

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12258 OF 2019

Rafiq Nabi Pathan

Petitioner

Versus

The State of Maharashtra
& others

Respondents

Mr. M.R. Andhale, Advocate for the petitioner.
Mr. S.B. Narwade, AGP for all respondents.

**CORAM : S.V.GANGAPURWALA &
ANIL S. KILOR, JJ.
DATE : 07th October, 2019.**

PER COURT :

1. Mr. Andhale, learned counsel for the petitioner submits that the letter dated 29.09.2019, directing holding of election to the post of Upa-Sarpanch of Gram Panchayat Laigaon, Tq. & Dist. Aurangabad, is illegal.

2. Learned counsel for the petitioner submits that the post of Upa-Sarpanch is vacant since three months. *Inter alia*, the post of the Member of the Panchayat is also vacant. It is the contention of petitioner that, first the election for the post of Member of the Panchayat should be held and thereafter only, election for the post of Upa-Sarpanch can be held. Learned counsel for the petitioner further submits that the respondents have committed an error while directing election for the post of Upa-Sarpanch before election for the post of Member of the Panchayat. Learned counsel

for the petitioner relies on Section 43 of the Maharashtra Village Panchayats Act.

3. Proviso to sub-section (1) of Section 43 of the Maharashtra Village Panchayats Act mandates that the post of Sarpanch or Upa-Sarpanch, as the case may be, fallen vacant shall be filled in within thirty days from the date of such vacancy.

4. It is not disputed that the post of Upa-Sarpanch became vacant on 10.06.2019.

5. Section 44 of the Maharashtra Village Panchayats Act provides that during any vacancy of the Panchayat, the continuing members may act as if no vacancy had occurred.

6. On cohesive reading of Section 43(1) with proviso and Section 44 of the Maharashtra Village Panchayats Act, it appears that the mandate required under proviso to sub-section (1) of Section 43 of the Maharashtra Village Panchayats Act will have to be adhered to.

7. In the light of above, election for the post of Upa-Sarpanch cannot be stalled till the election of the Member of the Panchayat.

8. Writ petition is disposed of. No costs.

(ANIL S. KILOR)
JUDGE

dyb/

(S.V.GANGAPURWALA)
JUDGE