



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12689 OF 2025

1. Yogesh Ashok Deshmukh
Age: 39 years, Ex. Dy. Sarpanch,
Grampanchayat Mharal, Residing at –
Mharal, Tq. – Kalyan, District: Thane.

2. Laxman Govind Kongere
Age – 64 years,
Residing at – Mharal, Tq. Kalyan,
District: Thane.

..Petitioners

Versus

1. Nilima Nandu Mhatre
Age – 42 years,
Sarpanch Grampanchayat Mharal,
Tq.- Kalyan, Dist: Thane.
2. Divisional Commissioner,
Konkan Division, (Establishment Branch)
Having its office at 112, 1st Floor,
Kokan Bhavan, Navi Mumbai – 400 614.
3. Additional Collector, Thane
Having its office at 18, Administrative
Building, 1st Floor, Collector Office, Thane
4. Block Development Officer,
Panchayat Samiti, Kalyan,
Kalyan, Dist: Thane.
5. Amol Ulhas Murbade
Gramsevak, Mharal,
Tq. Kalyan, Dist: Thane
6. Deepak Vaman Ahire
Age – 45 years,
Residing at – Mharal, Tq. Kalyan,
Dist: Thane.
7. Monika Mukesh Gaikwad

Age – 38 years,
Residing at – Mharal, Tq. Kalyan,
Dist: Thane

8. Nanda Pandurang Mhatre

Age – 54 years,
Residing at – Mharal, Tq. Kalyan
Dist: Thane.

9. Vikas Gopal Pawar

Age – 42 years,
Residing at – Mharal, Tq. Kalyan
Dist: Thane

10 Amruta Mahesh Deshmukh

Age – 38 years,
Residing at – Mharal, Tq. Kalyan
Dist: Thane

11 Prakash Baban Chaudhary

Age – 55 years,
Residing at – Mharal, Tq. Kalyan
Dist: Thane

12 Pragati Prakash Kongere

Age – 45 years,
Residing at – Mharal, Tq. Kalyan
Dist: Thane

13 Anita Balkrishna Deshmukh

Age – 42 years,
Residing at – Mharal, Tq. Kalyan
Dist: Thane

14 Ashwini Nilesh Deshmukh

Age – 39 years,
Residing at – Mharal, Tq. Kalyan
Dist: Thane

15 Vedika Vivek Gambhirrao

Age – 38 years,
Residing at – Mharal, Tq. Kalyan
Dist: Thane

16 Kishore Govind Wadekar

Age – 40 years,

Residing at – Mharal, Tq. Kalyan

Dist: Thane

17 Pramod Purushottam Deshmukh

Age – 55 years,

Residing at – Mharal, Tq. Kalyan

Dist: Thane

...Respondents

Mr. Avinash Fatangare a/w Santosh Sawant & Ms. Archana
Shelar, for the Petitioner.

Mr. Sanjay Patil, for Respondent No. 1

Mr. B. B. Dahiphale, AGP for the Respondent Nos. 2 & 3–State.

Ms. Prerna Agavekar, Mr. Sagar Bhoir i/by Ashish Gaikwad,
for Respondent No. 4.

CORAM	:	N. J. JAMADAR, J.
RESERVED ON	:	12th JANUARY 2026
PRONOUNCED ON	:	22nd JANUARY 2026

JUDGMENT:

1. Rule. Rule made returnable forthwith, and, with the consent of learned Counsel for the parties, heard finally.

2. The petitioners, who are the Deputy Sarpanch and Member of the village panchayat – Mharal, take exception to a judgment and order dated 17th February, 2025 passed by the Divisional Commissioner, Konkan Division in an appeal under Section 29(4) of the Maharashtra Village Panchayats Act, 1959, whereby the appeal preferred by the Respondent No. 1, Sarpanch of village panchayat – Mharal, came to be allowed by

setting aside an order dated 23rd September, 2024 rejecting the dispute application, being D.A. No. 01/2024, preferred by the Respondent No. 1 in regard to the genuineness of the resignation of the post of Sarpanch tendered by the Respondent No. 1.

3. The background facts necessary for the determination of this petition can be stated, in brief, as under:-

3.1 In the election to the post of Sarpanch held on 14th November, 2022, the Respondent No. 1 was elected unopposed. On 18th March, 2024, the Respondent No. 1 tendered resignation of the post of Sarpanch in the prescribed form. The petitioners witnessed the Respondent No. 1 putting signature on the said resignation. The petitioners thus signed the said resignation as witnesses thereto.

3.2 In the wake of said resignation, the Block Development Officer, Panchayat Samiti, Kalyan (R-4) gave directions to the Gram Sevak of the village panchayat (R-5) to convene a meeting of the village panchayat to ascertain the genuineness of the resignation tendered by the Respondent No. 1. Accordingly, on 28th March, 2024, a meeting of the village panchayat was held.

3.3 In the said meeting the Respondent No. 1 raised an issue about improper acknowledgment of the resignation letter. It was *inter alia* contended that, the Competent Authority had not issued the acknowledgment as warranted by the provisions of the Maharashtra Village Panchayats Act, 1959 and the Bombay Village Panchayat (Delivery of Notice of Resignation) Rules, 1965. The Respondent No. 1 professed to contest the correctness of the procedure and disowned the resignation.

3.4 In the said meeting, however, the village panchayat unanimously passed a resolution that, the signature of the Respondent No. 1 and the witnesses on the said resignation were duly verified. It was noted that, there was no dispute over the fact that the resignation bore the signature of the Respondent No. 1 and the petitioners as witnesses.

3.5 Being aggrieved, the Respondent No. 1 raised a dispute before the Collector under Section 29(3) of the Act, 1959. By an order dated 23rd September, 2024, the Additional District Collector, Thane rejected the dispute opining that, there was no controversy over the fact that, the resignation dated 18th March, 2004 bore the signature of the Respondent No. 1. In the meeting of the village panchayat held on 18th March, 2024 to verify the

genuineness of the resignation, the Respondent No. 1 did not dispute the factum of resignation. In the view of the Additional District Collector, the fact that the acknowledgment of the resignation was not in the form prescribed under Rules, 1965 did not detract materially from genuineness of the resignation.

3.6 Being aggrieved, the Respondent No. 1 preferred an appeal before the Divisional Commissioner. The petitioners were also impleaded as party respondents to the said appeal.

3.7 After appraisal of the material on record, by the impugned judgment and order, the Divisional Commissioner was persuaded to overturn the finding of the District Collector. In the light of the correspondence which the Respondent No. 1 had addressed to the Block Development Officer and the stand taken by the Respondent No. 1 in the meeting of the village panchayat dated 28th March, 2024, that the Respondent No. 1 did not put signature on the resignation in the presence of the Block Development Officer and there was discrepancy in the acknowledgment issued by the Office of Panchayat Samiti and the one annexed to the communication addressed to the Secretary of the village panchayat, the Divisional Commissioner observed that, the procedure prescribed for tendering the

resignation of the Sarpanch/Members of the village panchayat under the Act, 1959 and the Rules, 1965 was not scrupulously followed. Therefore, the resignation was not lawful. Resultantly, the order passed by the District Collector was set aside.

4. Being aggrieved, the petitioners invoked the writ jurisdiction.

5. I have heard Mr. Avinash Fatangare - the learned Counsel for the petitioners, Mr. Sanjay Patil - the learned Counsel for the Respondent No. 1, Mr. Dahiphale - the learned AGP for the Respondent Nos. 2 and 3 State and Mr. Prerna Agavekar - the learned Counsel for the Respondent No. 4. With the assistance of the learned Counsel for the parties, I have perused the material on record.

6. Mr. Fatangare – the learned Counsel for the petitioners, took a slew of exceptions to the impugned order. First and foremost, according to Mr. Fatangare, the Divisional Commissioner lost sight of the pivotal fact that, the tender of resignation by the Respondent No. 1, as such, was never disputed. Once the factum of resignation was unequivocally admitted then, there was no scope for raising a dispute about

the genuineness of the resignation by putting forth peripheral issues.

7. Secondly and, at best, the challenge on behalf of the Respondent No. 1 was confined to the irregularity in acknowledging the receipt of resignation tendered by the Respondent No. 1. Mr. Fatangare would urge, the acknowledgment issued by the administrator-cum-Block Development Officer, Panchayat Samiti, Kalyan, which was annexed to the communication to the Gram-Sevak (R-5), satisfied the requirement of Rule 3(3) of the Rules, 1965. The Divisional Commissioner fell in error in giving undue weight to the copy of the acknowledgment (Exh. A) issued by the inward clerk.

8. Thirdly, Mr. Fatangare urged with a degree of vehemence that, even in the meeting of the village panchayat convened on 28th March, 2024 to consider the genuineness of the signatures of Respondent No. 1 and witnesses on the said resignation, the Respondent No. 1 did not contend that, she had not tendered the resignation. Issue of improper acknowledgment of the resignation was sought to be raised by the Respondent No. 1 to question the validity of the process. Since, no formal acceptance

of the resignation is warranted, and the resignation takes effect after the seventh day of the meeting, in which the genuineness of the signature of the person tendering the resignation and the witnesses is verified, the Divisional Commissioner committed a manifest error in setting aside the order passed by the District Collector, on the ground that, the procedure prescribed under the Act, 1959 and the Rules, 1965 was not scrupulously followed.

9. Lastly, Mr. Fatangare would submit that, Rule 3(3) of the Rules, 1965 is directory in nature. The failure to issue acknowledgment in strict compliance of the said rule does not vitiate the factum of resignation, if it is otherwise established.

10. In opposition to this, Mr. Patil, the learned Counsel for Respondent No. 1, supported the impugned order. It was submitted that, the acknowledgment was clearly in breach of the mandatory provisions contained in Rule 3(3) of the Rules, 1965. The legislature has prescribed the procedure and forms in which the resignation should be tendered and acknowledged. Thus, the acknowledgment of the resignation by the inward clerk in express violation of the form prescribed for issuing such

acknowledgment was clearly in infringement of the mandatory rules.

11. Mr. Patil countered the submissions on behalf of the petitioners that, the Rule 3 (3) is directory in nature. Such a construction would defeat the object of the Rules, 1965. It was submitted that, once the resignation process was invalidated, the District Collector could not have rejected the dispute as the Respondent No. 1 had immediately raised the issues of improper acknowledgment of the resignation and the process having been vitiated on account of non-compliance of the Rules. The Divisional Commissioner was, therefore, justified in correcting the error committed by the District Collector.

12. As a second limb of the submission, Mr. Patil would urge that, in the meeting of panchayat held on 18th March, 2024, the Respondent No. 1 had categorically disputed the resignation and disowned the same. In this view of the matter, the Divisional Commissioner was justified in returning a finding that, there was no lawful resignation and, in any event, the same stood withdrawn. To lend support to this submission, the learned Counsel for the Respondent No. 1 placed reliance on the decisions of this Court in the cases of **Mina Kalyan Devdhe Vs.**

Commissioner, Nashik Division & Ors.¹, Sudhakar Yashwant Warule Vs. Gramsevak & Ors.², and Kalavati Rajendra Kokale Vs. State of Maharashtra³.

13. In the light of the aforesaid submissions canvassed across the bar, the following questions crop up for consideration:

I) Whether the non-compliance of the provisions contained in Rule 3(3) of the Rules, 1965 in the matter of issuing acknowledgment of receipt of resignation, vitiates the process and renders the resignation invalid and ineffective?

II) Whether, in the facts of the case, the stand taken by the Respondent No. 1 in the meeting of the village panchayat, amounted to withdrawal of the resignation?

14. To appreciate the controversy in a correct perspective recourse to the provisions contained in Maharashtra Village Panchayats Act, 1959 and the Rules, 1965 becomes imperative.

15. Sections 29 governs the resignation by a member of village panchayat and the disputes in relation thereto. Section 29 reads as under:-

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- 1** 2019 (1) Mh.L.J. 212
2 2025 (3) ALL MR 487
3 2025 (3) AIR Bom. R 86

[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.]

16. Section 34 of the Act, 1959 deals with resignation of office by Sarpanch and Upa-Sarpanch. It reads as under:-

[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 provisions 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.]

17. In exercise of the powers conferred by clause (v-a) and (xlvii) of sub-section (2) of section 176, read with section 29 and sub-Section (3) of 34 of the Bombay Village Panchayats Act, 1958 (Bom III of 1959), the State Government has framed rules, titled “The Bombay Village Panchayat (Delivery of Notice of Resignation) Rules, 1965”.

18. Rule 3 of the Rules, 1965 regulates the manner of delivery of resignation or notice of resignation.. It reads as under:-

3. Manner of delivery of notices.-

[(1) Subjects 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 authorized [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.

19. As the controversy revolves around the improper acknowledgment of the receipt of resignation, it may be apposite to extract Form I and Form II, which prescribe the form of resignation and receipt for resignation/notice of resignation to

be given or sent to the person delivering the resignation/notice of resignation respectively, as under:-

[Form I]

[See rule 3(2)]

Form of [Resignation/Notice of Resignation]

To

.....

.....

Sir,

I hereby tender [*Resignation/*Notice of my resignation] of the office of with effect from forenoon/afternoon.

Place (Signature)

Date (Designation)

Signed in the presence of -

I

Full name and address of a witness Signature of the witness

II

Full name and address of a witness Signature of the witness

Form [II]

[See rule 3(3)]

[*Receipt for Resignation/*Notice of Resignation]

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

The [*Resignation/*the notice of resignation] of the office of held by was delivered to me *by registered post through *personally by

.....duly authorized [in writing]
by the said

Date :

Signature and designation of
authority receiving the notice of resignation.

20. A conjoint reading of the provisions contained in Section 29 and 34 of the Act, 1959 indicates that, while recognizing the reality of the elected representative resigning from the post in a democratic polity, and thus making enabling provisions for the same, the legislature has, in its wisdom, endeavored to regulate the manner and the procedure of tendering the resignation. The member of the village panchayat may resign from his office by writing under his hand addressed to the Sarpanch. The Sarpanch may resign his office of member by writing under his hand addressed to the Chairman of the Panchayat Samiti. The Sarpanch may also resign his office of Sarpanch in the like manner. The Upa-Sarpanch may resign from his office by writing under his hand addressed to the Sarpanch. The legislature has made enabling provision for resignation from the office of Sarpanch or Upa-Sarpanch as well as the membership of the village panchayat itself. The legislature has however advisably mandated the manner in which the resignation shall be delivered.

21. Both Sections 29(1) and 34(3) thus provide that, the resignation/notice of resignation shall be delivered in the manner prescribed. Under Rule 3(2) of the Rules, 1965, every resignation/notice of resignation shall be in Form I. The said Sub-rule further prescribes the mode of delivery of resignation, namely, by registered post with acknowledgment due or personally or through any person duly authorized in writing by the Sarpanch/Upa-Sarpanch or Member, who tenders the resignation. The legislature has further taken care to provide the manner in which the receipt of the resignation be evidenced and acknowledged. Under Rule 3(3), the authority to which such notice is delivered, is enjoined to acknowledge the receipt of the same in Form II in token of having received such notice.

22. A cumulative reading of the provisions contained in Section 29 and 34 of the Act, 1959 and the Rules, 1965 would indicate that, all facets in the process of resignation of the office of member or Sarpanch/Upa-Sarpanch have been addressed. First, the resignation has to be in Form No. I in writing under his hand by the person resigning from the office. Second, it should be addressed to the specified authority i.e. Sarpanch or Chairman of the Panchayat Samiti. Third, such resignation shall

be delivered in the modes prescribed. Fourth, the authority shall acknowledge the resignation in the Form II. Upon receipt of the resignation, the Chairman of the Panchayat Samiti is tasked with the duty to forward it within seven days to the Secretary of the village panchayat for placing it before the meeting of the panchayat next following. If the person whose resignation is placed before the meeting of the panchayat disputes the genuineness of the resignation, he has an avenue to refer such dispute to the Collector from the date on which the resignation is placed before the meeting of the panchayat.

23. In the event, there is no dispute regarding the genuineness, the resignation shall take effect after the expiry of seven days from the date on which it is placed before the meeting of the panchayat. Otherwise, after expiry of seven days from the date of the rejection of the dispute by the Collector, in case no appeal is preferred, and, in case an appeal is preferred before the Commissioner, immediately after the appeal is rejected by the Commissioner.

24. There is no specific provision for acceptance of the resignation. Neither the Sarpanch nor the Chairman of the Panchayat Samiti, or for that matter, the Village Panchayat, is

empowered to accept the resignation. On the contrary, by a deeming fiction, the resignation comes into force, upon the happening of the specified events, which, in turn, are dependent upon the contingency of a dispute being raised by the person whose resignation is placed before the meeting of the panchayat.

25. As is evident, the resignation takes effect from the future date and does not operate *eo instante*. This interval of time gives rise to the questions of the permissibility of withdrawal of the resignation before it comes into effect. Evidently, there is neither a specific provision which enables the withdrawal of the resignation nor a particular form prescribed for the same. If the person who resigns from the post, makes a representation and seeks withdrawal of resignation before it takes effect, the general principle that a resignation can be withdrawn before it takes effect applies.

26. A Division Bench of this Court in the case of **Rajesh s/o Metadin Jaiswal & Ors. Vs. Village Panchayat, Wadi⁴**, enunciated that, the right to tender resignation and the right to withdraw the resignation are inter-related since both these acts

4 1987(1) Bom. C.R. 528

depend upon the discretion of the person tendering the resignation. The observations of the Division Bench in Paragraph No. 6 are material and hence extracted below:-

“6. It is true that there is no specific provision regarding this withdrawal of resignation. But in our view such a provision is not necessary. In fact, tendering of resignation is a matter within the volition and unilateral discretion of the Member itself and it only expresses his intention to vacate the Office which he occupies. There is, however, a provision in the Act that even after the expression of such an intention to withdraw from Office, the resignation does not become effective forthwith, but has to be placed before the subsequent Committee meeting of the Village Panchayat and it becomes effective only seven days after it is placed before the Committee Meeting and that too in case there is no dispute regarding the genuineness of the resignation letters. The right to tender resignation and the right to withdraw the resignation are inter-related since both these acts depend on the discretion of the person tendering the resignation. However, if there is a specific bar in the statute itself that a resignation once tendered cannot be withdrawn then it is an entirely different matter. In the present Act there is no such specific bar and it cannot be brought in even impliedly.”

(emphasis supplied)

27. Following the aforesaid pronouncement in the case of **Babanrao Uttamrao Jadhav Vs. Additional Collector & Ors.**⁵, another Division Bench observed as under:-

5 2016 SCC OnLine Bom 16332

“8. When a statute lays down that the resignation would become effective on a further date then, in absence of provision prohibiting withdrawal of resignation the said resignation can be withdrawn at any time before it operates to become effective. The said right is inherent in every member in absence of any provision prohibiting withdrawal of resignation. It has been held by the Division Bench of this Court in a case of Rajesh S/o. Matadin Jaiswal V. Village Panchayat, Wadi referred to supra that the right to tender resignation and the right to withdraw the resignation are inter related as both these acts depend on the discretion of the person tendering the resignation. The same view was taken by the another Division Bench in a case of Kumudini Ratilal Bhagat V. State of Maharashtra referred to supra.

(emphasis supplied)

28. Keeping the aforesaid interplay between the right to resign and the right to withdraw the resignation, the answers to the questions formulated above are required to be explored.

29. The thrust of the submission of Mr. Fatangare was that, though the Form in which the resignation shall be delivered is mandatory, yet, the Form in which the receipt of resignation is to be acknowledged is not mandatory. Acknowledgment is to be issued by way of token of receipt of the resignation and nothing

more and, therefore, the Respondent No. 1 could not have raised the dispute having voluntarily tendered the resignation.

30. On textual interpretation of the provisions contained in Section 29(1) and Section 34(3) of the Act, 1959, it becomes abundantly clear that, the legislature has used the word 'shall' in the matter of delivery of the resignation. Rule 3(2) uses the word 'shall' in the matter of the mode in which the resignation is to be delivered. Rule 3(3) also uses the word 'shall' for acknowledging the receipt of resignation and thereby enjoins the authority concerned to acknowledge the receipt of the resignation and issue receipt in Form II.

31. If the provisions contained in Section 29(1) and 34(3) are read in juxta-position with Rule 3(2) and (3) of the Rules, 1965, along with the prescribed forms, then the anxiety of the legislature in insisting that, the resignations must be delivered and acknowledged in such manner as rule out the possibility of elements which vitiate the free consent and volition influencing the decision to resign the elected post, becomes evident. In my view, Rule 3(3) and Form II are required to be construed, keeping in view the object of the prescribing mode of

resignation, authority to whom it should be delivered, and the mode of delivery of the resignation.

32. Form II mandates that, the authority to whom it is to be delivered under the provisions of the Act, 1959 and Rules, 1965, shall specify the person who delivered the resignation, and the mode of delivery. Therefore, the broad submission on behalf of the petitioners that, the non-compliance of the mandate contained in Rule 3(3) is of no consequence as the acknowledgment is merely in token of receipt of the resignation, cannot be countenanced. Form II is designed not merely to evidence the receipt of resignation but also to establish the identity of the person who tendered the resignation and the mode in which the said resignation was delivered. The time and place also assumes significance as under Section 29(2), the authority is bound to forward it to the secretary within seven days of the receipt of such resignation. An inference, therefore, becomes inescapable that, the provisions contained in Rule 3(3) are an inseparable part of the mandatory framework for the delivery of resignation from the elected office.

33. In the case of **Sudhakar Warule Vs. Gram Sevak & Ors. (supra)**, a learned Single Judge of this Court emphasized that,

the methodology prescribed under Section 29 and 34 of the Act, 1959 and Rule 3 of the Rules, 1965 must be strictly followed. Any material departure from the procedure prescribed from the Resignation Rules would render the process of resignation invalid. The observations in Para No. 25 to 27 reads as under:-

“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 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."

34. The aforesaid enunciation of law lends support to the view which this Court is persuaded to take. Therefore, the Question No 1 is required to be answered in the affirmative.

35. Answer to Question No. II, hinges upon the facts of the case as emerged from the record. It is imperative to note that, after the Respondent No. 1 delivered the resignation in Form No. I on 18th March, 2024, the Block Development Officer, on 19th March, 2024, directed the Gram-Sevak to place the said resignation before next meeting of the village panchayat. Instantly, the Respondent No. 1 raised a dispute with the Block Development Officer that, the acknowledgment of the resignation was not issued in the prescribed manner. And there was breach of the Rules, 1965. On 27th March, 2024, the Block Development Officer advised the Respondent No. 1 to raise the dispute in the meeting of the village panchayat which was

scheduled to be held for verification of genuineness of the said resignation.

36. It is pertinent to note, in the meeting held on 18th March, 2024, the Respondent No. 1 raised the said dispute again and specifically stated that, she was withdrawing the resignation tendered by her. The discrepancy in the acknowledgment issued by the inward clerk and a copy of the acknowledgment annexed to the communication addressed by the Block Development Officer to the Gram-Sevak was highlighted.

37. It would be imperative to note that, none of the acknowledgments satisfy the requirement of Form II. The first acknowledgment simply contains an endorsement of inward clerk, Panchayat Samiti, Kalyan. The second though records that, the resignation was delivered in person by the Respondent No. 1, yet, the name and designation of the authority acknowledging the said receipt do not find mention. Indeed, there is endorsement that, the administrator-cum-Block Development Officer, Panchayat Samiti had “seen” the said resignation.

38. It is in the backdrop of the aforesaid discrepancies and the stand of the Respondent No. 1 in the meeting of the village
SAINATH

panchayat, the Divisional Commissioner held that, the procedure prescribed under the Act, 1959 and the Rules, 1965 in the matter of resignation was not scrupulously followed.

39. The view taken by the Divisional Commissioner appears to be in consonance with the legislative object. Prescription of defined procedure with the role of specified authorities was to ensure that, the vitiating elements of fraud, coercion, undue influence and duress do not operate in driving an elected member to resign from office. If the receipt of the resignation was not acknowledged in the manner prescribed, the possibility of the resignation being affected by the vitiating elements lurks. In that situation, if the person concerned disputes and specifically disowns the resignation in the meeting of the village panchayat, the genuineness of the resignation becomes suspect. Moreover, one cannot lose sight of the fact that, the resignation is a product of the unilateral volition and discretion of the person tendering the resignation. If such person disputes the same with reference to the infraction of the procedure, before the resignation takes effect, the insistence to bind him down to such resignation may not be conducive to a free and fair electoral democracy.

40. For the foregoing reasons, in the facts of the case at hand, I am persuaded to hold that, the stand taken by the Respondent No. 1 in the meeting of the village panchayat amounted to withdrawal of the resignation. The fact that, there was no dispute about the tendering of resignation cannot be the sole criteria on which the legality and validity of the resignation could be tested. Under the provisions of the Act, 1959 and the Rules, 1965, strict compliance with the procedure, which is prescribed with the object of arresting unscrupulous and improper practices in the matter of resignation of elected representatives, the factum of signature on the person concerned on the resignation itself cannot be the be all and end all. The entire process has to be in conformity with the Rules, 1965.

41. The conspectus of aforesaid consideration is that, the Divisional Commissioner was justified in interfering with the order passed by the Collector who had taken a technical view of the matter. Resultantly, in exercise of the supervisory jurisdiction, this Court is not persuaded to interfere with the impugned order. Therefore, the petition deserves to be dismissed.

42. Hence the following order:

:: O R D E R ::

- (i) The Petition stands dismissed.
- (ii) Rule discharged.

No costs.

[N. J. JAMADAR, J.]

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