



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 18793 OF 2024

Shri. Sudhakar Yashwant Warule

....*Petitioner*

V/s.

The Gramsevak, Group Gram Panchayat
Rasegaon, Deharewadi, Dist. Nashik
and Ors.

....*Respondents*

Mr. Sachin Gite, *for the Petitioner.*

Mr. Kalpesh Patil, *for Respondent No.1.*

Mr. Pratik B. Rahade, *for Respondent Nos.2, 3, 5, 7 to 12.*

Mrs. M.P. Thakur, *AGP for Respondent-State.*

CORAM: SANDEEP V. MARNE, J.

Reserved On : 15 January 2025.

Pronounced On : 22 January 2025.

JUDGMENT :

1) Petitioner, who lost the position as *Upa-Sarpanch*, has filed this petition challenging order dated 24 October 2024 passed by the Additional Collector, Nashik rejecting the dispute raised by him with regard to the resignation shown to have been tendered by him from the position of *Upa-Sarpanch*. He also challenges the order dated 10 December 2024 passed by the Additional Divisional Commissioner, Nashik dismissing his appeal against the Collector's decision. Petitioner is thus aggrieved by the decisions treating his resignation as having taken effect and has accordingly filed the present petition.

2) Briefly stated, facts of the case are that the elections for Gram Panchayat, Rasegaon, Taluka-Deharewadi, District-Nashik were held in the year 2022 for the period 2022-2027. Petitioner contested the elections and was declared elected as a Member of the Gram Panchayat from Ward-B. He was thereafter elected as *Upa-Sarpanch* in the meeting of the Panchayat held on 26 September 2022. It is alleged that Petitioner tendered his resignation from the position as *Upa-Sarpanch* on 10 November 2023. He however denies having tendered such resignation and claims that his signature on the letter dated 10 November 2023 is forged. The monthly meeting of the Gram Panchayat was scheduled to be held on 29 November 2023. Petitioner alleges that he was unwell and was hospitalised from 24 November 2023 to 3 December 2023. It is claimed on behalf of the Respondents that the Gram Sevak could not serve the notice of monthly meeting dated 29 November 2023 on the Petitioner since he was residing at Nashik and therefore the agenda of the meeting was communicated to him by Whatsapp message sent by the Gram Sevak on 22 November 2023. Additionally, it is claimed that on 27 November 2023, notice and agenda was also served to the Petitioner on his email id.

3) The monthly meeting of the Gram Panchayat was held on 29 November 2023, in which the Gram Sevak placed letter dated 10 November 2023 allegedly signed by the Petitioner. The Petitioner was not present for the meeting. The Members of the Gram Panchayat adopted a Resolution of having verified genuineness of the resignation letter dated 10 November 2023 and resolved to dispatch a report to the higher officials. The Petitioner sent Whatsapp text message at 12.35 p.m. on 29 November 2023 to the Gram Sevak stating that he had never tendered resignation. The Petitioner raised a dispute before the Collector about his resignation by filing Dispute Application No.51/2023 on 30 November 2023. In the Dispute Application, he

claimed that the Members: Smt. Shobha Abbasaheb Apsunde and Shri. Santosh Shankar Salve had fabricated the resignation letter by forging his signature and showing themselves as witnesses on the resignation letter. The Petitioner claimed that he continued to remain admitted in the hospital on the date of filing of the Dispute Application. He accordingly prayed for cancellation of decisions adopted in the meeting dated 29 November 2023 relating to his resignation. The Collector however, proceeded to dismiss the Dispute Application by order dated 24 October 2024. Aggrieved by the Collector's decision, Petitioner filed Gram Panchayat Appeal No.124/2024 before the Additional Divisional Commissioner, Nashik, who has dismissed the Appeal by order dated 10 December 2024. Petitioner has accordingly filed the present petition challenging the Collector's order dated 24 October 2024, as well as the order of the Divisional Commissioner dated 10 December 2023. While issuing notices vide order dated 14 December 2024 when the petition was taken up on production board, this Court stayed election of *Upa-Sarpanch*, which order continues to operate till date.

4) Mr. Gite would appear on behalf of the Petitioner and submit that the orders passed by the Collector and the Additional Divisional Commissioner suffer from gross non-application of mind to the facts of the present case where Petitioner's resignation letter is fabricated by the persons interested. That the Petitioner was not served due notice under Rule 7 of The Bombay Village Panchayats (Meetings) Rules, 1959. That he was sick and hospitalised on the date of the meeting nor was made aware of the meeting till 28 November 2023. That immediately after noticing that his resignation was being discussed in the meeting scheduled on 29 November 2023, he attempted to make phone calls to the Sarpanch and thereafter sent message denying tendering of resignation. That it is otherwise inconceivable that the Petitioner would tender resignation on

10 November 2023 as he attended the Gram Panchayat meeting on 10 November 2023 and acted therein as *Upa-Sarpanch*. That there is apparent difference in the signature on the resignation letter as compared to Petitioner's signature on the proceedings of Gram Panchayat meeting dated 10 November 2023. That difference in the signature conclusively proves that his signature on the resignation letter has been fabricated. He would take me through various other signatures of the Petitioner on different documents to bring home the point that he does not sign in the manner in which his signature is shown on the resignation letter. He would particularly highlight the nomination filed by him for contesting the *Upa-Sarpanch* election where again his signature is completely different than the one appearing on the alleged resignation letter.

5) Mr. Gite would further submit that both the persons shown to have been witnesses on the resignation letter are interested persons and that one of the witnesses Santosh Shankar Salve is now contesting elections for the post of *Upa-Sarpanch* and his interest in the removal of the Petitioner from that position is more than apparent. That the Gram Sevak was very well made aware of Petitioner not tendering resignation, both through phone call as well as through text message and the recording of the mobile phone conversation was also filed before the Collector. Mr. Gite would submit that once the affected person makes a grievance disputing tendering of resignation, such dispute must be accepted by the Collector. That Petitioner is democratically elected *Upa-Sarpanch* and cannot be unseated despite he repeatedly vouching that he has never tendered resignation. Mr. Gite would therefore pray for setting aside the orders passed by the Collector and the Divisional Commissioner, as well as minutes of the Gram Panchayat Meeting dated 29 November 2023 relating to his resignation.

6) The petition is opposed by Mr. Rahade, the learned counsel appearing for Respondent Nos.2, 3, 5 and 7 to 12. He would submit that the whole story woven by the Petitioner about forgery of resignation letter clearly afterthought as he did not contemporaneously file any police complaint against any person forging his signature. His theory of admission in the hospital is also false and afterthought as he did not produce any medical record before the Collector or the Divisional Commissioner. That there is an admission on the part of the Petitioner in the petition about receipt of Whatsapp message. That the Whatsapp message was dispatched by the Gram Sevak on 21 November 2024 and thus the Petitioner was fully aware about convening of monthly meeting of the Gram Panchayat on 29 November 2024, as well as Agenda for his resignation. That, however the Petitioner maintained silence for the next 8 days and did not raise any dispute with regard to his resignation letter. That the text message was sent by him to the Gram Panchayat only after proceedings of the meeting were over as the message is sent at 12.35 p.m., whereas the meeting was conducted at 10.00 a.m. That his theory of hospitalisation is also falsified by the fact that he filed detailed dispute application before the Collector on 30 November 2024. He would submit that there are as many as 4 persons who have personally witnessed tendering of resignation by the Petitioner viz. Sarpanch, Gram Sevak and two witnesses. Mr. Rahade, would submit that the concurrent findings recorded by the Collector and Additional Divisional Commissioner do not warrant any interference by this Court. He would pray for dismissal of the petition.

7) Mr. Patil, the learned counsel would appear on behalf of Respondent No.1-Gram Sevak and would submit that the notice about the meeting dated 29 November 2023, as well as the agenda was served on the Petitioner via Whatsapp message dated 21 November 2023, as

well as through email dated 27 November 2023. That the electronic mode of service was required to be adopted as the Petitioner is not an ordinary resident of the Village and resides at Nashik City. He would submit that the requisite procedure under Sections 29 and 34 of the Maharashtra Village Panchayats Act, 1959 has been duly followed. He would pray for dismissal of the petition.

8) Ms. Thakur, the learned AGP would appear on behalf of the State Government (Respondent Nos.13 to 15) and would also oppose the petition and support the orders passed by the Collector and the Divisional Commissioner. She would submit that the both the officials have conducted in-depth factual enquiry into the contentions raised by the Petitioner and have rendered findings of facts which do not warrant interference in exercise of extraordinary jurisdiction under Article 227 by this Court. She would pray for dismissal of the petition.

9) Rival contentions of the parties now fall for my consideration.

10) Petitioner disputes genuineness of the resignation letter dated 10 November 2023 and claims that he did not tender the said letter. Petitioner was occupied twin positions as Member and *Upa-Sarpanch* of the Panchayat and the notice of resignation dated 10 November 2023 is shown to have been tendered for resigning from the position as *Upa-Sarpanch*. By treating the resignation as having taken effect, Petitioner is unseated from the position of *Upa-Sarpanch*. It would therefore be necessary to consider the provisions of the Village Panchayats Act dealing with resignation by a *Upa-Sarpanch*.

11) Section 34 of the Village Panchayats Act deals with Resignation by Sarpanch or Up-Sarpanch and provides thus :

34. Resignation by Sarpanch or Upa-Sarpanch:

- (1) The Sarpanch may resign his office by writing under his hand addressed to the Chairman of the Panchayat Samiti.
- (2) The Upa-Sarpanch may resign his office by writing under his hand addressed to the Sarpanch.
- (3) The notice of resignation shall be delivered in the manner prescribed.
- (4) The provision of sub-sections (2), (3), (4), (5) and (6) of section 29 shall *mutatis mutandis* apply to the resignations tendered under sub-sections (1) and (2) of this section as they apply to the resignation tendered under sub-section (1) of that section.

12) Section 34 of the Village Panchayats Act provides that *Upa-Sarpanch* can resign his office by writing under his hand addressed to the Sarpanch and that the notice of resignation shall be delivered in the manner prescribed. Sub-section (4) of Section 34 provides that the provisions of sub-sections (2) to (6) of Section 29 shall *mutatis-mutandis* apply to the resignation of *Upa-Sarpanch*. It would therefore be apposite to refer to the provisions of Section 29 of the Act, which provides thus :

29. Registration of member and disputes regarding resignation:

- (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 within seven days 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:
- 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.

13) Thus, under the provisions of Sections 34 of the Village Panchayats Act, once *Upa-Sarpanch* tenders his resignation to the Sarpanch by delivery of notice of resignation in the manner prescribed, the further action is to be taken in accordance with the provisions of sub-sections (2) to (6) of Section 29.

14) The manner in which the notice of resignation is to be tendered has been prescribed under the provisions of the Bombay Village Panchayat (Delivery of Notice of Resignation) Rules, 1965 (**Resignation Rules**). Rule 3 provides thus:

3. Manner of delivery of notices.

(1) Subject to the provisions of sub-rule (2),

- (a) The resignation of the office of a member given under sub-section (1) of Section 29 shall be delivered by the member to the Sarpanch and by the Sarpanch to the Chairman of the Panchayat Samiti;
- (b) The notice of resignation of the Office of Sarpanch given under sub-section (1) of Section 34 shall be delivered by the Sarpanch to the Chairman of the Panchayat Samiti;
- (c) The notice of resignation of the office of Upa-Sarpanch given under sub-section (2) of Section 34 shall be delivered by the Upa-Sarpanch to the Sarpanch.

(2) Every such resignation or notice of resignation shall be in Form I and shall be delivered by registered post with acknowledgment due or personally or through any person duly authorised in writing in this behalf by the person who gives resignation or, as the case may be, notice of resignation

(3) The authority to which such notice is delivered shall forthwith acknowledge receipt of the same and issue a receipt in Form II in token of having received such notice.

15) Thus, under the provisions of Section 34(2) of the Village Panchayats Act read with Rule 3(c) of the Resignation Rules, the notice of resignation of office of *Upa-Sarpanch* is required to be delivered by the *Upa-Sarpanch* to the Sarpanch. Such resignation or notice of resignation is required to be in Form-I and is also required to be delivered by Registered Post with acknowledgment due or personally or through any person duly authorised in writing by the person who gives resignation. In the present case, there is no dispute about the position that notice for resignation shown to have been submitted by the Petitioner conforms to the Form-I prescribed under Rule 3(2). The resignation letter dated 10 November 2023 is shown to have been signed by the Petitioner and supported by signatures of two witnesses Smt. Shobha Abbasahab Apsunde and Santosh Shankar Salve.

16) Under sub-rule (3) of Rule 3 of the Resignation Rules, upon receipt of notice of resignation from the *Upa-Sarpanch*, the Sarpanch is required to forthwith acknowledge receipt of the same and issue a receipt in Form-II in token of having received such notice. The Form-II in which acknowledgment is to be given by the person receiving the notice is as under:

FORM II

RECEIPT FOR RESIGNATION/ NOTICE OF RESIGNATION

[To be given or sent to the person delivering the Resignation/ notice of resignation]

The Resignation/notice of resignation of the office of _____ held by _____ was delivered to me by registered post/personally by _____ through _____ duly authorized in writing by the said _____

Date:

Signature and designation of
authority receiving the
the notice of resignation

17) As observed above, there is no dispute in the present case to the position that the notice of resignation as required under Section 34 of the Act is in Form-I prescribed under Rule 3(1)(c) of the Rules. Perusal of the minutes of the Gram Panchayat Meeting dated 29 November 2023 would indicate that the minutes are silent about the person who received the notice of resignation dated 10 November 2023. The minutes straightaway record that the Sarpanch placed the notice of resignation of the Petitioner before the meeting. The findings recorded by the Collector would indicate that he has taken into consideration the report submitted by Respondent No.1-Gram Sevak, which report again indicates that the Sarpanch placed the resignation of the Petitioner for approval and verification before the meeting on 29 November 2003. The report of the Gram Sevak, as well as the order of the Collector is again silent as to who accepted and acknowledged the notice of the resignation allegedly submitted by the Petitioner. The Divisional Commissioner has again maintained silence about the exact person who has accepted the alleged resignation letter. Respondent No.11 has filed Affidavit-in-reply producing alongwith it a copy of resignation notice in Form-I. However, the Affidavit-in-reply of Respondent No.11 is again silent about the person who accepted the resignation notice and whether such person issued an acknowledgment in Form No. II. The receipt/acknowledgment in Form-II has not been placed on record by any of the parties. In fact, there is no averment by any of the Respondents before either of the authorities or even before this Court that acknowledgment receipt of notice for resignation in Form-II was indeed issued to the Petitioner.

18) In this case, acknowledgment of notice of resignation in Form No. II assumes significance particularly in the light of specific stand adopted by the Petitioner that he did not tender resignation. Petitioner appears to be very emphatic right since 29 November 2023

that he did not tender resignation. In this context, it would be apposite to reproduce the text message sent by the Petitioner to the Gram Sevak on 29 November 2023 which reads thus :

“ग्रामसेवक साहेब मी आपणास टॅक्स मेसेज द्वारे कळवितो की दिनांक २९/११/२०२३ रोजी झालेल्या मीटिंगमध्ये मी उपस्थित राहू शकणार नाही याचे कारण मी दवाखान्यामध्ये ऍडमिट आहे मला तुमच्या फोन द्वारे समजले की मी माझ्या उपसरपंच या पदाचा राजीनामा दिला असे मला समजले परंतु मी असा कुठल्याही प्रकारचा राजीनामा दिलेला नाही याची नोंद घ्यावी मी माझ्या पदाचा राजीनामा दिलेला नाही कुठल्याही प्रकारे खोटा राजीनामा सादर झालेला असा मला असे समजले ज्यांनी कोणी राजीनामा सादर केला त्या व्यक्तींच्या विरोधात कायदेशीर कारवाई करणार आहे याची नोंद घ्यावी तसेच सरपंच यांना देखील टेक्स्ट मेसेज द्वारे कळविले आहे त्यांना फोन केला होता त्यांनी फोन उचलला नाही याची नोंद घ्यावी मी सुधाकर यशवंत वारुळे उपसरपंच पदाचा राजीनामा दिलेला नाही ”

19) Petitioner thus flatly denied in the text message that he ever tendered the resignation. He remained firm on the said plea throughout the proceedings and at no point of time, he gave even an implied suggestion of having tendered resignation. Even before this Court, Petitioner specifically asserts that he did not tender the notice of resignation dated 10 November 2023. Once the Petitioner is emphatic about non-tendering of resignation dated 10 November 2023, it becomes all the more necessary that provisions of sub-Rule 3 of Rule 3 of Resignation Rules are followed to the hilt.

20) There is a purpose behind enactment of Sub-Rule 3 of Rule 3 of the Resignation Rules. If the statutory scheme of Sections 29 and 34 are perused, there appears to be no window open for a Member, Sarpanch or Upa-Sarpanch to walk back on the resignation once resignation is tendered in accordance with the provisions of the Resignation Rules. The statutory scheme of Sections 29 and 34 is such that a Member, Sarpanch or Upa-Sarpanch, who once tenders resignation in writing by handing over the same to a Sarpanch or Chairman of Panchayat Samittee is provided with only the remedy of filing dispute before the Collector about the genuineness of the

resignation. The provisions of the Act appear to be silent about right of a Member, Upa-Sarpanch or Sarpanch to withdraw the resignation. True, it is that this Court in *Neena Kalyan Versus. Commissioner*¹ has held that the resignation can be withdrawn before the same is placed before commencement of meeting of Gram Panchayat. The Division Bench of this Court in *Babarrao Uttamrao Jadhav Versus. The Additional Collector, Beed & Ors.*² has also taken a similar view holding that there is inherent right in favour of a Member or Sarpanch to withdraw the resignation and the word 'genuineness' appearing in sub-section (3) of Section 29 for creation of dispute would cover the eventuality where the Sarpanch takes a stand that he had withdrawn the resignation even before the meeting is actually completed. It appears that another Division Bench of this Court, in *Rajesh s/o. Matadin Jaiswal & Ors. Versus. Village Panchayat. Wadi*³, appears to have gone a step further and taken a view that withdrawal of resignation is a unilateral discretion of a Member and that there is no specific bar under the Village Panchayats Act on withdrawal of the resignation. In the case before the Division Bench, the resignations of the Petitioners therein were placed before the meeting of the Gram Panchayat and once the Agenda for scrutiny of resignation letters was taken up in the meeting, all the Petitioners sought to withdraw the resignations. In the facts of that case, the Division Bench held that once the resignations were withdrawn before they became effective, the same could not have been acted upon.

21) In the present case, however it is not necessary for this Court to delve deeper into the aspect of withdrawal of resignation and the stage at which the withdrawal is permissible. This is because admittedly, there is no withdrawal of resignation by the Petitioner at any point of time. He on the contrary, has taken an emphatic position

1 2018 1 Mh.L.J. 42

2 Writ Petition No. 9577/2013 decided on 5 August 2016

3 1987 Bom. C.R. 528

that he never tendered the resignation. Thus, the case is clearly covered by the provisions of sub-section (3) of Section 29 where the Petitioner has created a dispute about the genuineness of the resignation.

22) Coming back to the statutory scheme of Sections 29 and 34, once the Collector arrives at a conclusion that the objection raised by a Member, Sarpanch or Upa-Sarpanch about genuineness of the resignation is baseless, the resignation comes into effect after expiry of 7 days of rejection of dispute by the Collector. Such is the stringent scheme of Sections 29 and 34 of the Act. In my view, while adjudicating the dispute raised before him under Section 29, the Collector is required to make an inquiry both in respect of genuineness of resignation as well as following of the prescribed procedure under the Act and the Resignation Rules.

23) In the present case, the resignation is shown to have been witnessed by two members of the Gram Panchayat, whose statements are apparently recorded by the Collector for arriving at a finding that the resignation is genuine. In my view, the Collector should have also conducted an enquiry as to whether the resignation was indeed tendered by the Petitioner and whether tendering of resignation was in strict compliance with the provisions of Rule 3 of the Resignation Rules. There appears to be no enquiry by the Collector into the manner in which the resignation is shown to have been tendered or acknowledged. As observed above, there is nothing on record to indicate that the resignation was accepted by the Sarpanch, which is a mandatory requirement of Section 34 of the Act. No other person, except Sarpanch can accept the notice of resignation and no other person except Sarpanch can acknowledge receipt thereof in Form No. II of the Resignation Rules. Therefore, finding of fact was required to be recorded in the present case that the resignation was indeed tendered to the Sarpanch that he received the same and gave acknowledgment as

provided for in Rule 3(3) of the Resignation Rules. The proceedings of the meeting dated 29 November 2023, as observed above reflects that the Sarpanch placed the alleged notice of resignation of the Petitioner in the Panchayat Meeting. Under the provisions of sub-section (2) of Section 29, the Sarpanch is required to forward the resignation to the Secretary and the act of placing the resignation before the meeting of the Gram Panchayat must be performed by the Secretary. There is nothing on record to indicate that the Sarpanch received the notice of resignation or that he forwarded the same to the Secretary.

24) In my view, therefore there appears to be wholesale departure from the scheme prescribed under Sections 29 and 34 of the Village Panchayats Act and Rule 3 of the Resignation Rules. As observed above, strict compliance with the provisions of Sections 29 and 34 read with Rule 3(3) of the Resignation Rules is of utmost importance in the facts and circumstances of the present case in the light of specific dispute created by the Petitioner. In this regard, it would be apposite to invoke the well celebrated principle of judgment in *Taylor Versus. Taylor*⁴ that where power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. In *Ramchandra Murarila Bhatad Versus. State of Maharashtra and Ors.*⁵, the Apex Court has quoted its judgment in *State of Uttar Pradesh Versus. Singhara Singh & Ors.*⁶ and has held in para-48 as under :

48. Reliance has also been placed on State of Uttar Pradesh v. Singhara Singh and Ors. (1964) 4 SCR 485, wherein this Court quoted with approval the decision in Taylor v. Taylor [(1875) 1 Ch. D. 426, 431] for the proposition that **where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. There is again no quarrel over the aforementioned proposition of law.** Here the Authority has not exercised any power

4 (1875) 1 ChD 426

5 2007 2 SCC 581

6 AIR 1964 SC 358

forbidden by law. The Authority has also not exercised its power in the manner which is not in accordance with law.

(emphasis added)

25) Therefore, the methodology prescribed under Sections 29 and 34 of the Village Panchayat Act and Rule 3 of the Resignation Rules must be strictly followed while dealing with the issue of resignation of a Member, Sarpanch or Upa-Sarpanch. It must be borne in mind that the act of acceptance of resignation unseats a democratically elected member, Sarpanch or Upa-Sarpanch and therefore strict compliance with the provisions of the Act and the Rules is all the more necessary and even a single flaw in following of the mandatory provisions would render the act of acceptance of resignation illegal.

26) In my view therefore, absence of material about receipt of resignation by Sarpanch, handing it over to the Gram Sevak and more importantly, failure on the part of the Sarpanch to issue Form No.II mandated under sub-rule 3 of the Resignation Rules is clearly fatal in the light of dispute created by the Petitioner with regard to the act of tendering of resignation. Acceptance of resignation of a elected Member, Sarpanch or Upa-Sarpanch has drastic consequences and therefore no leeway can be permitted in the area of strict following of the methodology prescribed under the Act and the Rules. This is not a case where there is an admission on the part of the Petitioner about the act of tendering of resignation. In a case where there is no dispute about the act of tendering of resignation, mere failure to issue an acknowledgment under Rule 3(3) of the Resignation Rules may not always entail the consequence of rendering illegal the acceptance of resignation in each and every case. However, in every case where the Member, Sarpanch or Upa-Sarpanch creates a dispute about the very act of tendering of resignation, non-following of provisions of sub-rule

(3) of Rule 3 of the Resignation Rules would necessarily render the event of coming into effect of the resignation void.

27) Section 34(3) of the Village Panchayats Act provides that “*The notice of resignation shall be delivered in the manner prescribed.*” Use of the word ‘shall’ would make the procedure prescribed in the Resignation Rules to be mandatorily followed. Therefore, any material departure from the procedure prescribed in the Resignation Rules would render the process of resignation invalid.

28) I am fortified in my view by judgment of Single Judge of this Court (*A.P. Deshpande, J.*) in *Janardhan Versus. State of Maharashtra & Ors.*⁷ in which this Court held that use of the word ‘shall’ in Section 29(1) of the Village Panchayats Act makes it imperative that compliance with the provisions of the Resignation Rules is mandatory. In that case, the Petitioner therein (Sarpanch) contended that the resignation was not handed over to him but was sent directly to the Panchayat Samitee and that the Meeting was convened as per the directions of the Panchayat Samitee. However, because factual dispute got created on account of Respondent’s assertion that the resignation was handed over to the Sarpanch, this Court did not proceed to decide the same. But it has made observations about the necessity of following the procedure prescribed under the Resignation Rules by holding in paras-6 and 7 as under:

6. My attention is drawn to the rules framed in regard to the tender of resignation. The relevant Rules are Bombay Village Panchayats (Delivery of Resignation and Notice of Resignation) Rules, 1965. Rule 3 of the said Rules reiterates and lays down that the resignation of the office of a Member given under sub-Section 1 of Section 29 shall be delivered by the members to the Sarpanch. Sub-Section 2 of Section 3 of the said Rules provides that every such resignation or notice of Resignation shall be in Form 1 and shall be delivered by registered post with acknowledgment due or personally or through any person duly authorised in writing in this behalf by the person who gives resignation notice is delivered, **is obliged to acknowledge receipt of the same and issue a receipt in Form II in Token of having received such notice.**

⁷ (2024) 2 ALL. MR 521

7. So, what is relevant to note is that not only Section 29 of the Act provides, 'the resignation shall Be delivered in the manner prescribed', but rules are framed laying down the manner in which resignation is to be tendered and it also provides form not only for tender of resignation but also an acknowledgment to be tendered by the authority who is to receive the resignation. If everything has been provided for by framing the rules in regard to tender of resignation and as the word 'shall' is used in Section 29(1) of the Act, it is imperative to hold that Section 29(1) of the Act is mandatory and, as such, strict compliance thereof is necessary. No doubt, the petitioner has contended that the resignations were not handed over to him but were sent to the Panchayat Samiti and as per the direction of the Panchayat Samiti, meeting was convened on 20th August, 2002; whereas it is the case of the respondent, that all the eight members had handed over the Resignations to the petitioner and then he handed it over to the Secretary and the Secretary of the Panchayat had issued an acknowledgment to bring home the fact that the resignations were Tendered to the Sarpanch. The learned Counsel for the respondent has invited my attention to page 13 which is one of the resignations and the same is addressed to the Sarpanch. To some extent, this Question involves a disputed question of fact and if and in case, the decision on the first point goes In favour of the petitioner. I may not be called upon the answer the second question that is raised. In support of the first submission, it is contended by the learned Counsel for the petitioner, that the right of hearing is provided for in Section 145(1) of the Act itself, before an impugned order of Dissolution of Panchayat is passed and that Section 145(1) governs Sub-section 1-A and hence, Principles of natural justice need to be complied with. "

29) I am therefore of the view that failure to follow the methodology prescribed under Sections 29 and 34 of the Village Panchayats Act and particularly of Rule 3 of the Resignation Rules in the present case is fatal and it cannot be said that the resignation allegedly tendered by the Petitioner has taken effect.

30) Once this Court has arrived at the conclusion that the resignation did not take effect on account of failure to follow the methodology under Sections 29 and 34 of the Act and Rule 3 of the Resignation Rules, it is not necessary to go into the other aspects of difference in Petitioner's signature, effect of sending of text message by him at 12.35 p.m. after conclusion of the meeting of Panchayat on at 10 a.m. or the dispute whether he indeed receive the notice of the meeting scheduled to be held on 29 November 2023.

31) The Collector and the Divisional Commissioner have failed to apply their mind to the aspect of failure to strictly follow the

methodology prescribed under the Act and the Resignation rules and both of them have proceeded to reject the dispute raised by the Petitioner without even conducting an enquiry into the manner of tendering of alleged notice of resignation by the Petitioner. Merely because the two alleged witnesses to the notice of resignation vouched before the Collector and continue to vouch before this Court about the Petitioner signing the resignation, the same would not *ipso-facto* mean that the alleged act of tendering of resignation is in strict compliance with the provisions of Rule 3 of the Resignation Rules. The plea raised by the two witnesses, Smt. Shobha Abbasaheb Apsunde and Santosh Shankar Salve about they witnessing the Petitioner signing the resignation letter, would at the highest imply that the Petitioner has actually signed the notice of resignation. The dispute however is whether the said notice of resignation was tendered in the manner prescribed under the provisions of Sections 29 and 34 of the Act and Rule 3 of the Resignation Rules. Mere finding that the resignation letter was signed by the Petitioner would not *ipso-facto* mean that the resignation has come into effect unless it is demonstrated that the methodology prescribed under the Act and the Rules is strictly followed to the hilt.

32) Therefore, the orders passed by the Collector and the Divisional Commissioner suffer from the vice of perversity and non-application of mind. The orders are indefensible and are liable to be set aside. The petition accordingly succeeds and I proceed to pass the following order:

(i) The order dated 24 October 2024 passed by the Additional Collector, Nashik and order dated 10 December 2024 passed by the Additional Divisional Commissioner, Nashik are set aside.

(ii) Dispute Application No. 51/2023 filed by the Petitioner is made absolute by holding that the alleged resignation of the Petitioner has not taken effect and that the Petitioner continues to function as *Upa-Sarpanch* of Gram Panchayat, Rasegaon.

33) The Writ Petition is **allowed** in the above terms. Rule is made absolute. Considering the facts of the present case, there shall be no order as to costs.

NEETA
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[SANDEEP V. MARNE, J.]