

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2971 OF 2016

Mr. Shivaji T. Shinde

..Petitioner

Versus

The President,

Zilla Parishad Satara & Ors.

..Respondents

Mr. V.D.Patil i/by Mr. Siddharth Kapse & Mr. Arun Khot, advocates for the Petitioner.

Mr. A.V.Anturkar, Senior Advocate with Ms. Kalyani Tulankar, Advocates for Respondent Nos.1 to 3.

Mrs. M.P.Thakur , AGP for the State-Respondent No.4.

**Coram : RANJIT MORE & DR. SHALINI
PHANSALKAR-JOSHI, JJ.**

Date : 12th APRIL, 2016.

P. C. :

Rule. Rule made returnable forthwith. With consent of the parties, the Petition is taken up for final hearing forthwith.

2 Heard learned counsel appearing for the respective parties and the learned AGP for the State.

3 By filing this Petition under Article 226 of the Constitution of India, the Petitioner has sought reliefs in following prayer clauses:

“b. This Hon'ble Court after going through the records and proceedings, may be pleased to

issue writ in the nature of '*Mandamus*' or such writ in similar nature and or direction and or Order thereby to quash and set aside the impugned acceptance of alleged notice of resignation dated 02.03.2016 accepted on 03.03.2016 by the Respondent No.1 marked at Exhibit B;

(bb) This Hon'ble Court be pleased to hold and declare that the Petitioner has not voluntarily resigned from the post of the Chairman of Agriculture, Animal Husbandry and Dairy Committee and still continues to hold the said post of subject Committee of Satara Z.P.

4 Brief facts giving rise to the present petition are as follows:

General elections of the Respondent No.3 were held in February, 2012. The Petitioner was elected as a councilor of the Respondent No.3. Thereafter, on 2.10.2014 the Petitioner was elected as the Chairman of Agriculture, Animal Husbandry and Dairy Committee of the Respondent No.3. It is the case of the Petitioner that at the time of his election as Chairman of the said subject committee, the District President of the Nationalist Congress Party had obtained the Petitioner's signature on blank Form No.1 of the Maharashtra Zilla Parishad and Panchayat Samitis (Delivery of Notice of Resignation) Rules, 1965 (In short '**Said Rules**'). It is also the case of the Petitioner that the District President of the Nationalist Congress Party clandestinely ,

fraudulently and without knowledge to the Petitioner submitted the said form to the Respondent No.1 on 2.3.2016. The Petitioner contends that he has never tendered the alleged resignation voluntarily. On the same date, that is on 2.3.2016, the Petitioner wrote letter to the Respondent No.1 and pointed out these facts. However, subsequently it revealed to the Petitioner that the alleged resignation given by the Petitioner in Form No.1 at the time of election of the subject committee was accepted by the Respondent No.1 which according to him, is illegal and contrary to the provisions of the Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961 (In short '**Said Act**') and the said Rules.

5 Mr. Patil, the learned counsel for the Petitioner, took us through the provisions of the Section 86 of the said Act and the Rule 3 of the said Rules along with Form Nos.1 and 2 of the said Rules. He also took us through the resignation letter and pointed out that the same is not voluntary and submitted that resignation cannot be said to be legal as well as voluntary.

6 Mr. Anturkar, the learned Senior Counsel for the Respondent Nos.1 to 3 invited our attention to the Petitioner's pleadings and submitted that the District President of the Nationalist Congress Party is not impleaded as party respondent despite allegations against him. He also produced original record for the perusal of the Court. Mr. Anturkar lastly submitted that Petitioner's resignation is voluntary and is accepted in accordance with the said Act and said Rules.

7 Having considered rival submissions of the respective parties and having gone through the petition along with the annexures therewith and the relevant provisions of the said Act and said Rules, we find merit in the Petition. Section 86 of the said Act deals with the resignation of the Chairman of Subjects Committee which reads as follows:

S.86 Resignation of Chairman of Subjects Committee.-

The [elected or co-opted] Chairman of a Subjects Committee may resign his office by writing under his hand addressed to the President, [and his office shall hereupon become vacant.] [The notice of resignation shall be delivered in the manner prescribed.]

Rule 3 of the said Rules deals with the manner of delivery of notices which reads as follows:

3. Manner of delivery of notices.-

(1) Subject to the provisions of sub-rule (2), a notice of resignation-

(a) of the office of Councillor given under Section 38 shall be delivered by the Councillor to the Chief Executive Officer and by the President to the Commissioner respectively;

(b) of the office of President given under sub-section (1) of Section 48 shall be delivered [by the President] to the

Commissioner;

(c) of the Office of Vice-President given under sub-section (2) of Section 48 shall be delivered [by the Vice-President] to the Chief Executive Officer.

(d) of the office of Member of Panchayat Samiti given under Section 60 shall be delivered ¹ [by the Member] to the Block Development Officer,

(e) of the office of Chairman of Panchayat Samiti given under sub-section (1) of Section 71 shall be delivered ¹ [by the Chairman] to the Chief Executive Officer;

(f) of the office of Deputy Chairman of a Panchayat Samiti given under sub-section (2) of Section 71 shall be delivered ¹ [by the Deputy Chairman] to the Block Development Officer;

(g) of the office of member of Standing Committee or a Subjects Committee given under Section 82A shall be delivered ¹ [by the member] to the Chief Executive Officer;

(h) of the office of the elected Chairman of Subjects Committee given under Section 86 shall be delivered ¹ [by the elected Chairman] to the Chief Executive Officer.

(2) Every such notice ¹ [shall be in Form I] shall be

delivered by registered post with acknowledgment due or personally or through any person duly authorized ¹ [in writing] in this behalf by the person who gives notice.

(3) The authority to which such notice is delivered shall forthwith acknowledge receipt of the same and issue a receipt ¹[in Form II] in token of having received notice.

8 In order to prove that resignation is voluntary, following procedure is required to be complied with:

(1) Chairman of the Subjects Committee resign his office by writing under his hand;

(2) Resignation must be addressed to the President;

(3) Resignation letter is required to be delivered to the Chief Executive Officer personally or through any person duly authorized or by registered post with acknowledgement due.

(4) The Chief Executive Officer is obliged to acknowledge the receipt of the resignation and issue a receipt in Form II in token of having received notice.

9 Photo-copy of the resignation is annexed at Exhibit B

Page 19. We have also perused the original resignation letter. Perusal of the same shows that the Petitioner's name and signature is in the same ink whereas the remaining portion of the letter including names and signatures of the witnesses are in different ink. Resignation letter bears Inward No.258 of 2.3.2016 and it is addressed to the Respondent No.1. Endorsement on the resignation letter dated 3.3.2016 made by the Respondent No.1 shows that the said resignation letter was produced by the Petitioner before him personally on 3.3.2016 and the same was accepted by the President on the very same day. Mr. Patil submitted and Mr. Anturkar fairly conceded that this inward number belongs to the Respondent No.1's office.

10 Factual position stated here-in-above makes it abundantly clear that the resignation was not delivered to the Chief Executive Officer as required under Clause (h) of Rule 3 of the said Rules. There is nothing on record to show that resignation letter was given by the Petitioner personally or through any person duly authorised. Admittedly, the said resignation letter is not sent by registered post with acknowledgment due. Be that as it may, there is also no dispute that the receipt in Form II of the said Rules is not issued by the Chief Executive Officer. Things do not stop here only. As stated above, inward number noted on the resignation letter shows that resignation was delivered in the office of the President on 2.3.2016. Contrary to this, resignation letter also shows that the same was tendered by the petitioner in person to the Respondent No.1-President on 3.3.2016 and on the very same day, the

President accepted the same. These two endorsements are contrary to each other and, therefore, the fact that the Petitioner voluntarily resigned itself becomes suspicious. This resignation letter is required to be read along with the Petitioner's letter at Exhibit 'C' at page 20. The Petitioner in this letter addressed to the Respondent No.1-President in unequivocal terms stated that he has given resignation in form no.I at the time of election to the District President of the Nationalist Congress Party and the same should not be accepted. If this letter was given on 2.3.2016 to the Respondent No.1-President, there was no occasion for the Petitioner to again remain present before the President on 3.3.2016 and tender resignation letter to the Respondent No.1-President. We are, therefore, of the considered view that the acceptance of the resignation of the Petitioner as Chairman of that Committee is contrary to the provisions of the said Act and said Rules.

11 The provisions of the said Rules fell for consideration before the Division Bench of this Court in **Pramod Murlidhar Jagtap and etc. v. State of Maharashtra and Others**¹. The Division Bench held that the resignation is a voluntary act. The voluntariness must follow not only by signing the resignation letter as per the prescribed form but the voluntariness is further carried in respect of delivery of resignation letter to the competent authority. Relevant observations contained in paragraphs 13 and 14 are re-produced below:

"13. It is very difficult to accept the

¹ AIR 1996 Bombay 429

voluntariness of the resignations. The resignation is a voluntary act. The person responsible and who desires to resign, the voluntariness must follow not only by signing the resignation letter as per the prescribed form but the voluntariness is further carried in respect of delivery of resignation letter to the competent authority. Even assuming that the concerned petitioners have signed these resignation letters, before delivery of the same, they could change their mind and withdraw the resignations. The voluntariness, therefore, is not sufficient to be expressed only qua signing the resignation letters, but it must be apparent even thereafter till its delivery and acceptance by the competent authority.

14. *We are, therefore, unable to appreciate as to how the Deputy Chief Executive Officer could have accepted such resignation letters and forwarded the same for consideration to the President of the Zilla Parishad. The notice of delivery of resignation is in violation of the provisions of the Maharashtra Zilla Parishads and Panchayat Samitis (Delivery of Notice of Resignation) Rule, 1965. The intention of the framers of the Rules is absolutely clear. The mode and method of delivery is not only enumerated in Rule 3, but more emphasised thereafter while making the provision in respect of the scope and it is further reiterated that the letter of resignation must be delivered either personally or by registered post with acknowledgement due or through any*

authorised person to the competent authority mentioned in sub-rule (1). The so called resignations can not be regarded as voluntary resignations submitted by the petitioners under the Rules. In view of this, the orders accepting the resignations by the President on 16-12-1995 are set aside. The petitioners to continue in the said posts as if they have not resigned on 16-12-1995. "

12 Facts of the present case if considered along with the observations made by the Division Bench then it is difficult to accept that resignation of the petitioner is voluntary. Before parting with this order, we must take note of submissions made by Mr. Anturkar, the learned Senior Counsel for the Respondent Nos.1 to 3. He submitted that in absence of impleadment of District President of Nationalist Congress Party, the Petition must fail. We are unable to accept the submission, inasmuch as on facts and after perusal of the original resignation letter, we have come to conclusion that the same is not in accordance with the provisions of Section 86 of the said Act and Rule 3 of the said Rules and even the allegations made in the Petition against the District President of the Nationalist Congress Party is ignored then also we are unable to come to conclusion that the resignation of the Petitioner is voluntary. Mr. Anturkar, the learned Senior Counsel also try to point out that the Petitioner himself tendered resignation to the Respondent No.1 on 3.3.2016 and in support of his submission, he relied upon the second endorsement of the Petitioner's resignation letter. This submission cannot be accepted in the light of the first

endorsement on the resignation letter which shows that the same was tendered in the office of the Respondent No.1 on 2.3.2016. Moreover, the fact remains that the resignation letter was not tendered to the Chief Executive Officer as required under Clause (h) of Rule 3 of the said Rules.

13 Taking totality of the facts and circumstances into consideration since we have come to conclusion that the Petitioner's resignation is not voluntary and the same is contrary to the provisions of the said Act and the said Rules, we allow this petition in terms of prayer clauses (b) and (bb).

14 Rule is made absolute accordingly.

[DR.SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]