

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10266 OF 2018

Sanjay Bajirao Deshmukh,
Age-47 years, Occu-Agriculture,
R/o Kati, Tq.Tuljapur,
Dist.Osmanabad

– PETITIONER

VERSUS

1. The Collector, Osmanabad,
Collector Office,
Osmanabad,
2. Adesh Jalinder Koli,
Age-49 years, Occu-Agriculture,
R/o Kati, Tq.Tuljapur,
Dist.Osmanabad

- -RESPONDENTS

Mr.N.K.Tungar, Advocate for the petitioner.
Mr.N.T.Bhagat, AGP for respondent No.1.
Mr.S.M.Kulkarni and Mr.O.B.Boinwad, Advocates for respondent
No.2.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 26/03/2019

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2. The issue raised by the petitioner vide this petition is, as to
whether a person, who is already elected as a member of the

Panchayat Samiti or the Zilla Parishad, will have to resign from the said position before contesting the election to the position of a member of the Village Panchayat or contest a direct election to the post of Sarpanch of a Village Panchayat, considering Section 14(1)(j-2) of the Maharashtra Village Panchayat Act.

3. The admitted aspects of this case are as under :-

- [a] Respondent No.2 was already elected as a Member of the Kati Panchayat Samiti on 23/02/2017.
- [b] The State Election Commission declared the election programme for the village Kati, Tal.Tulzapur, Dist.Osmanabad.
- [c] The nomination forms were to be filled in, between 22/09/2017 to 29/09/2017.
- [d] Scrutiny of the nomination forms was scheduled on 03/10/2017.
- [e] Withdrawal of the nomination form was scheduled on 05/10/2017.
- [f] Distribution of election symbols was scheduled on 05/10/2017.
- [g] The polling date was 16/10/2017.
- [h] The election results were to be declared on 17/10/2017.
- [i] Respondent No.2 was declared elected as a Sarpanch of the said village on 17/10/2017.
- [j] Respondent No.2 tendered his resignation to the Panchayat Samiti on 22/10/2017.
- [k] His resignation was accepted on 30/10/2017.

[l] The first meeting of the Village Panchayat was convened by the Tahsildar u/s 28, on 23/11/2017 and respondent No.2 assumed charge as a Sarpanch on the said date.

[m] The petitioner filed an application before the District Collector seeking disqualification of respondent No.2 u/s 14(1)(j-2) on the ground that he had incurred a disqualification as he was already elected as a Member of the Panchayat Samiti, Kati and could not have contested the elections to the post of Sarpanch, without resigning from the earlier post.

[n] The District Collector, by order dated 13/04/2018, concluded that as the petitioner was elected earlier as a Member of the Panchayat Samiti, he cannot continue as a Sarpanch.

[o] Respondent No.2 preferred an appeal before the Divisional Commissioner, Aurangabad.

[p] By order dated 30/07/2018, the appeal was allowed and it was declared that the second respondent has not incurred the disqualification u/s 14(1)(j-2).

4. Learned Advocate for the petitioner has strenuously canvassed that considering the phraseology of Section 14(1)(j-2), respondent No.2 should have first resigned as a Member of the Panchayat Samiti and then should have contested the election to the post of Sarpanch. He concedes that there is no provision in the Village Panchayat Act which would mandate a candidate to resign first and then contest the election to the post of Sarpanch or Member, as the case may be.

5. Learned Advocate for respondent No.2 relies upon Section 28 to contend that his tenure of office as a Sarpanch would commence only on the date the first meeting of the newly elected members of the Village Panchayat is convened.

6. Section 14(1)(j-2) and Section 28, read as under :-

Section 14 – Disqualifications :- (1) No person shall be a member of a Panchayat continue as such, who -

(j-2) has been elected as a Councillor of the Zilla Parishad or as a member of the Panchayat Samiti ; or]

Section 28 :- Commencement of term of office :- (1) The term of office of the members elected at a general election or appointed under sub-section (3) of Section 10 shall be deemed to commence on the date of the first meeting of the Panchayat. The first meeting of the Panchayat shall be held on a day fixed by the [Collector] [as soon as may be after the publication of the names of the elected members under Section 10; and such date shall not-

(i) in the case of first meeting after general election, be later than the day immediately following the day of expiry of the term of outgoing members ; and

(ii) in the case of election held after the dissolution of the Panchayat be later than the date of expiry of the period of six months from the date of dissolution of the Panchayat.]

7. The language used in Section 14(1) clearly indicates that no

person shall be a Member of a village Panchayat or continue as such, who has been elected as a Councillor of a Zilla Parishad or as a Member of the Panchayat Samiti. In my view, the plain reading of the said provision would suggest that a person shall not be a Member of two bodies at the same time. Consequentially, unless a person is elected to a body, it would not pre-suppose that his mere contesting of the election while occupying another elected position would mean that a person has occupied two elected positions.

8. The contention of the petitioner is that respondent No.2, already being a Member of the Panchayat Samiti on the date of filing his nomination form to the position of Sarpanch, should have first resigned as a Member of the Panchayat Samiti. One cannot read something that does not meet the eye. If there is no specific provision mandating a resignation from an existing elected position prior to contesting an election to another body, it cannot be interpreted that the disqualification introduced by Section 14(1) would mandate a resignation prior to filing of the nomination form, failing which, such a candidate would incur a disqualification.

9. Section 28 prescribes the date of commencement of the term of office. Had Section 28 been absent from the Statute Book, it would

not have invited a discussion as regards the commencement of the term of office of a Sarpanch. Since Section 28 prescribes the commencement of the term of Office which would be from the date of the first meeting of the Panchayat, it has to be accepted that respondent No.2 formally became a Sarpanch and assumed charge with the commencement of his term on 23/11/2017. By that time, he had already resigned as a Member on 23/10/2017 which was formally accepted on 30/10/2017. As such, in between 31/10/2017 to 22/11/2017, respondent No.2 was neither a Member of the Panchayat Samiti, nor was he a Sarpanch of the Village Panchayat.

10. The Hon'ble Apex Court has dealt with a somewhat similar issue u/s 14(1)(j-2) in the matter of Vijay Vs. State of Maharashtra 2006(6) SCC 289 = 2006 AIR (SCW) 6130 = 2006(5) Mh.L.J. (SC) 782.

In the said case, the appellant was elected as a Member of the Gram Panchayat in the year 2000. He was also elected as a Sarpanch of the village. Thereafter, he was elected as a Councillor of a Zilla Parishad. As he continued on both the positions, he was disqualified to hold the post under the Village Panchayat Act by the Additional Collector. His appeal was dismissed by the Additional Divisional Commissioner. His writ petition was also dismissed by this Court. The issue as to whether such a candidate should have

resigned from his earlier position before being elected to the membership in the Village Panchayat, was not raised.

11. The Hon'ble Apex Court, in the above backdrop, concluded that Section 14(1) is a disqualification clause and it was intended by the Legislature to give such disqualification a retrospective effect. It was also concluded that though the general rule is that a Statute shall be considered to be prospective, it would have two exceptions viz. it should be expressly enacted or an inference in relation thereto would be evident by natural implication. It was finally held that though the appellant was elected in terms of the provisions of the Statute, the disqualifying clause u/s 14(1) would have a retrospective effect and when a literal meaning of the provision giving such retrospective effect would not lead to any absurdity or an anomaly, such an interpretation has to be accepted and it would therefore not be effective prospectively.

12. The observations of the Hon'ble Supreme Court in Vijay Vs. State of Maharashtra (supra), in paragraph No.7, read as under :-

“7. It may be true the amendment came into effect on 8.8.2003. The legislative policy emanating from the aforesaid provision, in our opinion, is absolutely clear and unambiguous. By

introducing the said provision, the legislature, *inter alia*, intended that for the purpose of bringing grassroot democracy, a person should not be permitted to hold two posts created in terms of Constitution (73rd [Amendment](#)) Act. It is true that ordinarily a statute is construed to have prospective effect, but the same rule does not apply to a disqualifying provision. The inhibition against retrospective construction is not a rigid rule. It does not apply to a curative or a clarificatory statute. If from a perusal of the statute intendment of the legislature is clear, the Court will give effect thereto. For the said purpose, the general scope of the statute is relevant. Every law that takes away a right vested under the existing law is retrospective in nature. [\[See Govt. of India & Ors. vs. Indian Tobacco Association, \(2005\) 7 SCC 396.\]](#)

"The cardinal principle is that statutes must always be interpreted prospectively, unless the language of the statutes makes them retrospective, either expressly or by necessary implication. Penal statutes which create new offences are always prospective, but penal statutes which create disabilities, though ordinarily interpreted prospectively, are sometimes interpreted retrospectively when there is a clear intendment that they are to be applied to past events. The reason why penal statutes are so construed was stated by Erle, C.J., in *Midland Rly. Co. v. Pye*, (1861) 10 C.B. NS 179 at p.191 in the following words:

"Those whose duty it is to administer the law very properly guard against giving to an Act of Parliament a retrospective operation, unless the intention of the legislature that it should be

so construed is expressed in clear, plain and unambiguous language; because it manifestly shocks one's sense of justice that an act, legal at the time of doing it, should be made unlawful by some new enactment."

This principle has now been recognised by our Constitution and established as a Constitutional restriction on legislative power."

13. Learned Advocate for respondent No.2 relies upon the prohibition of simultaneous membership Rules, 1950 which were introduced by the President of India in exercise of the powers conferred by clause II of Article 101 and clause II of Article 190 of the Constitution of India. He points out that, in so far as an election to a position in the Parliament and in the House of the State Legislature is concerned, such a candidate would have 14 days available from the date of publication in the gazette of India or in the official gazette of the State with regard to the declaration that he has been so chosen, to vacate either of the position. The option of resigning before facing the elections is also available.

14. It is well settled that the intention of the Legislature is visible from the phraseology / language used in the enactment. The Legislature has introduced Section 3(11AAA) to define a "member" as

a duly elected member under a Panchayat and includes the Sarpanch of such Panchayat elected directly u/s 30A(1A). U/s 13A, the vacation of seats is prescribed. 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 authorized by it in this behalf, all the seats shall become vacant. Rule 41A of the Bombay Village Panchayat Election Rules, 1959 provides for resignation of all but one of the seats u/s 13A by a person elected to more than one seat. The period within which he is supposed to resign from all but one seat is 7 days from the date of the posting of the result of the election by the Returning Officer under Rule 36. Rule 36 does not speak about the declaration of a result **(Bhika Poona Kanpate Vs. Civil Judge, AIR 1971 Bom. 277 (DB) = 1970 Mh.L.J. 648)** as it provides for the Returning Officer causing the names of elected candidates to be pasted to the Village chavadi or at the village Panchayat office or at such other public place.

15. It is, therefore, obvious that the Legislature has devised a scheme for the resignation of a person elected to more than one seat

in a Village Panchayat. The time period is 7 days. Akin to such a provision as in Section 13A, there is no provision with regard to 14(1) (j-2) under which the mandate is that no person shall be a member of a Panchayat or continue as such who has been elected as a Councillor of a Zilla Parishad or as a Member of the Panchayat Samiti. Such a candidate would therefore incur a disqualification u/s 14(1) only if he is or continues as a member of the Village Panchayat while being a member of the Zilla Parishad or the Panchayat Samiti.

16. It, therefore, has to be inferred that the Legislature did not intend that such a candidate who was contesting the election of a Panchayat, should resign prior to the filing of his nomination form or on the date of election. Respondent No.2, in fact, co-incidentally, resigned on 22/10/2017 which is after 5 days from the declaration of the election results on 17/10/2017. The posting of the result of the election by the Returning Officer has occurred thereafter. As noted above, his resignation was accepted on 30/10/2017 and considering the effect of Section 28, neither was he a Member of the Panchayat Samiti nor was he a Sarpanch in between 31/10/2017 till 22/11/2017.

17. As such, in the light of Vijay Vs. State of Maharashtra (supra), no person shall be a member of the Village Panchayat or continue as such, if has been elected as a Councillor of the Zilla Parishad or as a member of the Panchayat Samiti, which presupposes that such a person cannot occupy two positions at the same time. Such a candidate would then be disqualified from the Village Panchayat with retrospective effect.

18. This, therefore, leads me to draw a conclusion that a candidate as like respondent No.2, is not required to resign from an elected position at the time of filing the nomination form for contesting an election to another body. In the absence of such an express provision, I hold that such a candidate will have to resign from an earlier position, before his tenure as a member or a Sarpanch, as the case may be, commences u/s 28 of the Act.

19. This petition, being devoid of merit, is therefore, dismissed. Rule is discharged.

(Ravindra V.Ghuge, J.)