

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11275 OF 2018

**NARAYAN ANGADRAO SURAYWANSHI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioner : Mr S S Thombre h/f Jadhavar K.B.

AGP for Respondents 1-3 : Mr S B Pulkundwar

Advocate for Respondent 5 : Mr Patil Jayant R.

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CORAM : N.M. JAMDAR, J.

Dated: November 29, 2018

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ORAL ORDER :-

By this petition, the petitioner has challenged the order dated 28 August, 2017 passed by the Additional Divisional Commissioner, Aurangabad in appeal no.373 of 2016 and the order dated 26 June 2018 passed in revision application no.116 of 2017, confirming the order passed by the Additional Collector on 8 November 2016.

2. Respondent No.5 filed a complaint before the Additional Collector, Latur for disqualification of the petitioner under section 14 (1) (g) of the Bombay Village Panchayat Act. The Additional Collector, Latur rejected the complaint. Thereafter, respondent no.5

filed an appeal to the Additional Divisional Commissioner, Aurangabad. The Additional Divisional Commissioner allowed the appeal on 28 August 2017. The review filed by the petitioner was rejected on 20 September 2017.

3. Heard the learned counsel for the parties.

4. The learned counsel for the petitioner submitted that, the order passed by the Additional Divisional Commissioner is without considering the record and even after pointing out the error, the review was rejected. The learned Additional Divisional Commissioner disqualified the petitioner under section 14 (1) (g) of the Act on the ground that the petitioner had pecuniary interest in the functioning of the Panchayat. The Additional Divisional Commissioner held that the petitioner had withdrawn an amount of ₹ 4,19,900/- from the account of the Panchayat, which he had no right to do so. The learned counsel for the petitioner contended that it was specifically pointed out to the Additional Divisional Commissioner that the Panchayat had passed a Resolution permitting the petitioner to withdraw the amount and the amount so withdrawn was utilized for the work of Panchayat itself by paying necessary dues.

5. The learned counsel for respondents contended that passing of these resolutions were objected by the Gramsevak.

6. The perusal of the impugned order shows that, after referring to the Resolutions passed by the Panchayat, there is no discussion whatsoever by the Additional Divisional Commissioner. Even the argument that the resolution was objected to was also not noted. The Additional Divisional Commissioner straight way without referring to the resolutions has passed the order dismissing the appeal. Once this position was pointed out in review, at least, at that time, it was expected that the same would be corrected, however, it was not done.

7. On 1 November 2018 while issuing notice, by ad-interim order, it was directed that, if any election is conducted, it will be subject to further order and no equities would be claimed. Considering the above position, and that the order passed by the Additional Divisional Commissioner is unreasoned, the order passed by the Additional Divisional Commissioner dated 28 August 2017 and the order dated 26 June 2018 in review will have to be quashed and set aside and the appeal will have to be restored to the file of the Additional Divisional Commissioner, Aurangabad.

8. Accordingly, Writ Petition is disposed of by quashing and setting aside the orders dated 28 August 2017 and 26 June 2018. The appeal filed by the petitioner No.373 of 2016 stands restored to the

file of the Additional Divisional Commissioner, Aurangabad. The Additional Divisional Commissioner, Aurangabad will decide the said appeal within a period of eight weeks from the date the writ of this order reaches to it. All the contentions of the parties are kept open to be decided in the appeal.

9. Writ Petition is disposed of in above terms.

(*N.M. Jamdar, J.*)

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