

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 3912 OF 2022

Varsha w/o Gajanan Vazire

vs.

Divisional Commissioner, Amravati and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. A. R. Deshpande, Advocate for petitioner.
Mr. N. R. Patil, AGP for respondent No.1.
Mr. S. D. Chopde, Advocate for respondent No.2.
Mr. R. M. Sharma, Advocate for respondent No.3.

CORAM : MANISH PITALE J.
DATE : 19/09/2022

Heard learned counsel for the petitioner
and the learned counsel for the respondents.

2. The present writ petition is filed to challenge order dated 05/07/2022, passed by the respondent No.1 – Commissioner, whereby hearing on appeal filed by the respondent No.2 was shown to have been concluded and the matter closed for orders.

3. On 18/07/2022, this Court issued notice in the present petition and granted ad-interim stay of

further proceedings before the respondent No.1 – Commissioner and in paragraph 5, the gist of the challenge raised on behalf of the petitioner is recorded, which reads as follows :-

“5. It is the case of the petitioner that the order passed by this Court was only partly complied with by giving opportunity to the petitioner to cross-examine the Peon of the gram panchayat, but further prayer made in the said application for permission to cross-examine the Secretary of the gram panchayat was rejected in a cryptic manner without any reasons on 05/07/2022. By referring to the roznama of the office of the Divisional Commissioner, the learned counsel for the petitioner submitted that after denying the opportunity to cross-examine the Secretary of the gram panahcyat, the proceedings were directly closed for orders without opportunity of hearing to the petitioner. It is then alleged that subsequently certain reasons were added in the roznama to justify denial of cross-examination.”

4. The respondents appeared through counsel and the matter was heard today. It was vehemently submitted on behalf of the petitioner that, not only is the impugned order in violation of the principles of natural justice, but it is also in the teeth of directions given by this Court in order dated 22/03/2022, passed in Writ Petition No.3402 of 2020, which was filed by the petitioner herein, being aggrieved by the approach adopted by the respondent

No.1 – Commissioner while hearing the said appeal. It was submitted that this Court had specifically directed the Commissioner to decide an application seeking production of documents on merits and the said application contained a composite prayer, not only for placing documents on record, but also seeking cross-examination of the then Secretary of the Gram Panchayat.

5. On the other hand, the learned counsel appearing for the contesting respondent No.2 submitted that a proper reading of the aforesaid order passed by this Court on 22/03/2022 in Writ Petition No.3402 of 2020, would show that there was no specific reference to any direction for permitting cross-examination of the then Secretary of the Gram Panchayat and the order specifically recorded in the opening paragraph that the petitioner was really seeking an opportunity to cross-examine the Peon of the Gram Panchayat.

6. The dispute in the present case involves the question, as to whether the petitioner incurred disqualification under the provisions of the Maharashtra Zilla Parishad and Panchayat Samitis Act, 1961. The question involved, no doubt is of a serious nature, because if the complaint made against

the petitioner is to succeed, not only will the petitioner be unseated, but the will of the majority which elected her will be set at naught. When such a drastic consequence is contemplated, the principles of natural justice have to be followed to the hilt and technicalities cannot be permitted to override substantive requirements being followed.

7. A perusal of the impugned order indeed shows that the Commissioner closed the matter for orders and thereafter certain reasons were added by hand. The reasons so recorded do not appear to show compliance with the spirit of the order dated 22/03/2022, passed by this Court in Writ Petition No.3402 of 2020. Although paragraph 7 of the order states that the pending application, seeking production of documents shall be considered on merits, it cannot be interpreted to mean that the prayer made in the very application, in the form of a composite prayer seeking opportunity to cross-examine the then Secretary of the Gram Panchayat, should be ignored. The purpose of the proceedings before the Commissioner is to elucidate the truth in the allegations made against the petitioner, who is admittedly an elected representative. Any step which aids the authority to get to the bottom of the truth ought to be promoted and therefore, the

Commissioner in the present case appears to have committed an error in passing the impugned order.

8. In view of the above, the writ petition is allowed. The impugned order is quashed and set aside.

9. The Commissioner is directed to immediately take up the appeal by properly taking into consideration the documents produced by the Gram Panchayat and retaining a copy thereof, if necessary, and permitting the petitioner to cross-examine the then Secretary of the Gram Panchayat.

10. The Commissioner shall follow the principles of natural justice in further proceedings to dispose of the appeal expeditiously and preferably within **eight weeks** from today.

JUDGE