



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No.13426 of 2025
Decided on 25th August 2025

Manish Dharmaik

...Petitioner

Versus

State of Himachal Pradesh and others

...Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge

¹Whether approved for reporting? Yes

For the petitioner: Mr. T.S. Chauhan, Senior Advocate,
with Mr. Surya Chauhan, Advocate.

For the respondents: Mr. Pushpinder Jaswal, Additional
Advocate General.

Ajay Mohan Goel, Judge (Oral)

With the consent of the parties, the petition is being disposed of at this stage itself.

2. By way of this writ petition, the petitioner has assailed order dated 13.08.2025 (Annexure P-7) passed by the learned Divisional Commissioner, in Appeal No.112 of 2025, in terms whereof, the appeal filed by him against the order passed by Deputy Commissioner stands dismissed by the Divisional Commissioner.

3. Brief facts necessary for the adjudication of this petition are that feeling aggrieved by issuance of notification dated 31.05.2025 (Annexure P-2), the petitioner preferred an appeal against the same before the learned Divisional Commissioner Shimla. Learned Divisional Commissioner in terms of order dated 24.06.2025, allowed the appeal and remanded the matter back to the Deputy Commissioner Shimla. However, thereafter, the same appeal was again taken up for consideration and decided by the Divisional Commissioner on merit, without the earlier order of remand having been set aside by any superior authority.

4. When this case was listed on 21.08.2025, this Court passed the following order:-

“Notice. Mr. Pushpinder Jaswal, learned Additional Advocate General, accepts notice on behalf of the respondents.

Learned Senior Counsel appearing for the petitioner points out that an Appeal preferred by the petitioner under Rule 10 of the H.P. Panchayati Raj (Election) Rules, 1994, was allowed by the Appellate Authority vide Annexure P-4, dated 24.06.2025. In terms of said order, the matter was remanded back to the learned Deputy Commissioner, Shimla, for adjudication afresh, after setting aside the order passed by the

Deputy Commissioner. The petitioner also, in the interregnum, filed objections regarding delimitation of Ward No. 13 and 14 of Choppal, District Shimla, before the Deputy Commissioner. The Deputy Commissioner confused himself in deciding the objections and deciding the Appeal in remand and it appears he referred the matter to the learned Divisional Commissioner, by stating that he was not having any authority to decide the objections afresh.

A perusal of Annexure P-6, dated 31.07.2025 demonstrates that the Divisional Commissioner rather than appreciating that in case the Deputy Commissioner had expressed his inability to decide the objections, the said Authority could have been directed to decide the Appeal in terms of the order earlier passed by the Divisional Commissioner, himself assumed again the authority of rehearing and deciding an Appeal, which already stood decided by the said Authority. This order, as per the learned Senior Counsel, was passed by the Authority, behind the back of the petitioner. Thereafter, notices were issued to the petitioner and in terms of impugned order dated 13.08.2025, now the Appeal has been dismissed by the petitioner.

Learned Senior Counsel submits that perversity is writ large on the face of the record itself as the Authority once having allowed the Appeal, has no jurisdiction to reopen and rehear the same Appeal.

At this stage, on the request of learned Additional Advocate General, the case is ordered to be listed on 25.08.2025, to enable the respondents to file reply/to have instructions as to whether the facts as stand

narrated in this order, are correct or not. Record of the learned Divisional Commissioner pertaining to the case be also produced before the Court.”

5. Today, learned Additional Advocate General has produced the original record. Perusal thereof demonstrates that after the remand order was passed by learned Divisional Commissioner Shimla, thereafter on 31.07.2025, learned Divisional Commissioner passed the following order:-

“This case has already been disposed of vid this Court order dated 24.06.2025. vide order dated 24.06.2025 appeal preferred by the appellant Rule 10 of HP Panchayati Raj Election) Rule 1994 was accepted with further direction Deputy Commissioner Shimla to hear and decide the objection of the present appellant after affording proper opportunity of being heard to the parties concerned.

However, the Deputy Commissioner Shimla vide his office letter dated 18-07-2025 has submitted that as there is no provision to hear and decide the objections after the appeal decided and the orders passed by the Divisional Commissioner. As Per Rule 10 of HP Panchayati Raj(Election), Rule 1994 the orders passed in appeal by the Divisional Commissioner shall be final. In view of provision Under Rule 10 Deputy Commissioner Shimla has expressed his inability to hear and decide the objection afresh and further has sought guidance to this effect.

In view of the above submission made by the Deputy Commissioner Shimla, the matter has been taken up with the State Election Commission, Shimla-2. The State Election Commission, Shimla-2 vide the letter dated 29-07-2025 has directed that Divisional Commissioner should finally dispose of the appeal immediately.

Therefore, in compliance of direction issued by the State Election Commission, Shimla-2 vide the letter dated 29.07.2025, this appeal has been taken up again.

Notice be issued to parties. Case be listed on service on 05.08.2025.”

6. Pursuant thereto, the appeal was again re-heard on merit and the same was ultimately dismissed vide order dated 13.08.2025.

7. In order dated 31.07.2025, it is mentioned that the appeal was again being taken up for consideration on account of the directions issued by the State Election Commission on 29.07.2025, wherein, the Divisional Commissioner was directed that the said authority should finally dispose of the appeal immediately. Said communication of the State Election Commission reads as under:-

“With reference to your letter No. Div. Com(SML) Peshi/Delimitation/2025-4166 dated 18.07.2025 on the subject cited above, I am directed to convey that the matter was placed before the Commission and the Commission has directed that the Divisional Commissioner Shimla should finally dispose of the Appeal immediately.”

8. Above demonstrates that all that was observed by the Secretary, State Election Commission in this communication was that Commission directed the Divisional Commissioner, Shimla to finally dispose of the appeal relating to the delimitation of constituencies of Zila Parishad of Shimla District. It is evident that the office of learned Divisional Commissioner did not point out to the State Election Commission that the appeal already stood disposed of vide order 24.06.2025 and the matter stood remanded to the learned Deputy Commissioner. Otherwise also, when the learned Divisional Commissioner had already disposed of the appeal earlier in terms of order dated 24.06.2025, the authority had become *functus officio* and until and unless the order passed by the Authority was either reviewed, if the authority was having the power to review, or set aside by a superior authority and remanded back to the

Divisional Commissioner, there was no power vested with the learned Divisional Commissioner to again hear an appeal already decided by the said authority in exercise of its quasi-judicial power. There is no power vested in the Divisional Commissioner to *suo moto* again revive an appeal which has been decided by it earlier.

9. In the light of the above observations, this writ petition is allowed. Order dated 13.08.2025 is quashed and set aside and Deputy Commissioner Shimla is directed now to decide the matter in terms of the remand order passed by the Divisional Commissioner expeditiously. Record stands returned back. Pending miscellaneous applications, if any, also stand disposed of.

(Ajay Mohan Goel)
Judge

August 25, 2025
(Vinod)