

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Writ Petition No.1321 of 2018
(Datta Ganpat Kamble .vs. State of Maharashtra and others.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders.
and Registrar's orders

Mr. V.N. Patre, Advocate for Petitioner.
Mr. S.B. Bissa, AGP for Respondent Nos. 1 to 3.

CORAM : Manish Pitale, J.
DATED : April 18, 2019.

The petitioner herein, who was elected directly as a Sarpanch as also a Member of Ward No.1 of Gram Panchayat Indira Nagar, tahsil Pusad, district Yavatmal, has challenged order dated 23.01.2018 passed by the respondent no.1 – Additional Collector, whereby it has been held that the petitioner stands disqualified from both the posts by operation of Section 13A of the Maharashtra Village Panchayats Act, 1959, (for short “Act”) as he failed to resign from either of the posts within the stipulated period of seven days from the date of declaration of result of election.

2. The facts leading up to filing of the present writ petition are that the elections were held for the said Gram Panchayat wherein the petitioner contested for the post of Member of the Gram Panchayat from Ward No.1 and also for the post of Sarpanch, who after the amendment of 2017 in the aforesaid Act, was to be elected directly by the voters. The petitioner was

elected both as a Sarpanch and also as Member from Ward No.1. The result of the election was declared on 09.10.2017 and it was published by the respondent no.2 on the Gram Panchyat notice board on 11.10.2017. According to the petitioner, on 16.10.2017 he submitted a letter to the respondent no.3- Tahsildar, also the Returning Officer, resigning from the post of Member of Ward No.1.

3. But, on 06.11.2017 a complaint was submitted against the petitioner before the respondent no.3, stating that resignation was not submitted by the petitioner within the stipulated time period of seven days and that, therefore, he stood disqualified under Section 13A of the aforesaid Act. The said provision mandates that a person elected to more than one seat in a Village Panchayat shall resign from all but one of the seats within the prescribed period and if he/she failed to do so, all the seats occupied by such person would be rendered vacant. On the said complaint, the respondent no.3 sent a proposal to respondent no.2, recommending disqualification of the petitioner, on the ground that the letter of resignation was received in the office of the respondent no.3 on 31.10.2017. It was submitted that since the said letter of resignation was beyond the prescribed period under Section 13A of the aforesaid Act read with Rule 41A of the Maharashtra Village Panchayats Rules, 1959, the petitioner was liable to be disqualified.

4. On this basis, notice was issued by the

respondent no.2 to the petitioner. In reply to the said notice, it was contended on behalf of the petitioner that Section 13A of the aforesaid Act did not apply to the petitioner after the 2017 amendment of the Act, whereby Sarpanch was directly elected on the post. It was further contended that resignation letter was in fact submitted on 16.10.2017, which was within the stipulated period and that due to clerical mistake and administrative issues, the correct date of submission of the resignation letter was not reflected in the record. On this basis, the petitioner asserted that he could not be disqualified under Section 13A of the aforesaid Act.

5. By the impugned order dated 23.01.2018, the Additional Collector rejected both the contentions which were raised on behalf of the petitioner. It was held that Section 13A of the aforesaid Act applied even after the 2017 amendment of the aforesaid Act and that the petitioner had not been able to show that he had submitted letter of resignation from the post of Member from Ward No.1 within the stipulated period of seven days. It was noted that the petitioner had claimed that the delay in submitting resignation had occurred due to ill-health and that he had also sought to be forgiven for the mistake on his part. It is this order of the respondent no.2 that has been made subject matter of challenge in the present writ petition.

6. Mr. V.N. Patre, learned counsel appearing for the petitioner made twofold submissions, firstly that Section 13A of the aforesaid Act did not apply to the

petitioner because it contemplated resignation from all but one seats by a person who was elected as ward member from more than one seat. It was submitted that as the petitioner was elected as member of the Gram Panchayat from Ward No.1 and that he was also elected directly as Sarpanch after the 2017 amendment of the Act, since there was no consequential amendment in Section 13A of the aforesaid Act, it could not be said that the said provision applied to the facts of the present case. On this basis it was submitted that when Section 13A of the Act did not apply, there was no question of the petitioner being disqualified on his failure to submit resignation within a period of seven days from 09.10.2017 when the results of the election were declared. Secondly, it was submitted that the petitioner had indeed submitted his resignation letter on 16.10.2017 and that this was evident from the aforesaid date being stated in the letter, which was on record. It was submitted that it was due to administrative issues and a clerical mistake that the endorsement of the office of the Tahsildar (respondent No.3) showed that the said letter was received on 31.10.2017. It was further submitted that the petitioner had also submitted letter dated 10.11.2017 before the respondent no.3, reiterating the fact that the resignation letter had been submitted on 16.10.2017 and that, therefore, there was sufficient material to show that the petitioner had complied with the requirement of Section 13A of the aforesaid Act, even if it was held that the same applied in the facts of the present case. It was further submitted that the reason recorded by the respondent

no.2-Additional Collector in the impugned order about ill-health of the petitioner or the fact that he had sought to be forgiven for his mistake in submitting the resignation letter after delay, did not find mention in the reply filed by the petitioner and that such a stand was never taken before the Collector. On this basis, it was submitted that the impugned order recorded facts that did not exist, thereby showing that on this ground also it was required to be set aside. The learned counsel placed reliance on the Division Bench judgment of this Court in the case of **Baburao Narayan Bagade .vs. State of Maharashtra** reported in **2006(1) All MR 366**.

7. On the other hand, Mr. S.B. Bissa, learned AGP appearing along with Mrs. Swati Kolhe, learned AGP for the respondents, submitted that there was no substance in the contention raised on behalf of the petitioner that Section 13A of the aforesaid Act did not apply to him as he was directly elected Sarpanch after the 2017 amendment in the aforesaid Act. The learned AGP invited the attention of this Court to Section 3 (11 AAA) introduced in the aforesaid Act by the very same amendment of the year 2017, which expressly specified that the Sarpanch would also be a “member” meaning a member duly elected to the Panchayat. It was submitted that the aforesaid definition clearly indicated that when the petitioner was directly elected as Sarpanch under the amended Section 30A-1A of the aforesaid Act, he was also elected as Member of the Gram Panchayat. It was submitted that since the petitioner was elected as a member of the Gram

Panchayat from Ward No.1 also, he was required to resign from either of the posts under Section 13A of the Act within the stipulated period and having failed to do so, the impugned order passed by the Collector was fully justified. It was further submitted that there was no substance in the contention raised on behalf of the petitioner that the resignation letter was submitted within the stipulated period of time and that due to some clerical mistake, the fact of submission of such letter within the stipulated period of time was not reflected in the record. It was pointed out that the endorsement on the letter of resignation clearly stated the date 31.10.2017, which was beyond the stipulated period of seven days and that, therefore, no fault could be found with the impugned order passed by the Additional Collector. In support of contentions raised on behalf of the respondents, reliance was placed on Division Bench judgment of Aurangabad Bench of this Court in the case of **Anuja Kalyan Gore .vs. The State of Maharashtra and others (Writ Petition No. 209 of 2018 decided on 06.03.2018)** along with connected writ petitions and order dated 15.06.2018 passed by the principal seat of this Court in the case of **Manisha Janardhan Desai .vs. State of Maharashtra** (Writ Petition No.6390 of 2018).

8. Heard learned counsel for the parties and perused the material placed on record. In order to appreciate the contentions raised on behalf of the rival parties, it would be necessary to refer to the relevant provisions of the aforesaid Act, particularly those

introduced by the Amendment Act, 2017. The said provisions read as follows:-

“Section 3 (11 AAA) *“member” means a member duly elected as a member of panchayat under section 11 and include the Sarpanch of panchayat elected directly under section 30A-1A.*

Section 3(25) *“Ward” means an area into which a village is divided under clause (b) of sub-section (1) of section 10 for the purpose specified therein.*

Section 10. Constitution of Panchayats- (1)

[(a) A panchayat shall consist of, -

(i) such number of members not being less than seven and not more than [seventeen as the [State Government may prescribed]], who shall be elected in accordance with Section 11:

[Provided that, the ratio between the population of the territorial area of a Panchayat and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State.]

[(ii) Deleted]

(b) each village shall be divided into such number of wards, and the number of members of a Panchayat to be elected from each ward shall be such, as may be determined [in the prescribed manner by the State Election Commission or an officer authorised by it]:

[Provided that, the panchayat area shall be divided into wards in such manner that, the ratio between the population

of each ward and the number of seats allotted to it shall, so far as practicable, be the same throughout the panchayat area.]

(1A) In respect of the panchayat to which the Sarpanch is directly elected under section 30A-1A, the provisions of this section shall apply with the modifications that, in sub-section (1), in clause (a), before sub-clause (i) the following sub-clause shall be inserted namely :-

(i-A) Sarpanch elected under section 30A-1A - ex officio member; and””.

Section 13A . *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.*

Section 30A-1A *(1) After the date of commencement of the Maharashtra Village Panchayats (Amendment) Act, 2017 in respect of the panchayat to which the general election is to be held, subject to provisions of sub-sections (4), (5) and (6) of section 30, every panchayat shall have a Sarpanch who shall be elected by the persons whose names are included in the list of voters for village under section 12.*

(2) Election of the Sarpanch shall be held simultaneously with the general elections of the panchayat and the procedure regarding holding of elections to the panchayat shall, mutatis mutandis, apply to such election.

(3) If at an election, no Sarpanch is elected, a fresh election shall be held to elect a Sarpanch, and if there is a failure to elect a Sarpanch at the fresh election, such vacancy may, notwithstanding anything contained in this Act, be filled by election by the elected members from amongst themselves and the term of Sarpanch elected under this sub-section shall be co-terminus with the term of members of the panchayat.

(4) Any person elected under sub-section (3) shall be deemed to be duly elected at an election under this section.

(5) If, in the election of the Sarpanch, there is an equality of votes, the result of the election shall be decided by lots to be drawn by the State Election Commissioner or the officer appointed by him for the purpose.

(6) In case of a dispute regarding election of the Sarpanch, the provisions of section 15 shall, mutatis mutandis, apply."

"Section 33 (4) *If, in the election of Upa-Sarpanch there is an equality of votes, the Sarpanch shall have the right to exercise casting vote, and if the post of Sarpanch is vacant, the result of elections shall be decided by lot drawn in the presence of the officer presiding in such manner as he may determine."*

9. A perusal of the above quoted provisions, shows that due to the amendment in the aforesaid Act introduced in the year 2017, the procedure for election of Sarpanch has undergone a substantial change, as a result of which the Sarpanch is now elected directly by

the voters. It is in this context that Section 3(11 AAA) appears to have been introduced by the Amendment Act to clarify that a “member” means a member duly elected as a member of the panchayat under Section 11 and would include the Sarpanch of panchayat elected directly under Section 30A-1A of the aforesaid Act. Thus, it is made abundantly clear that even if the Sarpanch is now elected directly by the voters, he additionally enjoys the status of being elected member of the Gram Panchyat. Similarly introduction of sub-section 1A to Section 10 of the aforesaid Act, shows that a Sarpanch elected under Section 30A-1A is an ex officio member of the Panchayat.

10. This has a crucial bearing on the facts of the present case because the principal argument raised on behalf of the petitioner in the present case is that since the petitioner was elected as ward member from Ward No.1 and he was directly elected as a Sarpanch of the Gram Panchayat, Section 13A of the aforesaid Act did not apply, on the basis that it applied only to a situation where a person was elected as ward member from more than one ward. It was contended that since there was no consequential amendment in Section 13A of the aforesaid Act, the same did not apply to the petitioner who was elected on the one hand as member of Gram Panchayat from Ward No.1 and on the other hand he was a directly elected Sarpanch. The said contention raised on behalf of the petitioner is found to be without any substance when Section 13A is read with Section 3 (11 AAA), Section 10(1) (1A) and Section 30A-1A of the

aforesaid Act. A conjoint reading of all the aforesaid provisions shows that when the petitioner was directly elected as a Sarpanch under Section 30A-1A of the aforesaid Act, he was also duly elected as a member of the Panchayat. Admittedly the petitioner was also elected as Member of the Gram Panchayat from Ward no.1 and, therefore, he was clearly faced with a situation contemplated under Section 13A of the aforesaid Act, which provides that when a person is elected to more than one seat in the Gram Panchayat, he has to resign within the prescribed time limit from all but one of the seats and if he fails to do so, all the seats become vacant. Therefore, the petitioner was very much required to choose either of the seats to which he was elected i.e. directly elected Sarpanch and elected member from Ward No.1.

11. The view taken by this Court is supported by the Division Bench judgment and order, correctly relied upon by the respondents. The judgment of the Division Bench in the case of **Anuja Kalyan Gore .vs. The State of Maharashtra** (supra) concerned an issue as to whether the directly elected Sarpanch could exercise vote for electing the Upa-Sarpanch, both as a member of the Gram Panchayat and also as a Sarpanch. It was contended before the Division Bench of this Court that the Sarpanch elected directly after the aforesaid Amendment Act could not be allowed to vote as an elected member of the Gram Panchayat. While considering the said question, the Division Bench of this Court took into consideration the provisions of the

amended Act and held that the directly elected Sarpanch could certainly vote both as an elected member of the Gram Panchayat and also as Sarpanch. The relevant portion of the aforesaid judgment reads as follows:-

“13. The procedure prescribed under the Elections Rules contemplates voting at the elections of Upa-sarpanch and it has been further provided that the candidate who obtains highest number of votes shall be declared to have been duly elected. Though the Rules provide for draw of lots in the event of equality of votes by the Presiding Officer, however, in view of amendment incorporated in subsection 4 of section 33, the Sarpanch shall have the right to cast vote and the substantial provision incorporated in the Act will prevail over the Rules. The procedure prescribed in the Rules in the event of equality of votes at the election of Upa-sarpanch cannot be pressed into service in view of the specific provision made under section 33 of the Act. The contentions raised by the respondents that in view of provisions of Section 10(1)(A) of the Act, the President elected under section 30-A-1-A shall be ex- officio member and shall not have a right to vote and as such, shall not cast vote for electing Upa- sarpanch is devoid of substance. It must be understood that by virtue of section 3 (11-AAA), a directly elected Sarpanch is deemed to be a member of the Panchayat and as such he or she is entitled to exercise right conferred on a member including the right to cast vote at the meeting for elections of Upa-sarpanch.

14. Section 35 of the Act prescribes the procedure for initiating

motion of no-confidence. All the members of the village Panchayat including Sarpanch & Upa-sarpanch are bestowed with the right to vote at the meeting convened to express no confidence on the Sarpanch or Upa-sarpanch. If the argument advanced by the respondents is to be accepted, it would lead to an anomalous situation. As per the contention of the respondents, Sarpanch may have right to cast vote at the meeting convened for expressing no confidence over Upa-sarpanch, but shall not be entitled to exercise right as a member, while electing Upa-sarpanch which appears to be illogical and beyond the express provisions of the Act. There is absolutely nothing in the Act including the amended provisions to limit exercise of powers by the Sarpanch. There is no specific bar against the Sarpanch in respect of exercise of his power to cast vote at the meeting convened to elect UpaSarpanch under section 33 of the Act.

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17. *Section 33 of the Maharashtra Village Panchayats Act contemplates convening a meeting for electing UpaSarpanch of the Panchayat. The Sarpanch chosen by a direct election from the territorial constituency shall have a right to vote at the meeting in view of sub-article 4 of Article 243-C of the Constitution of India. Right conferred upon the Chair-person and the members to cast vote at the meeting of the Panchayat under the constitution is unqualified and is not restricted. The respondents contend that the right of the Sarpanch to cast vote at the meeting for election of Upa-*

sarpanch is not taken away but he has been bestowed with casting vote which he may exercise in the event of equality of votes and as such the impugned communication is not illegal or unconstitutional, nor the direction issued to the revenue authorities by the State can be said to be illegal.

18. The argument advanced by the respondents is devoid of merit for the reason that the casting vote conferred on Sarpanch by virtue of provisions of subsection 4 of section 33 is an additional vote exercisable by the Sarpanch apart from his legal right to cast vote as a member. The contention of the respondent that there is only restricted right conferred on the Sarpanch while presiding over a meeting convened for election of Upa-sarpanch under section 33 is opposed to the constitutional provisions contained in Article 243-C(4). The right conferred upon chair- person of the Panchayat under Article 243-C(4) is an unqualified right and cannot be construed as a restrictive right as contended by the respondents. If at all the argument advanced by the respondents is to be accepted and provision is construed as the right conferred on a Sarpanch to cast vote at the election of Upa- sarpanch in the meeting convened under section 33 of the Act to be restricted right, it will lead us to draw logical conclusion that the provisions incorporated by virtue of amended Act itself is opposed to constitutional mandate contained in Article 243-C(4). The intention of the legislature while bringing the amendment was clear to confer an additional right on the directly elected Sarpanch. While interpreting legislative provisions, a care shall have to be taken to bring the provisions within the ambit

of constitutionality in stead of putting an interpretation which would lead to render the provision itself in conflict with the constitutional provision. If the interpretation put forth by the respondent is accepted, it would render the amended provision conferring right of casting vote on the directly elected Sarpanch to be in conflict with the constitutional provision and such interpretation shall not be accepted.

19. The contention of the respondents that the right conferred on Sarpanch to exercise casting vote takes away his entitlement to cast vote as a Member is devoid of merit. Black's Law Dictionary defines casting vote to mean "deciding vote cast by the chair of a deliberative assembly when the votes are tied". Oxford Dictionary defines casting vote as "the vote given by the person in charge of an official meeting to decide an issue when votes on each side are equal". The Featuring Black's Law Dictionary, second edition describes casting vote thus:

" Where the votes of a deliberative assembly or legislative body are equally divided on any question or motion, it is the privilege of the presiding officer to cast one vote (if otherwise he would not be entitled to any vote) on either side, or to cast one additional vote, if he has already voted as a member of the body. This is called the "casting vote". By the common law, a casting vote some times signifies the single vote of a person who never votes; but, in the case of an equality, some times the double vote of a person

who first votes with the rest, and then, upon an equality, creates a majority by giving a second vote."

20. *It is thus clear that merely because Sarpanch has been conferred with casting of votes, it does not take away his entitlement to exercise the right to vote as a Member of the Village Panchayat. Such an interpretation would be in consonance with the constitutional provisions of Article 243-C(4) of the Constitution of India."*

12. The Division Bench of this Court took into consideration the introduction of sub-section (4) to Section 33 of the aforesaid Act, which further clarified the position regarding the entitlement of a directly elected Sarpanch, to vote as an elected member and also as a Sarpanch in the context of election of Upa-Sarpanch. The said judgment of the Division Bench of this Court was followed by an order dated 15.06.2018 passed by the Division Bench at the principal seat in the case of **Manisha Janardhan Desai .vs. State of Maharashtra** (supra). It was noted in the said order that a directly elected Sarpanch was entitled to exercise right conferred upon an elected member of Panchayat including the right to cast vote at the meeting convened to elect the Upa-Sarpanch of Village Panchayat. Thus, it becomes clear that if the contention raised on behalf of the petitioner is accepted, he would vote in Gram Panchayat meetings thrice i.e. as Sarpanch, then as elected member because Sarpanch is also an elected member under Section 3 (11 AAA) of the Act and further as elected member from Ward No.1. This cannot be

countenanced, thereby showing that Section 13A of the Act applies to the case of the petitioner.

13. As the said position of law makes it very clear that a directly elected Sarpanch of the Gram Panchayat under Section 30A-1A of the aforesaid Act enjoys the status of elected member of the Gram Panchayat also, it becomes at once clear that when the petitioner in the present case stood elected directly as a Sarpanch and also was elected as Member of Gram Panchayat from Ward No.1, he was required to choose one of the two seats as per Section 13A of the aforesaid Act. He was required to resign within the prescribed period of seven days from the date of declaration of result from either the seat of Sarpanch or that of an elected member from Ward No.1. Hence, it is found that there is no substance in the contention raised on behalf of the petitioner regarding inapplicability of Section 13A of the aforesaid Act to his case, after the 2017 Amendment of the Act.

14. In this backdrop, it also becomes clear that the learned counsel for the petitioner cannot rely upon judgment of Division Bench of this Court in the case of **Shri Baburao Narayanrao Bagde .vs. State of Maharashtra** (supra), because it was rendered in the context of another legislation and the controversy involved therein was different. It was held that the President of a Municipal Council was different from Councillors, but in the present case introduction of Section 3(11 AAA) in the Act and the aforesaid judgments of this Court in that context show that the

Sarpanch is also an elected member of Gram Panchayat. Hence, there is no substance in the contention raised on behalf of the petitioner.

15. As regards the question as to whether the petitioner satisfies the requirement of Section 13A of the said Act read with Rule 41A of the Maharashtra Village Panchayats Rules, 1959, it appears that the only explanation put forth by the petitioner was that there was an administrative issue or clerical mistake due to which resignation allegedly submitted by him on 16.10.2017 was not recorded properly and that the endorsement dated 31.10.2017 put by the office of the respondent no.3- Tahsildar (Returning Officer), was erroneous. The material on record does show that there was nothing in the reply filed on behalf of the petitioner before the respondent no.2- Additional Collector stating that the delay in submitting the resignation letter had occurred due to ill-health or that the petitioner sought to be forgiven for the mistake. Even if the said reasoning recorded by the Collector is not found anywhere in the written document on record, it needs to be examined as to whether the petitioner has been able to support the stated reasons for delay in submitting the resignation.

16. The only contention raised in this regard on behalf of the petitioner was a repetition of what was stated in the reply filed before the respondent no.2- Additional Collector. It was simply stated that there was a clerical mistake due to which resignation letter

appeared to have been submitted beyond the stipulated period of time. In this regard, reliance was sought to be placed on letter dated 10.11.2017 submitted by the petitioner before the respondent no.3- Tahsildar, wherein much emphasis was placed on the fact that the petitioner had reiterated his claim of having submitted the resignation on 16.10.2017. A perusal of the said letter dated 10.11.2017 shows that it was submitted by the petitioner before the respondent no.3 after complaint dated 06.11.2017 was submitted against him before the respondent no.3 and proposal dated 08.11.2017 was also moved by the respondent no.3 before the Additional Collector for disqualification of the petitioner due to non-compliance of Section 13A of the aforesaid Act. These facts clearly showed that the letter dated 10.11.2017 submitted by the petitioner before the respondent no.3 was nothing but an after thought, only to claim on 10.11.2017 that the resignation letter was submitted on 16.10.2017.

17. The letter of resignation itself shows that although the date 16.10.2017 is mentioned in the resignation letter, the endorsement put by the office of the respondent no.3- Tahsildar states the date 31.10.2017, clearly showing that the resignation letter was received in the office of respondent no.3 on 31.10.2017, which was beyond the stipulated period of seven days within which the resignation letter was required to be submitted.

18. Thus, on facts also, the petitioner has not

been able to make out a case to demonstrate any error committed by the respondent no.2 in passing the impugned order, whereby the petitioner was found to have been disqualified from both the posts of Sarpanch as well as elected member of the Gram Panchayat by operation of Section 13A of the aforesaid Act.

19. In view of the above, it is found that there is no merit in the present writ petition and it is accordingly dismissed.

JUDGE

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