

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

WRIT PETITION NO. 9695 OF 2019

**VIDYADHAR MAROTIRAO AURADHYE
VERSUS
KALYAN VITHALRAO DAREGAVE AND ANOTHER**

...

Advocate for the Petitioner : Shri V. V. Bhavthankar
Advocate for Respondent No.1 : Shri S. V. Kurundkar
AGP for Respondent No. 3 : Shri S. W. Munde

...

CORAM : RAVINDRA V. GHUGE, J.

DATED : 30th AUGUST, 2019.

...

PER COURT :

1. This matter is heard for quite some time.
2. It is, however, noticed from the record that the District Collector had noted the presence of the parties on 05/01/2018 in Case No. 2017/GB/Desk-1/GPN/Appeal-82. He posted the matter on 16/03/2018. The applicant namely Kalyan, respondent No.1 herein submitted his notes of arguments. There is no record indicating whether the petitioner / original respondent No.1 has addressed the Collector or has submitted oral/written notes of submissions. The file was closed for orders on 16/03/2018.

3. The roznama indicates that there is an interpolation in the roznama sheet indicating that the Collector ordered the BDO to submit his report about the Gram Sabha dated 14/08/2017, after closing the matter. The roznama also indicates that none of the parties were present when the order to the BDO was issued, *inasmuch* as, the roznama does not indicate that the copy of the BDO's report was supplied to the litigating sides. Roznama, however, indicates that the matter was suddenly taken on board on 03/07/2019 and the impugned order was passed.

4. I find that the District Collector, Nanded should have adopted a transparent approach and the parties should have been made aware about he ordering the BDO to submit his report. Fair play requires that the copy of the report be supplied to the parties. So also, the matter cannot be suddenly taken on board after one year and four months, *suo moto* on the pretext that the order is passed, without notice to the parties.

5. It is in view of the above recorded irregularity which affects the authenticity of the proceedings before the District Collector, that I am setting aside the order dated 03/07/2019.

6. This petition is partly allowed with the following directions :-

- (a) The impugned order dated 03/07/2019 is set aside.
- (b) The petitioner and respondent No.1 shall remain present before the District Collector, Nanded on 18/09/2018 at 12.00 noon. Notice be issued to respondent No. 2 / Gramsevak, though he is a formal party.
- (c) The litigating parties shall abide by the dates of hearing on which the District Collector would post the matter.
- (d) After the hearing in the matter is concluded, the District Collector, shall close the proceedings for passing orders, on 05/11/2019.

- (e) The litigating parties would be obliged to remain present on 05/11/2019 at 2.00 p.m. in the office of the District Collector when he shall pronounce his order and supply copies of his order to the litigating sides forthwith.

7. Needless to state, the Up-Sarpanch shall officiate as the Sarpanch until the decision by the District Collector on 05/11/2019. Election to the post of Sarpanch shall not be held until then and in the event the petitioner Sarpanch succeeds in the proceedings, he would be entitled for all allowances which he was deprived of on account of his disqualification.

(RAVINDRA V. GHUGE, J.)

shp/-