direction / order of any authority with regard to withdrawal of resignation however as a future date for acceptance is laid down and withdrawal prior to the said date would make the resignation non est. The learned counsel relies on the judgment of Division Bench of this court in a case of, **Rajesh S/o. Matadin Jaiswal and others V/s. Village Panchayat, Wadi** reported in **1987 (1) Bom. C. R. 528** and another judgment of Division Bench of this court in a case of, **Kumudini Ratilal Bhagat and others V/s. State of Maharashtra and others** reported in **1987 (1) Bom. C. R. 634.**

3. Mr. Nimbalkar, the learned counsel for Respondent Nos. 9 to 11, 13 and 14 submits that, there is no withdrawal of resignation in the eyes of law. The Petitioner in his letter has not stated that he is withdrawing the resignation however has only stated that the said resignation be rejected. As such, there is no withdrawal of resignation. The learned counsel further submits that, the resignation was placed in the meeting of the Panchayat dated 28.09.2013. As per Section 29 (6) (a) when there is no dispute regarding the genuineness the resignation takes effect after expiry of 7 days from the date of which it is placed before the meeting of the Panchayat. As per Section 29 (3), if, the person who has tendered the resignation wants to dispute the genuineness of the resignation he has to refer such dispute to the Collector within 7 days from the date his resignation is placed

before the meeting of the Panchayat. In the present case, the Petitioner has moved the Collector after 21 days of the said meeting being conducted. According to the learned counsel, the expression “*genuineness of the resignation*” will have to be given a wider connotation. It would even include within its ambit withdrawal of resignation. If, the said expression is not given a wider connotation then, the provision of sub – section 3 of section 29 would be rendered redundant. The learned counsel relies on the judgment of the learned Single Judge of this court in a case of **Ravindra Bhaskar Lumpataki V/s. Chairman and others** reported in **2006 (6) Bom. C. R. 595.**

4. We have considered the submissions canvassed by the learned counsel for respective parties.

5. Before we advert to the contentions canvassed by the learned counsel for respective parties it would be proper to refer to the relevant provisions of the Maharashtra Village Panchayats Act, 1958 -

“SECTION 29 :

Registration 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 of 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 place 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.

SECTION 34

RESIGNATION BY SARPANCH OR UPA-SARPANCH :

1. The Sarpanch may resign his office by writing

under his hand addressed to the Chairman of the Panchayat Samiti.

2. The Upa-Sarpanch may resign his office by writing under his hand addressed to the Sarpanch.

3. The notice of resignation shall be delivered in the manner prescribed.

4. The provisions of sub-sections (2), (3), (4), (5) and (6) of section 29 shall mutatis mutandis apply to the resignations tendered under sub-sections (1) and (2) of this Section as they apply to the resignation tendered under sub-section (1) of that Section."

6. The following facts are not disputed -

A] The Petitioner is a Sarpanch of Gram Panchayat, Borgaon.

B] On 13.09.2013 the Petitioner given letter of resignation to the Chairman of Panchayat Samiti, Georai.

C] The resignation tendered by the Petitioner was placed in the meeting of the Gram Panchayat on 28.09.2013.

D] On 28.09.2013 the Petitioner withdrew his resignation. The meeting was scheduled on same day. The same is recorded in Resolution No. 5 to the effect that he had given the resignation due to mental agony and the same should not be accepted. The said resignation should be rejected.

E] On 19.10.2013 Petitioner filed representation before the Collector communicating that he has withdrawn the resignation in the meeting dated 28.09.2013.

F] Respondent No. 6 gave report to the Block Development Officer on 22nd October, 2013 intimating that Petitioner has withdrawn his resignation in the meeting

dated 28.09.2013.

G] Respondent No. 1 passed an order on 11th November, 2013 declaring the post of Sarpanch vacant and directing election of Sarpanch.

7. The facts hitherto narrated are uncontroverted. Section 29 of the Maharashtra Village Panchayats Act, 1958 lays down the entire scheme from the stage of tendering the resignation and till the same becoming effective. Section 29, read, in its entirety leads us to an irresistible conclusion that, if, any member or Sarpanch tenders his resignation, the said resignation does not become effective until the expiry of 7 days from the date on which it is placed before the meeting of the Panchayat. The member or the Sarpanch even if he tenders his resignation he continues to occupy the office even after resignation and until 7 days after the lapse of the meeting of the Gram Panchayat in which the said resignation is placed.

8. When a statute lays down that the resignation would become effective on a further date then, in absence of provision prohibiting withdrawal of resignation the said resignation can be withdrawn at any time before it operates to become effective. The said right is inherent in every member in absence of any provision prohibiting withdrawal of resignation. It has been held by the Division Bench of this court in a case of **Rajesh S/o. Matadin Jaiswal and others V/s. Village Panchayat, Wadi** referred to supra that the right to tender resignation and the right to withdraw the resignation are inter related as both these Acts depend on the discretion of the person tendering the resignation. The same view was taken by the another Division Bench in a case of **Kumudini Ratilal Bhagat and others V/s. State of Maharashtra and others** referred to supra.

9. No particular form for withdrawal of resignation is specified. The representation / application should suggest the intention of the person to withdraw the resignation. The Respondent has harped upon the fact that, in view of Section 29 (3) of the Maharashtra Village Panchayats Act, 1958, if, the Petitioner wants to contend that the resignation is not genuine then, he has to refer the dispute to the Collector within 7 days and in the present case it is referred after the lapse of the period stipulated in Sub-Section 3 of Section 29 of the Maharashtra Village Panchayats Act, 1958. According to Respondents even if the Petitioner is not disputing the factum of tendering resignation as still the same is withdrawn the dispute would arise with regard to the genuineness of resignation inter alia the same was required to be referred by the Petitioner to the Collector within 7 days from the date on which his resignation is placed before the meeting of the Panchayat. On failure of the Petitioner to refer the dispute to the Collector within 7 days of the date of the meeting of the Panchayat the said resignation has become effective.

10. The learned Single Judge of this court in a case of **Ravindra Bhaskar Lumpataki V/s. Chairman and others** referred to supra has observed that the expression genuineness of the resignation will have to be interpreted in wider terms. The said expression cannot be combined into narrow compass. The expression genuineness would also encompass within its ambit the absence of intention of the Sarpanch to give up his post so also to resile from the previous stance of tendering the resignation. In the said case the person tendering the resignation had raised a dispute that the said resignation was obtained by fraud. The judgment of this court cannot be read as euclid theorem. The same will have to be read in the context in which it

is delivered.

11. The phrase 'genuineness' would mean that it is not false, forged, fictitious, stimulated, spurious or counterfeit. As per Blacks Law Dictionary the expression genuineness means authentic or real, something that has the quality of what is purported to be or to have.

In the present case, the Petitioner does not dispute that he has tendered his resignation and before the date stipulated for the resignation to be effective the Petitioner has withdrawn the said resignation. There cannot be any dispute with the proposition that dispute with regard to the genuineness of resignation will have to be given wider connotation and may include any facet by virtue of which the genuineness of the resignation is doubted. In the present case, the Petitioner has admitted that he has tendered the resignation on his own volition and freewill, however, before the resignation was placed for acceptance the petitioner withdrew his resignation. There was no dispute with regard to the genuineness of the resignation. The Division Bench of this court in a case of **Kumudini Ratilal Bhagat and others V/s. State of Maharashtra and others** referred to supra held that the nature and the controversy vis a vis such a resignation would be capable of being brought on the surface either in that meeting or even before thereto. The right to withdraw such a resignation can well be exercised by such a member till the point it has become effective. It is further observed by the Division Bench that, if, the resignation is voluntarily withdrawn by the concerned member even before the meeting is actually convened and held then in reality there is no resignation as such in existence which would be required to be placed before the said meeting as prescribed under Sub Clause 3

of Section 29 of the Maharashtra Village Panchayats Act, 1958 and if, that be so then, logically there would not arise any question about the said resignation to become effective at all because that view would remain in vacuum. In that even an occasion for the further consequences would not arise at all and the Division Bench thereafter held that the Petitioners therein were within their right to voluntarily withdraw the said resignation even before the meeting was held and the said resignation had not become effective. It was further held that the inescapable result therefore is that, these four members are deemed to have been continued to be the members of the Panchayat as if, they had not resigned at all. The further result therefore is equally inescapable that the action taken by the authorities in resorting to the provisions contained in Section 145 (1-A) of the Maharashtra Village Panchayats Act, 1958 which proceeded on the erroneous footing that these members had resigned and the resignations had become effective immediately falls on the ground.

12. In view of the facts of the present case in the meeting before the resignation tendered by the Petitioner was discussed for acceptance, the Petitioner had withdrawn the resignation, it was not necessary for the Petitioner to take further steps as is held by the division bench of this court in case of **Kumudini Ratilal Bhagat and others V/s. State of Maharashtra and others** referred to supra. The present case is squarely covered by the judgment of that court in case of **Kumudini Ratilal Bhagat and others V/s. State of Maharashtra and others** referred to supra. In view of that we are not required to consider the interpretation of Sub-Section 3 of Section 29 of the Maharashtra Village Panchayats Act, 1958

13. In view of the above, the Writ Petition is allowed and the impugned order is quashed and set aside, however, there shall be no order as to costs.

[K. K. SONAWANE, J.]

[S. V. GANGAPURWALA, J.]

sam/June.16