

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

WRIT PETITION NO.7835/2019

Manojkumar s/o Manoranjan Bawangade Vs. State of Maharashtra, through its
Secretary, Urban Development Department, Mumbai and others.

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

Court's or Judge's Orders.

Shri C.M.Samarth, Advocate for petitioner.

Shri A.M.Kadukar, Assistant Government Pleader for respondent nos. 1 and 2.

Shri M.I.Dhatrak, Advocate for respondent no.3.

CORAM : A.S.CHANDURKAR, J.

DATED : DECEMBER 11, 2019.

The petitioner was elected as a Councilor of Municipal Council, Umred in the year 2017. On 26.09.2019 a document was stated to be executed by the petitioner in which it was stated that for personal reasons, he was resigning from the post of Councilor and hence that resignation be accepted. The Collector endorsed that document by stating that it was submitted before him at 12.30 p.m. The Collector thereafter directed the Chief Officer of the Municipal Council to verify the matter. The Chief Officer after verifying the matter reported that the petitioner had in-fact tendered his resignation. Thereafter on 25.10.2019 the petitioner moved another application before the Collector stating therein that as his personal difficulties had now ceased to exist, he may be permitted to again function as a Councilor. The Collector on 08.11.2019 informed the petitioner that the resignation tendered by him stood accepted and the vacancy created on account of that resignation had been intimated to the State Election Commission.

Hence the request made in the petitioner's application could not be considered. Being aggrieved the petitioner has filed the present writ petition seeking to challenge the said communication/order dated 08.11.2019 refusing to permit the petitioner to function as a Councilor.

Shri C.M.Samarth, learned counsel for the petitioner submitted that the alleged resignation letter dated 26.09.2019 had not been written by the petitioner. Since the petitioner had never resigned as Councilor, the Collector ought to have permitted the petitioner to function as a Councilor as he continued to hold office. He then referred to the provisions of Section 41(2) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 to urge that the said resignation had not been tendered in accordance with the prescribed procedure and hence it had no force in the eye of law. He relied upon the decision in *Laxmi Verma Vs. State of Maharashtra and others, (2010) 5 SCC 329* in that regard. The learned counsel referred to the additional affidavit filed on behalf of the petitioner along with report of the handwriting expert with the opinion that the resignation letter dated 26.09.2019 was not in the petitioner's handwriting. . He thus submitted that the impugned order was liable to be set aside.

Shri A.M.Kadukar, learned Assistant Government Pleader for the respondent nos. 1 and 2 as well as Shri M.I.Dhatrak, learned counsel for the respondent no.3 submitted that the petitioner has come up with an inconsistent

case and there was no reason to interfere with the impugned order. It was submitted that on 26.09.2019 the petitioner himself had approached the Collector and had presented his resignation letter. That letter was accordingly endorsed by the Collector. The office of the Collector thereafter informed the Chief Officer about the said resignation and also the need to verify the petitioner's signature thereon. Accordingly pursuant to that communication dated 30.09.2019, the Chief Officer on 01.10.2019 informed the office of the Collector that said resignation letter bore the signature of the petitioner. This was done by again obtaining the signature of the petitioner. On that basis, the Collector on 01.10.2019 formally accepted the resignation of the petitioner. The vacancy created due to the resignation of the petitioner was then communicated to the State Election Commission and thereafter elections had been declared by publishing the election programme to fill in the vacancy created by the petitioner's resignation. The learned Assistant Government Pleader also produced the original records including the letter of resignation tendered by the petitioner for perusal.

On hearing learned counsel for the parties and after perusing the relevant documents, it is found that the petitioner is not entitled for any relief whatsoever. The resignation letter dated 26.09.2019 has been submitted by the petitioner himself before the Collector. Endorsement to that effect has been made by the Collector. Thereafter the signature of the petitioner was sought to be verified and hence the Chief Officer was directed to

submit a report in that regard. The Chief Officer accordingly reported on 01.10.2019 that the signature of the petitioner was verified and it was found to be his own signature. With that report another document signed by the petitioner certifying his signature was also placed on record. It is on that basis that the petitioner's resignation came to be accepted. Hence the vacancy in question was communicated to the State Election Commission which has thereafter taken further steps to fill in that vacancy.

It is relevant to note that in the application moved by the petitioner on 25.10.2019 he has in clear terms stated that he had resigned from the post of Councilor on 26.09.2019 for personal reasons. The petitioner has not stated therein that the resignation tendered by him was not signed by him and hence it was not liable to be accepted. He has merely stated that the personal difficulties on account of which he had resigned as Councilor were no longer subsisting and therefore he wanted to withdraw his resignation. It is thus seen that the stand now taken by the petitioner that the letter of resignation was not written by him is purely by way of an afterthought. This stand could have been taken by him at the earliest on 01.10.2019 when he was called by the Chief Officer to verify his own signature when the report in that regard was being prepared. It thus becomes clear that the petitioner resigned as Councilor on 26.09.2019 and after a period of one month has sought to seek opportunity to again continue as Councilor. The resignation having been accepted on 01.10.2019, there was no occasion to

again permit the petitioner to function as Councilor. The request as made by the petitioner has been rightly turned down by the Collector.

Though the learned counsel for the petitioner sought to rely upon the report of the handwriting expert as well as decision in *Laxmi Verma* (supra), in the light of the fact that the petitioner has not challenged the acceptance of his resignation on 01.10.2019 the said report of the handwriting expert is of no assistance to the petitioner. Similarly the ratio of the decision relied upon cannot apply to the facts of the present case.

Hence in absence of any case being made out by the petitioner, there is no reason to exercise writ jurisdiction. The writ petition is accordingly dismissed. No costs.

JUDGE

Andurkar.