

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15388 OF 2023.

Usha Narayan Mangale and Ors.

...Petitioners.

Versus

The State of Maharashtra And Anr.

...Respondents.

Mr. S. S. Patwardhan a/w. Mr. A. M. Savagave for the petitioners.

Mr. B. B. Dahiphale, AGP for the respondent Nos.1, 2 and 4.

Mr. Shridhar Patil (Through V/C) a/w. Mr. Akshay S. Pansare i/b Mr. S. B. Shetye for the respondent No.3

Mr. P. D. Dalvi i/b Mr. R. G. Patil for the respondent Nos.6 to 10.

Coram : Sharmila U. Deshmukh, J.

Date : 12th June, 2024.

P. C. :

1. By this petition the challenge is to the order dated 3rd November 2023 passed by Divisional Commissioner in Gram Panchayat Appeal No.461/2023 by which the learned Divisional Commissioner has directed dissolution of the gram panchayat under Section 145 (1-A) of the Maharashtra Village Panchayats Act, 1959.

2. The facts of the case are that the petitioner had contested the election and was elected as sarpanch of Respondent No.11 Gram

Panchayat. Respondent Nos.6 to 10, who were elected as members of gram panchayat, submitted their resignations on 17th July 2023 to the CEO, Zilla Parishad, Kolhapur. Subsequent thereto in the meeting conveyed on 24th May 2023 the resignations were discussed and accepted by passing resolution 17, 18, 19 and 20.

3. After resignations were accepted respondent Nos.6 to 10 submitted representation dated 24th July 2023 to CEO, Zilla Parishad, Kolhapur pointing out the fact of resignation and seeking dissolution of respondent No.11-Gram Panchayat under Section 145(1-A) of the Village Panchayats Act with further request for appointment of an administrator. This was opposed by the petitioner seeking by-elections for filling up vacancies. Subsequently report dated 18th August 2023 was submitted by respondent No.3 to respondent No.2 pointing out that there is no hurdle for smooth functioning of Gram panchayat on account of the vacancies. Upon hearing the parties, respondent No.4 by impugned order dated 3rd November 2023 exercised powers under Section 145(1-A) of the Village Panchayats Act and dissolved the Gram Panchayat.

4. Heard *Mr. S. S. Patwardhan for the petitioners, Mr. B. B. Dahiphale, AGP for the respondent Nos.1, 2 and 4, Mr. Shridhar Patil for*

the respondent No.3 and Mr. P. D. Dalvi for the respondent Nos.6 to 10.

5. Learned counsel for the petitioner submits that the petitioner who is a woman belonging to the backward class category was elected as Sarpanch which was not acceptable to respondent Nos.6 to 10 and they tendered their resignation to ensure that gram panchayat is dissolved and election of the petitioner as sarpanch is set at naught. He submits that under Section 145(1-A) of the Village Panchayats Act, discretion is vested in the State Government to dissolve the panchayat, if more than half of the total number of seats have become vacant. However discretion is required to be exercised to ensure to make the panchayat workable and provisions are not mandatory. He submits that in the present case there was option available to respondent No.4 to conduct by-election to fill up vacancies and there is no reasoned order in the present case. He draws support from the following decisions:

- **Jahangir Yusuf Qureshi and Ors. vs. State of Maharashtra and Ors., 2008(3) Mh. L. J. 437 ;**
- **Smt. Kiran Ravindra Jadhav vs. The State of Maharashtra through its Principal Secretary and Ors., WP No.8522/2023;**
- **Shivaji Maruti Shingate and Ors. Vs. State of Maharashtra**

and Ors., 2007 (5) Mh. L. J., 109.

6. Learned AGP submits that respondent No.4 has exercised the powers under Section 145 (1-A) which permits dissolution of gram panchayat when more than 1/2 of the total number of seats have become vacant. He submits that respondent No.4 has specifically observed that as more than half number of posts have been rendered vacant by resignation, it is not possible for the affairs of the gram panchayat to be conducted smoothly. He submits that in view thereof discretion has been rightly exercised by respondent No.4 to dissolve the gram panchayat.

7. Mr. Dalvi for respondent Nos. 6 to 10 would attempt to canvass his submissions to support the impugned order of dissolution. However considering that the respondent Nos.6 to 10 have submitted their resignation and having done so are not concerned with the course that the State Government may subsequently adopt, I am not inclined to hear Mr.Dalvi. Although Respondent No.6 to 10 are party to the proceedings, they were not required to be impleaded. It is their own resignation which has led to the present situation of dissolution of the gram panchayat, if the impugned order is upheld, or to direct filling of the vacancies, if the order is unsustainable.

8. Considered the submissions and perused the record.

9. Considering that following their resignation, the respondent Nos.6 to 10 then made representation for dissolution of gram panchayat and appointment of Administrator would lend credence to the submissions of learned counsel for petitioner that the whole purpose was to ensure defeat of petitioner. The respondent Nos.6 to 10 cannot be permitted to treat the election process as per their own desire. Holding of fresh elections of local self government necessitates involvement of considerable state machinery and funds. It is therefore necessary that all efforts should be made to ensure continuance of gram panchayat rather than its dissolution. The provisions of Section 145(1-A) vests discretion in the State Government to dissolve panchayat if more than half of the total number of seats in the panchayat have become vacant. The use of the word "may" indicates that the same is directory and not mandatory. The Division Bench of this Court in the case of ***Shivaji Maruti Shingate (supra)*** was considering whether there is no power in the Act to fill in the vacancy occasioned by resignation of member/members. The Division Bench noted that the option of dissolution of Gram panchayat does not further either the democratic

process or constitutional mandate whereby the objective is to allow large amount of freedom to the village panchayat in the process of development at the local level and stability and certainty in elected bodies is desirable. The Division Bench has further held that the State Government is not bound to dissolve the panchayat unless a situation has arisen whereby the functioning of the panchayat cannot be carried out except by dissolution and holding fresh election.

10. It is therefore clear that it is only in the event where the situation commands the dissolution and holding of fresh elections as functions of the panchayat cannot be otherwise carried out that the order of dissolution of the panchayat should have been passed. For that purpose it was expected of the respondent No.4 Divisional Commissioner to consider the factual position and give a reasoned order as to the option of dissolution was preferred to continuance. Perusal of the order of Divisional Commissioner would indicate that the Respondent No.4 has only considered that more than ½ of the members have resigned and therefore the panchayat cannot function. The Respondent No.4 has therefore treated the provisions of Section 145(1-A) as mandatory which is contrary to the decision of ***Shivaji Maruti Shingate (supra)***. Apart from the bald observation in the impugned order, there is no discussion and the observation is not

supported by any reasoning. In that view of the matter it cannot be accepted that the discretion which was required to be exercised to ensure continuance of panchayat has been rightly exercised.

11. Pertinently, in the case of *Kiran Ravindra Jadhav (supra)*, in identical facts wherein the petitioner therein was a woman belonging to Scheduled Caste category and members of the gram panchayat had resigned resulting in an order dissolving the gram panchayat, the learned Single Judge had quashed and set aside the order and directed the State Election Commissioner to expeditiously conduct by-election.

12. Mr. Patwardhan would rightly emphasize that the position in the law has been well settled by decisions of this Court and the impugned order does not record any reasons for arriving at the finding that functions of Gram panchayat cannot be carried out and that the only course available is dissolution. The order is clearly unsustainable and is required to be quashed and set aside.

13. In light of the discussion above, the impugned order date 3rd November, 2023 is hereby quashed and set aside. The State Election Commission is directed to expeditiously conduct by-election for the

post of members which have become vacant due to resignation of respondent Nos.6 to 10. Till the by-election for the vacant posts are held, ad-interim which has been granted to remain in operation.

14. Writ Petition is allowed in the above terms.

[Sharmila U. Deshmukh, J.]