

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

WRIT PETITION NO.13912 OF 2017

Kaveri w/o Hanumant Borge,
Age : 45 years,
Occupation : Agriculture & Household,
R/o Babhalkhunta,
Taluka and District Beed.

..PETITIONER

-VERSUS-

- 1 The State of Maharashtra.
Through its Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai-32.
- 2 The State Election Commission.
Through it's Secretary,
Madam Kama Road,
Fort, Mumbai.
- 3 The District Collector,
Beed.

..RESPONDENTS

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Shri S.S. Thombre, Advocate for the Petitioner.
Shri S.R.Yadav, AGP for Respondent Nos.1 and 3.
Shri S.T.Shelke, Advocate for Respondent No.2.

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CORAM: RAVINDRA V. GHUGE, J.

Reserved on : 25th June, 2018.

Pronounced on : 06th July, 2018.

JUDGMENT :

- 1 Rule. Rule made returnable forthwith and heard finally by the

consent of the parties.

2 By this petition, the Petitioner prays that the impugned order dated 21.11.2017 passed by the District Collector, Beed be quashed and set aside. The Petitioner has been removed as a member of the Gram Panchayat as well as Sarpanch of Village Gram Panchayat, Babhalkhunta under Section 13-A of the Maharashtra Village Panchayats Act, for having failed to resign as per Rule 41-A of the Maharashtra Gram Panchayat Election Rules, 1959.

3 The Petitioner was elected as a member of the Babhalkhunta Gram Panchayat on 09.10.2017 after the polling took place on 07.10.2017. She also contested the elections to the position of a Sarpanch since the said position was to be directly filled in by elections held on 07.10.2017 under Section 30(1A) of the Maharashtra Village Panchayats Act. She was elected as a Sarpanch on 09.10.2017.

4 Under Rule 41-A of the Maharashtra Gram Panchayat Election Rules, 1959, a period of seven days is prescribed, from the date of the official publication of the notice declaring the results of the elections, for a candidate to resign from one post if he has been elected to more than one post in the said elections. A notification was published by the District Collector on 11.10.2017 notifying the results of the elections. By excluding the said date, the Petitioner was expected to resign from all but one position within seven days, which would be on or before 18.10.2017.

5 It is the case of the Petitioner that she has written down her

resignation from the position of member of the Gram Panchayat on 13.10.2017, signed it and posted it by RPAD to the District Collector, Beed, on the same day, from her village. The contention is that after the resignation was dispatched by RPAD, it was beyond the control of the Petitioner as to when the said resignation would reach the District Collector. The case of the Respondent/ State is that as the District Collector received the resignation letter on 01.11.2017, the Petitioner was held to have incurred a removal as a member and as the Sarpanch, vide the impugned order dated 21.11.2017. It is contended that there was no hearing given to the Petitioner before unseating her and declaring both the positions vacant.

6 The learned counsel for the Petitioner relies upon Section 13-A and Rule 41-A to contend that the said section provides that a person, who is elected to more than one seat in the village panchayat, shall resign from all the seats but one, by writing a resignation duly signed by the candidate and addressed to the State Election Commission or any officer authorized by it in this behalf. If this is not so done, all the seats occupied by the said candidate would be declared as vacant. He, therefore, contends that the language of the said provision requires a candidate to write the resignation letter, sign it and address it to the State Election Commission or any authorized officer. The language in the said section and the Rule does not indicate that a resignation letter should be delivered within seven days to the competent authority.

7 Reliance is placed upon Rule 41-A of the Election Rules to support the contention that even the said rule which prescribes the time period of seven days, does not specifically indicate that the resignation letter should be delivered within seven days to the District Collector. It is, therefore, contended that a person, who is democratically elected by the mandate of the masses, cannot be unseated merely because the District Collector desires to interpret a particular provision in a different manner. When the resignation letter is not mandated to be delivered within seven days to the District Collector, the State cannot take a stand that as the letter dispatched by RPAD has not reached the District Collector within time, all the seats would fall vacant.

8 Shri Shelke, learned Advocate appearing on behalf of the State Election Commission, which has authorized the District Collector to act on behalf of the Commission, submits that the intent of the legislature will have to be seen. If the legislature mandated that the resignation must occur within seven days, it has to be understood that the action of resignation must be complete within seven days. Though the Rules could be directory in nature, the interpretation of Section 13-A and Rule 41-A should lead to a harmonious meaning. The intent and object of the legislature should not be defeated merely because a candidate has been democratically elected.

9 Section 13-A of the Act was introduced by the Maharashtra Act No.36 of 1965, which reads as under :-

"13-A. *Vacation of seats :- If a person is elected to more than one seat in a village panchayat, then unless, within the prescribed time he resigns all but one of the seats by notice in writing signed by him and addressed to the State Election Commission or any officer authorised by it in this behalf, all the seats shall become vacant.*"

10 Rule 41-A of the Election Rules, 1959 reads as under :-

"41-A. *Multiple Election :- If a person is elected to more than one seat in a village panchayat, the time within which he may resign all but one of the seats under Section 13-A shall be seven days from the date of the posting of the result of the election by the Returning Officer under Rule 36.*"

11 The impugned order has been passed on 21.11.2017 by the District Collector. The resignation letter dated 13.10.2017 written and signed by the Petitioner, is dispatched by RPAD and the stamp of the Post Department indicates the date as being 13.10.2017. The said letter is admittedly received by the District Collector on 01.11.2017.

12 Section 13-A does not prescribe a specific time frame. It only indicates that the resignation must be written and signed by the candidate and should be addressed to the authorized officer. It is Rule 41-A which prescribes the period of seven days from the date of the posting of the results of the election by the Returning Officer, to enable a candidate for resigning from all but one post. As such, if Section 13-A and Rule 41-A are to coexist since the Rules are accepted to be a hand-maid to the provisions,

both these provisions will have to be interpreted harmoniously so as to ensure that the Rule should not run counter to the section.

13 Neither Section 13-A nor Rule 41-A express in any manner that the resignation must be written, signed and delivered to the authorized officer within seven days from the date of the official announcement of the election results.

14 The Petitioner has relied upon the reported judgment of this Court in the matter of Rukhmaji Dnyanoba Hakke vs. Collector, Latur, 2013 (4) Mh.L.J. 926, wherein, the view taken was that if a candidate fails to tender his resignation from all seats except one, within seven days, the Collector can declare all the seats vacant. The Petitioner in the said case was elected as a member from two wards on 21.10.2012. He failed to tender his resignation within seven days. The Collector declared both the seats vacant on 22.11.2012. This Court sustained the said decision since the Petitioner had never tendered his resignation. The Tahasildar conveyed to him the impugned order dated 22.11.2012, that both the seats have fallen vacant, that he realized that he was required to submit a resignation under Rule 41-A.

15 Paragraphs 6, 7, 8, 9 and 10 of Rukhmaji Hakke (supra) read as under :-

“6. It is not disputed that the petitioner was elected from Ward No. 2 and Ward No. 3. The provisions of section 13-A of the said Act mandates that if a person is elected

to more than one seat in the Village Panchayat, then unless he resigns from all but one of the seats, within the prescribed time by notice in writing and addressed to the State Election Commission or any Officer Authorized by it in this behalf all the seats shall become 'vacant'. Rule 41-A of the said Rules lays down the period within which the person has to elect the seat which he would like to retain. As per the said rules within seven days from the date of the posting of the result of the election by the Returning Officer under Rule 46, the person has to elect which seat he would retain and has to resign from the other seat.

7. In the present case, it is not disputed that the petitioner was posted with the result of election on 22nd October, 2012. It is also not disputed that the petitioner has not tendered his resignation from one seat within seven days and the Collector passed the order declaring both the seats to be vacant on 22nd November, 2012 i. e. after lapse of one month from the date of the posting of the result of election to the petitioner.
8. Reading the provisions of the Statute and the Rules conjointly, it nowhere prescribes issuance of notice by the authority to the petitioner. On the contrary Sec. 13-A of the said Act and Rule 41-A of the said Rules impose a duty on the petitioner to tender his resignation of all seats except one within a period of seven days. When a statute casts an obligation on the petitioner to tender his resignation within a particular period and the statute also nowhere lays down a mandate to be followed by the authority of issuing notice to the petitioner, in such an event the arguments of Shri Nimbalkar, the learned counsel for the petitioner that the same should be read into said provisions cannot be accepted. The same would be supplanting the statute. The provision of Sec. 13-A is self operative. The election law will have to be construed strictly. The Court would not read into a provision, nor insert any word in the statute, which statute has consciously excluded.
9. Sec. 13-A of the Panchayat Act mandates that, on the lapse of period as prescribed all the seats shall

become vacant. As such, by the operation of law on the lapse of seven days of the posting of the result of election the seat would become vacant, if the candidate does not tender his resignation for all the remaining seats except one. As far as the term "vacant" as appearing in Sec. 13-A is concerned, it is a consequence of the fact that a person cannot continue to hold the seat. The term must be understood in the context in which it is used. The provisions of Sec. 13-A nowhere contemplates any adjudication. On omission of the person to resign from all but one seat within stipulated period by operation of law all seats become vacant.

10. *In fact the Collector while passing the order of declaring both seats vacant has only performed a ministerial act. It is by operation of Sec. 13-A of the statute both seats became vacant axiomatically. The Collector by passing an order only took cognizance of the fact that both the seats stood vacant, as petitioner within the period of 7 days did not tender his resignation from one seat or did not opt for retaining a particular seat."*

(Emphasis supplied)

16 Reliance is placed by the Petitioner on the judgment of the Honourable Apex Court in the matter of Indo Automobiles vs. Jay Durga Enterprises, 2009 AIR SC 386, which was the judgment delivered with regard to the Negotiable Instruments Act, 1881. The issue was as regards the effect of sending a notice by a registered post to the Addressee. Paragraph 8 of the said judgment reads as under :-

- "8. *Admittedly, notice under Section 138B of the Negotiable Instruments Act was sent to the respondents through registered post and under a certificate of*

posting on their correct address of the respondents. The High Court had quashed proceeding on the ground that although notice through registered post and also under certificate of posting were sent by the appellant/ complainant to the respondents but because of the endorsement of the postal peon, the service could not be said to have been effected. In our view, the High Court was not justified in holding that service of notice could not be found to be valid. In *K.Bhaskaran vs. Sankaran Vaidhyan Balan & Anr.* [1999 (7) SCC 510], it has been held that the context of section 138B of the Negotiable Instruments Act invites a liberal interpretation favouring the person who has the statutory obligation to give notice under the Act because he must be presumed to be the loser in the transaction and provision itself has been made in his interest and if a strict interpretation is asked for that would give a handle to the trickster cheque drawer. It is also well settled that once notice has been sent by registered post with acknowledgement due in a correct address, it must be presumed that the service has been made effective. We do not find from the endorsement of the postal peon that the postal peon was at all examined. In *V. Raja Kumari vs. P. Subbarama Naidu & Anr.* [2004 (8) SCC 774], again this Court reiterated the same principle and held that the statutory notice under Sections 138 and 142 of the Negotiable Instruments Act, 1881 sent to the correct address of the drawer but returning with the endorsement must be presumed to be served to the drawer and the burden to show that the accused drawee had managed to get an incorrect postal endorsement letter on the complainant and affixed thereof have to be considered during trial on the background facts of the case.”

(Emphasis supplied)

17 It is, thus, held by the Honourable Apex Court that the benefit of interpretation in such circumstances must favour a person who is likely to

suffer an irreparable harm and serious prejudice. If a letter or notice is sent by RPAD to the addressee on his correct address, the service is presumed to be effected. In the case in hand, there is no dispute that the District Collector has received the resignation on 01.11.2017. The communication of an acceptance is complete when the communication is put in the course of transmission to the addressee so as to be out of the power of the sender. The Petitioner has posted the resignation letter duly signed by RPAD on 13.10.2017 addressed to the District Collector. Once the letter is put in the envelope and is dispatched by RPAD, it is not within the control of the Petitioner as to when it would be delivered to the Collector.

18 The learned AGP has placed on record a communication from the Senior Superintendent of Post Offices, Aurangabad addressed to the AGP whereby, he has communicated the delivery norms of a registered mail. This was in response to the letter from the AGP calling for the said information. I have perused the norms of delivery of the Department of Posts, Ministry of Communication by which, a registered letter takes two to four days for delivery between one metro to another metro and takes two to six days in between two places in the same State. With this in focus, the letter sent by the Petitioner by RPAD on 13.10.2017 should have normally reached the District Collector's office within two to six days. It is the stand of the District Collector's office that the letter was received on 01.11.2017. This is not within the control of the Petitioner. It cannot be ignored that she had put

the envelope in a course of transmission and therefore, she had performed her obligation expected under Section 13-A and Rule 41-A.

19 It is the contention of the State that the language used in Section 13-A and Rule 41-A has to be treated as being inclusive of the meaning "delivered". The resignation must be written, signed and should be delivered to the authorized officer within seven days. A parallel is sought to be drawn by Shri Shelke, with the case of resignation of an employee in service jurisprudence. I am unable to accept the said contention since, in service jurisprudence, the issue of resignation is a bipartite transaction. The moment an employee submits the resignation, either by hand or through post, it would not mean that he stands relieved from employment. The employer has to react by accepting the resignation or post reasons for rejecting the same. In between the dispatch of the resignation letter and the decision of acceptance, the employee can withdraw his resignation. No resignation can be accepted by the Management if there is withdrawal before the decision of acceptance is taken. As such, the principle applied in service jurisprudence would not assist the case of the State.

20 In the case in hand, the obligation is on the candidate to resign within seven days. No response in the form of "acceptance" by the Collector is expected. This is a unilateral action and the moment such a candidate resigns, the action is complete and will relate to the date of his resignation, unless the law mandates that the candidate must deliver his resignation to

the authorized officer before the expiry of seven days. A constricted view, in the absence of the words “should be delivered”, would be harsh in such matters.

21 The Petitioner has relied upon the judgment of the Honourable Apex Court in the matter of V.Raja Kumari vs. P. Subbarama Naidu and another, AIR 2005 SC 109, wherein, it has been held, by placing reliance upon Section 27 of the General Clauses Act, 1897, that, when the sender has dispatched the notice by post with the correct address written on it, then, it can be deemed to have been served on the addressee.

22 Considering the peculiar facts of this case, I am of the view that unless mischief is established as against the Petitioner, the conduct of the Petitioner needs to be scrutinized within the ambit of the provisions applicable. When the Petitioner has discharged her obligation by sending her resignation as a member of the Gram Panchayat within two days from the official declaration of the result, the provisions need to be interpreted in a manner so as to avoid the unseating of a democratically elected candidate.

23 As neither section 13-A nor rule 41-A mentions that the resignation should be delivered to the authorized officer within seven days, it needs to be interpreted that the legislature intended that the elected candidate should perform his obligation of resigning within seven days. On account of the postal delay, the Petitioner cannot be blamed so as to dislodge her from the elected position of a Sarpanch. No provision under the

Act or the Rules or any judicial pronouncement has been cited by which, the contention of the State could be substantiated that such an elected candidate has to ensure that the resignation should be delivered to the authorized officer within seven days by hand delivery or any other mode.

24 In view of the above, this Writ Petition is allowed. The impugned order dated 21.11.2017 passed by the District Collector, Beed is quashed and set aside. The Petitioner shall be deemed to have retained her position as a Sarpanch of the said Village Gram Panchayat.

25 Rule is made absolute in the above terms.