

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

WRIT PETITION NO. 10656 OF 2016

MIRZA MOHD ALI NISAR ALI BAIG
VERSUS
THE ADDITIONAL DIVISIONAL COMMISSIONER AURANGABAD AND
ANOTHER.

...
Advocate for Petitioner : Shri Salgare Vitthal G.
AGP for Respondent 1 : Shri PN.Kutti.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 25th October, 2016

Per Court:

1 The Petitioner is aggrieved by the order dated 08.08.2016 delivered by Respondent No.1 by which it has refused to condone the delay of about 08 months and 10 days.

2 The Petitioner has served Respondent No.2/ Chief Executive Officer, Zilla Parishad, Hingoli and the service affidavit is placed on record along with the printout of the tracking report of the Indian Post Department which indicates that Respondent No.2 has been served with notice at 16:19 hours on 19.10.2016. No appearance has been entered by Respondent No.2, despite notice from the Petitioner.

3 The Petitioner has filed the appeal under Rule 14 of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964.

4 A short issue has been raised in this petition. The appeal preferred by the Petitioner under Rule 14 was not registered since an application for condonation of delay under Rule 16 was pending. By the impugned order passed under Rule 16, Respondent No.1 has refused to condone the delay on the ground that the matter has been filed beyond limitation. It appears from the pleadings of the Petitioner that reasons have been assigned for explaining the delay of 08 months and 10 days.

5 The learned AGP appearing on behalf of Respondent No.1 submits that in the event this Court is inclined to entertain this petition, the matter may be remitted to Respondent No.1 so as to enable the said Authority to consider the application for condonation of delay afresh.

6 The proviso to Rule 16 clearly indicates that the delay can be condoned beyond the limitation period if satisfactory reasons are cited. It is trite law that the delay has to be considered liberally. If it appears to be inordinate or deliberate or if laches are attributable to the conduct of the litigant, the delay may not be condoned. The Honourable Supreme Court

has laid down the law in the matter of the *Collector, Land Acquisition, Anantnag v/s Mst.Katiji*, **AIR 1987 SC 1353**.

7 Considering the above, this Writ Petition is partly allowed. The impugned order dated 08.08.2016 is quashed and set aside and Appeal being Case No.DB/Appeal/Cell/93/2015 filed by the Petitioner is remitted to Respondent No.1 for considering the application for condonation of delay under the proviso to Rule 16 and in the light of the ratio laid down by the Honourable Supreme Court in the matter of the *Collector, Land Acquisition, Anantnag (supra)*.

8 Needless to state, the Petitioner shall appear before Respondent No.1 on 02.12.2016. Respondent No.1 shall issue notice to Respondent No.2 for causing it's appearance in the matter.

9 It is expected that the application for condonation of delay shall be decided afresh on or before 15.02.2017.