

(Reportable)

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

WRIT PETITION NO. 13893 OF 2017

MINA KALYAN DEVDHE
VERSUS
THE COMMISSIONER NASIK DIVISION NASIK AND OTHERS

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Advocate for the Petitioner : Shri Jaju Nikhil S.
AGP for Respondents 1 and 2 : Shri B.A.Shinde.
Advocate for Respondents 3 and 4 : Shri Avinash D. Aghav.
Advocate for Respondents 5 to 7 : Shri Narwade Narayan B..

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 02nd August, 2018

Oral Order:

1 Leave to amend prayer clause B. Amendment be carried out forthwith.

2 I have heard the learned Advocates for the Petitioner, Respondent Nos.3 to 7 and the learned AGP on behalf of Respondent Nos.1 and 2. Respondent Nos.8 and 9, who are also members of the Gram Panchayat, have not caused an appearance though served with the court notices.

3 The Petitioner, who was elected as the Sarpanch of Village Panchayat, Dadegaon, Taluka Shevgaon, District Ahmednagar, is aggrieved by the order dated 24.10.2017 delivered by the Collector, Ahmednagar in

Dispute Application No.40/2017 as well as by the order dated 20.11.2017 passed by the Additional Divisional Commissioner, Nashik in Grampanchayat Appeal No.596/2017.

4 It is contended that after the Petitioner was elected as the lady Sarpanch of Village Panchayat, Dadegaon, she is said to have tendered her resignation on 24.05.2017. Respondent Nos.5 to 7 presented the said resignation to the Panchayat Samiti on 24.05.2017. On 29.05.2017, the Block Development Officer, Panchayat Samiti, Shevgaon has forwarded the said resignation for verification to the Village Development Officer/ Gramsevak, Dadegaon Village Panchayat. After the Petitioner received the notice of the meeting convened on 14.06.2017 with regard to her resignation, she moved a withdrawal application dated 14.06.2017 and tendered it to the Gramsevak at 10:30 AM. The Gramsevak participated in the meeting of the Gram Panchayat.

5 The stand taken by the Petitioner was that she was pressurized by some antisocial elements and threats were held out to her family members. She was made to sign on a document, which is termed as a resignation letter. She is not aware about the contents of the said letter, which is branded as a resignation.

6 In the said meeting dated 14.06.2017, the contentions of the Petitioner were recorded by the Chairperson which indicate that she specifically stated that she has not resigned, the resignation notice bears

her signature which was acquired under pressure and coercion, she has not resigned from the said position of the Sarpanch and her resignation should not be accepted.

7 The proceeding book indicates the name of Respondent No.5, who proposed acceptance of the subject on the agenda without it being so recorded specifically and the Petitioner's name is stated to be the seconder of the said proposal. What is recorded in the proceeding book is "ठराव मंजूर करण्यात आला", meaning that the resolution/subject is approved. The subject of the meeting undisputedly was only for scrutinizing the resignation notice of the Petitioner.

8 The Petitioner then approached the District Collector on 20.07.2017 for referring the resignation document for enquiry. By the impugned order dated 24.10.2017, the District Collector declined to consider the dispute under Section 29 of the Maharashtra Village Panchayats Act (for short "the said Act") since it was filed after 07 days from the date of the meeting. For identical reasons, the Additional Divisional Commissioner declined to consider the appeal under Section 34 of the said Act.

9 The Petitioner places reliance upon the judgments of the learned Division Bench of this Court in the matter of ***Rajesh Matadin Jaiswal and others vs. Village Panchayat, Wadi, 1987 (1) Bom.C.R.***

528 and in the matter of *Sou.Kumudini Ratilal Bhagat and others vs. State of Maharashtra and others, 1987 (1) Bom.C.R. 634 : 1987 Mh.L.J. 462.*

10 The learned Advocate for Respondent Nos.5 to 7/ Gram Panchayat Members, contends that the impugned orders require no interference as the Petitioner has approached the District Collector belatedly and both the Authorities below have rightly refused to consider the dispute after 07 days. He further refers to Section 29 of the said Act and strenuously submits that once the dispute is raised after 07 days, the District Collector could not have entertained it. He has rightly declined to entertain the said dispute and as such, no interference is called for.

11 During the course of his vehement submissions, he has delved upon the contents of the resignation notice/ document as if the Petitioner was making allegations against Respondent Nos.5, 6 and 7. In fact, these Respondents are not adversarial respondents unless they have a specific role to play in the entire episode of the issuance of the resignation notice dated 24.05.2017. It is alleged by the Petitioner that they had carried a document bearing her signature and had submitted it in the concerned office.

12 The learned Advocate hastens to add that Respondent Nos.5 to 7 have no role to play and they are merely assisting the Court. He further adds that he is relying upon Section 29 of the said Act and is also

relying upon the judgment of the learned Division Bench of this Court in the matter of *Shrikant Mallappa Ulegadi vs. Gram Panchayat at Mouje Kadgaon, (1986) 88 Bom.L.R. 79 : (1986) Mh.L.J. 514* so as to render assistance to this Court that the Collector cannot entertain the dispute after 07 days.

13 Considering the conspectus of this matter, I find that the following three issues need to be dealt with :-

- (i) Whether, the document dated 24.05.2017 can be termed as a resignation letter?
- (ii) Whether, the Petitioner has withdrawn the said purported resignation?
- (iii) Whether, the resignation notice can be accepted by the Gram Panchayat after it is withdrawn or it is disputed?

14 Section 29 of the said Act reads as under :-

"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 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."*

15 The resignation or the resignation notice is to be served upon the Chairperson of the Panchayat Samiti in Form-I under Rule 3(2) of the Maharashtra Village Panchayats (Delivery of Notice of Resignation) Rules, 1965. The said Form-I is split into two portions. The first part is with regard to the "Form of Resignation/ Notice of Resignation" by an elected

candidate and the second part is in Form-II under Rule 3(3) by which, an acknowledgement receipt for the resignation has to be issued to the candidate intending to resign.

16 The copy of the so called resignation is placed on record at page 20 and the same is available in the original record, which has been placed before this Court for perusal. On perusal of the record, it is apparent that the acknowledgement receipt has not been issued by the Chairperson of the Panchayat Samiti. Whether, the document is a resignation or a notice for resignation is not clear because the words, which are not applicable, have not been scored out. So also, the acknowledgement receipt is blank, except the remark of the Chairperson that the said resignation be forwarded to the Gram Panchayat for verification. Form-I, therefore, indicates that a candidate can either tender the resignation or can give a notice for resignation. Form-II, which constitutes a receipt to the candidate tendering the resignation, also enables the said candidate to disclose whether, it is a resignation or it is merely a notice before resignation.

17 In view of this position, the said document will have to be treated, at the most, as a notice for resignation. This backdrop, therefore, lends credence to the contention of the Petitioner that she was unaware as to what was the document on which her signature was obtained and which was tendered to the Chairperson of the Panchayat Samiti. The

contention in the petition is that Respondent Nos.5 to 7 had carried the said document to the Chairperson of the Panchayat Samiti. The fact that an acknowledgement receipt was not issued by the Chairperson to the Petitioner, would support the contention of the Petitioner that she had not tendered any resignation herself to the Chairperson. On this premise, the said document could not be treated as a resignation voluntarily submitted.

18 The second issue is as to whether, the Petitioner has withdrawn her resignation and whether, the said act would have an impact upon the proceeding in the meeting dated 14.06.2017. As noted above, after the Petitioner received a notice from the Gramsevak on 07.06.2017 as regards the verification of her resignation, she has not declared before the Gramsevak that the said document is a resignation tendered by her voluntarily or she confirms it to be her resignation indicating her intention. She has infact written a letter dated 14.06.2017 and tendered it to the Gramsevak at 10:30 AM on 14.06.2017, thereby withdrawing the said resignation notice. The Gramsevak participated in the meeting of the Gram Panchayat. It, therefore, presupposes that after the meeting commenced at 11:00 AM, the Gramsevak was aware that the Petitioner had withdrawn her resignation. I find from the said letter that the Petitioner has reiterated that she has not voluntarily signed on the resignation, has not submitted the resignation herself and that she intends to continue as the Sarpanch and the resignation should be ignored.

19 The minutes of the proceeding book indicate that a discussion took place in the said meeting. The Petitioner addressed the members in the meeting listing out the reasons as to how she has not signed the resignation voluntarily. She reiterated that she has not resigned from her position as the Sarpanch. She was never given an acknowledgement of tendering her resignation in person. She prayed in the meeting that the said resignation should not be considered and she does not intend to resign.

20 The agenda for the meeting at item No.5 (सरपंच राजीनामा पडताळणी करणे बाबत) was to conduct a verification of the resignation document submitted by the Sarpanch. Once the Petitioner declared that she has not resigned, did not intend to resign and her resignation letter should be discarded, the Gram Panchayat could not have accepted the said resignation in the light of Section 29(6)(a) of the said Act which specifically provides that the resignation shall take effect where there is no dispute regarding the genuineness and after the expiry of 07 days from the meeting in which the resignation is confirmed. Once the Petitioner has withdrawn the resignation and reiterated her withdrawal in the meeting on 14.06.2017, the resignation did not stand in the eyes of law and there was no occasion for the Gram Panchayat to resolve as to whether, the resignation is to be accepted.

21 The learned Division Bench of this Court in **Rajesh Jaiswal** (*supra*) has observed in paragraph 6 as under :-

"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."
(Emphasis supplied)

22 There is no provision under the said Act, which would expressly bar the withdrawal of the resignation once it is tendered. Even if the resignation letter is submitted as per Section 29, the person tendering the resignation would not be prevented from withdrawing the same. In the absence of any bar, the Petitioner could have withdrawn the resignation and which she has so done before the meeting commenced.

23 This Court has concluded in **Rajesh Jaiswal (supra)** that the resignation does not become effective forthwith. It is to be placed in the committee meeting of the Village Panchayat and it becomes effective only after 07 days and that too if there is no dispute regarding the genuineness of the resignation letter. The Petitioner's action of withdrawing the resignation is, therefore, fortified by the said conclusion.

24 In **Sou.Kumudini Ratilal Bhagat (supra)**, the learned Division Bench has held in paragraphs 10, 11 and 13 as under :-

- "10. *There is yet another prominent shade serving as a pointer, namely, 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) and if that be so, then logically there would not arise any question about the said resignation to become effective at all because that feature would remain in vacuum. In that event an occasion for the further consequences would not arise at all. This in our opinion is quite formidable pointer in favour of the view that we are inclined to take in this matter.*
11. *Therefore, on the rational basis some reasonable period for rethinking is necessary to be allowed especially when there is no prohibition in the provision unlike some other statutes. One can easily go thus far to enunciate that having regard to the scheme of the said provisions along with the legislative intent behind the same and in the context of the various clauses enveloped in that provision, the resignation tendered by a member may not become effective until at least the meeting is called and even until such resignation is placed in that meeting. In other words, it would still remain in that nebulous*

form till the meeting is called or even till the meeting is held and concluded on the scheduled date and as a logical rider corollary it would follow that till then the member would be within his rights to voluntarily withdraw the said resignation. This in our opinion would be the minimum that can be safely arrived at on the premise of this harmonious construction of these provisions.

12.

13. *In conclusion, therefore, on the facts as established in the instant case the petitioners stand on still stronger footing. There is no dispute about the genuineness of the resignations as also about the genuineness of their withdrawal. As stated, the said three points of time are firmly established and what is of more importance is that the genuineness and voluntariness of the withdrawal of those resignations as also the correctness of the date on which those were withdrawn is not even remotely doubted and thereby firmly establishing that these four petitioners have admittedly and genuinely withdrawn their resignations even before the meeting was held and as stated there thus did not arise any question of placing any such resignations in that meeting. The withdrawal of the resignations before the date of the meeting has been referred to even by the Chief Executive Officer in his report to the Commissioner. Consequently, therefore, these four petitioners were within their right to voluntarily withdraw the said resignations even before the said meeting was held as by then the said resignations had not become effective. 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 Act which proceeded on the erroneous footing that these members had resigned and the resignations had become effective almost immediately itself falls on the ground. Consequently, therefore, the impugned order*

dated July 19, 1985 under which the Panchayat was dissolved and the consequential order of appointment of the Block Development Officer as the Administrator of the Panchayat will also have to be quashed."
(Emphasis supplied)

25 The learned Division Bench, therefore, dealt with a similar situation of withdrawal of the resignation before the date of the meeting. It was held that the candidate has a right to voluntarily withdraw the resignation even before the said meeting was held.

26 Section 29(6) was, however, not pressed into service in *Sou.Kumudini Bhagat (supra)*. In considering the third issue, Section 29(6)(a) of the said Act clearly indicates that the resignation would take effect only when there is no dispute as regards its genuineness and that too after the expiry of 07 days from the date on which it is placed before the meeting of the Gram Panchayat. In the light of this position of law, the Petitioner can be said to have rightly withdrawn her resignation before the meeting commenced and declared her intention of not resigning in the meeting when she addressed the members of the Village Panchayat.

27 Notwithstanding the above, the resolution No.5, which is the decision taken by the Village Panchayat on 14.06.2017, indicates that the subject on the agenda was approved. The subject on the agenda was only to conduct a verification of the resignation of the Sarpanch. She declared that she has not resigned and has withdrawn her resignation. Thereafter,

it is mentioned as "ठराव मंजूर" (resolution accepted). This, therefore, cannot amount to the Village Panchayat accepting the resignation of the Petitioner when the agenda in the meeting was not regarding the "acceptance of the resignation", but purely for conducting an exercise of verification of the said resignation. On this count as well, the said resolution No.5, which is as vague as it could be, cannot tantamount to acceptance of the resignation of the Petitioner.

28 In the above backdrop, there was no occasion for the Petitioner to approach the Collector and thereafter, the Additional Divisional Commissioner. It appears that her approaching the District Collector was on account of an ill advise. When the resolution in the meeting does not indicate that she has resigned or that her resignation is accepted, the Petitioner, therefore, continued in her position as the Sarpanch. Nevertheless, this answers the third issue that the resignation letter cannot be accepted by the Gram Panchayat after its withdrawal by the candidate as it did not remain in existence.

29 In view of the above position, I am not required to deal with the aspect of whether, the Collector could have entertained the dispute raised by the Petitioner after 07 days from the date of the meeting. This aspect actually throws up one more issue as to who should raise the dispute before the District Collector. The phraseology of Section 29(3) indicates that if any member or the Sarpanch, whose resignation is placed

before the meeting of the Gram Panchayat, wants to dispute the genuineness of resignation, he shall refer such dispute to the Collector within 07 days from the date on which his resignation is placed before the meeting of the Gram Panchayat.

30 The issue as to whether, it would be sufficient for the candidate purportedly resigning to raise a dispute about the genuineness of the resignation in the meeting and leave it to the Chairperson of the meeting to refer the dispute since the Gram Panchayat cannot accept the resignation once the dispute regarding its genuineness is raised under Section 29(6)(a). The dispute has to be referred to the Collector or else there would be a deadlock. Whether, after raising the dispute in the Gram Panchayat meeting, the candidate resigning has to proceed to the office of the Collector within 07 days and lodge his dispute with the Collector? These issues do not require an adjudication in the facts of this case and hence, are not being gone into by this Court in this petition since the Petitioner had withdrawn her resignation before the meeting began on 14.06.2017.

31 The learned Advocate for the Petitioner/ Sarpanch makes a gracious statement, on instructions, that though the Petitioner can identify who were the persons who had forcibly obtained her signature on the form by threatening her and her family, yet she would prefer to pardon those persons so as to close the dispute and develop a goodwill which

would lead to her peaceful functioning as the Sarpanch. She would, however, not spare them if there is any recurrence of such acts.

32 Considering this statement, I am not required to consider whether, the District Collector can be ordered by this Court to cause an enquiry into the allegation of some persons pressurizing the Petitioner. This issue is, therefore, put to rest for the present.

33 In view of the above, this Writ Petition is allowed in terms of prayer clause B, which reads as under :-

"B) *By issuing of appropriate writ of certiorari or any other writ or direction or order of like nature, impugned judgment and order dated 24.10.2017 passed by the learned Collector, Ahmednagar in Dispute Application No.40/2017 as well as the judgment and order dated 20.11.2017 passed by the learned Additional Commissioner, Nasik Division, Nasik in Grampanchayat Appeal No.596/2017 be quashed and set aside by allowing the dispute of the petitioner and it may be declared that petitioner withdrew the resignation letter and hence, it could not be regarded as genuine one and it may be declared that the petitioner would be entitle to continue as Sarpanch of Village Panchayat, Dadegaon, until her term is over.*"

34 The record and proceedings received from the office of the District Collector, Ahmednagar be returned forthwith.