

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11217 OF 2017
(Jaha Ara Sharfoddin Makrani Vs The State of Maharashtra and
others)

WITH
WRIT PETITION NO.11218 OF 2017
(Wansing Jalamsing Valvi Vs. The State of Maharashtra and others)

Mr.A.S.Savale, Advocate for the petitioners.
Mr.S.N.Kendre, AGP for respondent Nos. 1 and 2.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 10/10/2017

PER COURT :

1. While considering this matter for issuance of notice, I have recorded the submissions of the learned Advocates in my order dated 20/09/2017, which reads as under :-

“1 In these two matters, the identically placed two Petitioners are challenging an identical order dated 31.07.2017 by which the Additional Commissioner has concluded that the appeals filed by the Petitioners under Section 16 of the Maharashtra Village Panchayats Act are beyond the prescribed limitation of 15 days and hence, the appeals are rejected.

2 The facts, which are identical in these petitions, are quite peculiar and which are as under:-

(a) These Petitioners are aggrieved by their disqualification by order dated 29.09.2016 passed by the Additional Collector.

(b) They filed their respective appeals on 14.10.2016 under Section 16, which happens to be the fifteenth day as per the limitation prescribed.

(c) By letter dated 20.10.2016, these appeals were returned for the reason that requisite postage was not affixed.

(d) The Petitioners affixed the requisite postage and re-filed their appeals on 08.11.2016.

(e) By the impugned orders, the appeals were rejected on the ground that they were filed beyond limitation on 08.11.2016.

(f) The disqualification of these Petitioners is on account of having more than two children (eight children in one case and three children in the second case).

3 The issue in these petitions would be whether, the appeals filed by these Petitioners on the fifteenth day as per the prescribed limitation, which happens to be the last day, could be entertained on their merits by the Additional Commissioner in the light of the above factors.

4 Issue notice before admission to the Respondents returnable on 05.10.2017.

5 The learned AGP waives service on behalf of Respondent Nos.1 and 2.

6 On request, Humdast is granted.

7 The Petitioners are preempted that if in any case the issue of disowning a child occurs, I would not hesitate to order a DNA test to prove the paternity (motherhood and/or fatherhood) of the child. It is also made clear that eventually if this Court comes to a conclusion that either the Petitioners or

the Respondent/ Complainant have tried to play a fraud on the system and have abused the process of law, I would not hesitate to order registering of a criminal offence against such persons and also imposition of costs of at least Rs.1 lac.”

2. The learned AGP has strenuously opposed both the petitions on the ground that an appeal was filed u/s 16 belatedly and hence the additional Commissioner has rightly rejected both the appeals as he does not have the power to condone the delay.

3. Notwithstanding the strenuous submissions of the learned AGP, it cannot be ignored that both these petitioners had preferred their respective appeals on 14/10/2016 for challenging the order of the Additional Collector dated 29/09/2016 and 03/10/2016. The said appeals were filed on the 15th and 11th day from the date of the orders. Inadvertently, requisite postage was not affixed. The petitioners, bonafide, deposited the requisite postage and re-tendered their appeals on 08/11/2016 which are now rejected by the impugned orders.

4. Considering the above, both these petitions are partly allowed. The pending appeal Nos. 390/2016 and 391/2016 which were in fact tendered on 14/10/2016 are restored to the file of respondent No.1.

The litigating sides shall appear before respondent No.1 on 03/11/2017 at 3.00 p.m. Formal notices need not be issued by respondent No.1.

5. Respondent No.1 shall decide the said appeals on their own merits keeping in view the observations of this Court in paragraph No.7 meaning thereby that respondent No.1 may even order a DNA test in the matter and if any of the litigating sides is found to have played a fraud on the Government or the system, the Additional Commissioner would be at liberty to impose costs of Rs.1,00,00/- as well as issue directions to register a criminal offence against the said person who has committed the fraud.

(Ravindra V.Ghuge, J.)