

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 992 OF 2019

Kavita Sachin Udhane

....Petitioner

Versus

The State of Maharashtra & ors.

...Respondents

Mr. Prashant D. Patil, for the Petitioner.

Mr. P. G. Sawant, AGP for the State/Respondent.

CORAM: B. R. GAVAI &
N. J. JAMADAR, JJ

DATED: 25th January, 2019

PC:-

1. The Petitioner has approached this Court contending therein that though the Petitioner has raised the dispute with regard to the genuineness of her resignation as 'Sarpanch', the Collector has not decided the same and has declared the programme for election to the office of Sarpanch.
2. Undisputed facts are that the Petitioner has tendered resignation of her post as 'Sarpanch' on 23rd December, 2018, to the Chariman of the Panchayat Samiti. The village panchayat in its meeting dated 5th January, 2019, passed the resolution accepting the resignation of the Petitioner. The Petitioner thereafter filed a dispute on 19th January, 2019 before the Collector. It is the contention of the Petitioner that

without deciding the dispute of the Petitioner, the Collector could not have declared the election programme.

3. The learned Counsel for the Petitioner relies on the judgment of the Division Bench of this Court in the case of Sangitabai Vasudeo Rajput vs. State of Maharashtra & ors.¹, in support of his proposition that the Collector has the power to condone the delay.

4. It is relevant to refer to Section 29 of the Maharashtra Village Panchyat Act, 1958 ('the Act', for short).

“29. (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,—

12018(1) Bom.C.R.588.

- (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.]”

The perusal of Section 29 of the Act would reveal that the Sarpanch can resign his office by writing, under his hand, addressed to the Chairman of the Panchayat Samiti. On receipt of the resignation from the Sarpanch, the Chairman of Panchayat Samiti is required to forward it to the Secretary, who is required to place it before the meeting of the Panchayat next following. Sub-section (3) provides that if any member or 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 the resignation is placed before the meeting of the Panchayat. The perusal of Sub-section 6(a) would reveal that 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 Panchyat, the resignation shall take effect.

5. In the present case, undisputedly, the resolution has been passed by the Gram-panchayat in the presence of the present Petitioner and after verifying from her with regard to the genuineness of the resolution. After the period of 12 days, the Petitioner has made her representation to the Collector. It can, thus, clearly be seen that, within this period of seven days from the date on which resignation is placed before the Panchayat, if a member or Sarpach does not dispute its genuineness in view of Sub-section (6) clause (a), the resignation is deemed to have become effective. In that view of the matter, we find no merit in the petition.

6. Insofar as the judgment and order of the Division Bench at Aurangabad in the case of *Sangitabai Rajput* (supra) is concerned, the learned Judges of the Division Bench were considering the provisions of Section 16(2) of the said Act. The view taken is on the basis that no consequences of not filing of appeal within prescribed period had been provided in the said provision and, as such, it could not be held that there is no power to condone the delay. However, in the present case, on a combined reading of Sub-sections (1), (2), (3) along with Clause (a) of Sub-section (6), it is clear that in the event the dispute is not preferred within seven days from the date on which the resignation is placed before the Panchayat, the

resignation will be deemed to have taken effect. As such, since the consequences of not filing a dispute within seven days are specifically provided in the said provision, the judgment, on which the learned Counsel for the Petitioner relies, would not be applicable to the present case.

7. The petition is, therefore, rejected.

[N. J. JAMADAR, J.]

[B. R. GAVAI, J.]