

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

WRIT PETITION NO. 10889 OF 2018

SHANKAR VITTHAL RAKHE
VERSUS
THE ADDITIONAL DIVISIONAL COMMISSIONER AURANGABAD AND
OTHERS

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Advocate for the Petitioner : Shri Deshmukh Umakant B.
AGP for Respondents 1 and 2 : Shri N.T.Bhagat.
Advocate for Respondent 3 : Shri S.B.Pulkundwar.
Advocate for Respondent 5 : Shri P.B.Rakhunde.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 26th October, 2018

Per Court:

After the parties were heard on 03.10.2018, the following order was passed :-

- 1 *The Petitioner, former Up-Sarpanch of Village Panchayat, Lohgaon, Taluka Biloli, District Nanded, is challenging the impugned order dated 13.08.2018 passed by the Additional Divisional Commissioner Shri Shivanand Taksale in Gram Panchayat Appeal No.31/2018 by which, the Petitioner has been disqualified under Section 14-1(g) of the Maharashtra Village Panchayats Act for having withdrawn large amounts from the account of the Village Panchayat thereby, showing his interest directly in the works done by the Village Panchayat.*
- 2 *The learned AGP has caused an appearance on behalf of Respondent Nos.1 and 2. Shri Rakhunde, learned Advocate, has entered a caveat on behalf of Respondent No.5.*

3 The learned Advocate for the Petitioner submits that he would personally serve Respondent Nos.3 and 4 with Advocate's notice through the inward section and as such, prays for time.

4 Considering the impugned order, which is materially in three sentences, and considering the strictures passed by this Court (Coram : V.L.Achliya, J.) in a different matter, in the judgment dated 12.09.2018 in Writ Petition No.10333/2018, against the same Additional Divisional Commissioner, I prima facie find that the matter could be remanded by allotting the proceedings to the Divisional Commissioner, Aurangabad Dr.Purushottam Bhapkar to be decided afresh.

5 Stand over to 11.10.2018 in the Urgent Admission Category subject to the service of advocate's notice on Respondent Nos.3 and 4 along with the copy of this order."

2 The learned Advocate for the original Complainant/ Respondent No.5 submits, on instructions, that Respondent No.5 is agreeable if the proceedings are remitted to the Divisional Commissioner at Aurangabad. It is pointed out that in Gram Panchayat Dispute No.312/2017, Respondent No.5 had arrayed this Petitioner/ Up-Sarpanch as Respondent No.2 and the Sarpanch as Respondent No.1. In a common proceeding initiated on 30.06.2017, he had sought disqualification of the Sarpanch as well as the Up-Sarpanch for the allegations made in the application.

3 The District Collector has rejected the dispute filed by Respondent No.5. The Additional Divisional Commissioner (Mr.Shivanand Taksale) has delivered a common order obviously because there was a

single proceeding, on 13.08.2018. This Court (Coram : V.L.Achliya, J.) has quashed and set aside the said order by judgment dated 12.09.2018 delivered in Writ Petition No.10333/2018 filed by the Sarpanch. Strictures have been passed against Shri Shivanand Taksale and this Court has remanded the matter to the Divisional Commissioner at Aurangabad, who is Dr.Purushottam Bhapkar, by taking away the said matter from Mr.Shivanand Taksale.

4 I have perused the judgment delivered by this Court on 12.09.2018 and my attention has been drawn to the strictures passed against Mr.Taksale. As such, the present Petitioner, who is Respondent No.2 in Gram Panchayat Dispute No.312/2017, can be permitted to appear in the said proceedings and contest the said proceedings as Respondent No.2.

5 The learned Advocate for Respondent No.5/ original complainant submits that this Petitioner, who is the Up-Sarpanch, should not be given the charge of the Up-Sarpanch and should not be reinstated till the decision by the Divisional Commissioner.

6 I find from the judgment dated 12.09.2018 that the earlier order passed by Mr.Taksale dated 13.08.2018 has already been quashed and set aside and the proceedings have been remitted. This Court has reinstated the Sarpanch. When the Sarpanch has already been reinstated, I do not find that I should take a different view in the matter insofar as the

Up-Sarpanch is concerned.

7 Considering the above, this Writ Petition is allowed. As the impugned order dated 13.08.2018 has already been quashed and set aside by the judgment of this Court dated 12.09.2018, no further directions are necessary.

8 Respondent No.5 is already participating in the hearing in Gram Panchayat Dispute No.312/2017. Needless to state, the Petitioner herein shall also participate in the said proceeding as it is a single proceeding filed against both the Sarpanch and the Up-Sarpanch.

9 The Up-Sarpanch shall also be reinstated in view of the order of this Court dated 12.09.2018 restoring the position of the Sarpanch.

kps

(RAVINDRA V. GHUGE, J.)