

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

WRIT PETITION NO. 9658 OF 2016

Sangitabai w/o Vasudeo Rajput,
Age: 34 years, Occ.: Agriculturist,
R/o: Nanthe, Tq. Shirpur,
Dist. Dhule

.. **Petitioner**

Versus

1. The State of Maharashtra
Through Principal Secretary,
Rural Development Department,
Mantralaya, Mumbai – 400 032.
2. The Additional Commissioner (Revenue),
Nasik Division, Nasik.
3. Additional Collector,
Dhule, District Dhule.
4. Jitendra s/o Ramsing Rajpur,
Age: 45 years, Occ: Agriculturist,
R/o: Nathe, Tq. Shirpur,
Dist. Dhule.
5. Village Panchayat,
R/o: Nathe, Tq. Shirpur,
Dist. Dhule.
Through its Gramsevak/
Village Development Officer.

.. **Respondents**

Mr. Pradip R. Patil, Advocate for the petitioner.
Mr. S.G. Karlekar, AGP for respondent-state.
Mr. S.S. Dere, Advocate for respondent no.4.

**CORAM : S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.**

**DATE OF RESERVING THE JUDGMENT : 19.06.2017
DATE OF PRONOUNCING THE JUDGMENT : 29.06.2017**

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JUDGMENT: (*Per Mangesh S. Patil, J.*)

1. Rule. The rule is made returnable forthwith with the consent of the parties. Heard the learned Advocates for both the sides.

2. In this Writ Petition under Article 226 and 227 of the Constitution of India, the petitioner is seeking a writ of certiorari or an order in the nature thereof in respect of the judgment and order dated 02.01.2015 passed by the Additional Divisional Commissioner, Nashik (Exhibit 'A') and judgment and order dated 20.03.2014 passed by the Additional Collector, Dhule in Village Panchayat Dispute No. 2 of 2014 (Exhibit 'B'). The petitioner is also seeking writ of Mandamus or a direction or order in the nature thereof, seeking declaration that of Section 16(2) of the Maharashtra Village Panchayat Act, 1958 (hereinafter referred to as the Act) is unconstitutional to the extent it restricts the period of limitation which begins to run from the date of passing of the order and not from the date of its knowledge.

3. The relevant facts as are necessary to decide the Writ Petition

may be summarised as under:

The petitioner was married on 16.03.1996. She gave birth to her first child on 19.11.1998 and the second child on 20.11.2000. She gave birth to her third child which is a girl by name Shweta on 17.08.2001. The date of birth was also recorded under the Registration of Birth and Deaths Act, 1969 and the rules framed thereunder. A bona fide certificate was also issued by the Headmaster of H.R. Patel Kanya Secondary and Higher Secondary School, Shirpur, District Dhule, certifying that Shweta was born on 17.08.2001 and even her school leaving certificate read her date of birth as the same.

The petitioner filed her nomination for ward no.2 in open women category in the Gram Panchayat Elections of village Nanthe. All her three children were born before the cut-off date namely 12.09.2001, for inviting disqualification as laid down under Section 14 (j-1) of the Act. Nobody had taken any objection to her nomination including the respondent no.4, who also contested the election. However, after she was elected, he raised a dispute by filing Village Panchayat Dispute Application No. 2 of 2014 before the respondent no.3-Additional Collector, Dhule to the effect that she was disqualified since her third child Shweta was born on 17.06.2003 i.e. after the cut-off date i.e.

12.09.2001. He filed documents demonstrating that Shweta was born after the cut-off date.

The respondent no.3, then, proceeded with the inquiry. On 22.01.2014 the learned Advocate for the petitioner was absent for the hearing and the matter was adjourned to 29.01.2014. On that day her learned Advocate was present but the matter was adjourned to 14.02.2014 and then to 26.02.2014. On 26.02.2014 when the matter was called out the petitioner's Advocate submitted an application for issuing witness summons to the Headmaster of R.C. Patel High School for verifying the original school register. On 12.03.2014, the petitioner was personally present before the respondent no.3 and so was the Headmaster of R.C. Patil High School, albeit her learned Advocate was absent. However, the respondent no.3 did not verify the original register brought by the Headmaster and the matter was reserved for decision. On the same day the learned Advocate for the respondent no.4 also submitted written notes of arguments. On 20.03.2014, the respondent no.3 passed the judgment holding that the petitioner had earned disqualification. The copy of the order was received by the Tahsildar only on 25.03.2014 and it was received in the office of Village Panchayat, Nanthe on 19.06.2014. For that matter even respondent no. 4 could

receive the copy of the judgment on 24.06.2014. She got the knowledge of the decision on 04.07.2014, when intimation letter (Exhibit-Q) signed by the Village Development Officer was received by her.

According to the petitioner, since she was only informed about the decision and was not having a copy of the judgment, she applied for it and received it on 08.07.2014 and, thereafter, filed an appeal before the respondent no.2-Additional Divisional Commissioner, Nashik on 14.07.2014. She also preferred an application for condonation of delay in preferring the appeal by quoting all the aforementioned facts and explaining the cause. The respondent no.2-Additional Divisional Commissioner, Nashik was pleased to stay the operation of the impugned order passed by the respondent no.3-Additional Collector and extended the stay from time to time. Lastly, respondent no.2 rejected the application for condonation of delay on 21.03.2014 and that is how the petition has been filed.

4. After a brief hearing, the learned Advocates for both the sides restricted their arguments only to the point whether the respondent no.2 has any power to condone the delay while hearing the appeal under Section 16 of the Act, and it was not necessary to touch the merits of the case.

5. According to the learned Advocate for the petitioner, the respondent no.2 does have a power to take into consideration facts causing delay in preferring appeal and has inherent power to condone it, when he sits in appeal against the orders of the respondent no.2- Additional Collector. Per contra, the learned Advocate for respondent no.4 vehemently submitted that there is no such provision which empowers the respondent no.2 to condone the delay and what has not been expressly provided in the statute cannot be read into it and when the legislature in its wisdom has not provided for any such power, this Court cannot read it into it. In this regard deem it opposite to refer to the judgment rendered by one of us (Coram: S.C. Dharmadhikari, J.) in the case of **Maruti Vasant Kashid V/s. The Divisional Commissioner, Pune Division and Ors. in writ petition no. 1213 of 2011 on 8th and 11th July, 2011.** We particularly endorse the observations and conclusions drawn in para 37 and 42 which are as follows:

"37) Resultantly, it will have to be held that the appeal which is to be filed against the decision of the Collector may be filed within fifteen days from the decision but that is not rule of limitation as understood by the Limitation Act and in general. That a limit is prescribed but non adherence to the same is a matter not dealt with by the Legislature at all. It has not been provided by the Legislature that if the appeal is not preferred

within fifteen days, that no appeal can be filed thereafter or if filed will not be entertained and heard. The consequences having not been provided by law, it is possible to hold that the appeal even if filed beyond the period of fifteen days can be dealt with and decided by the State Government or its delegate. Ultimately, it is not filing of the appeal but appealing to the State Government is what is stated. It is not filing and institution of any other proceeding but it is an appeal to the State Government by a person aggrieved and that would be the relevant factor. The appeal is not to be made in any prescribed form. The proceedings are styled as an appeal to the State Government and obviously the word "Appeal" has some definite meaning in law. It is a request to the higher forum or authority to correct the errors and defects in the proceedings held at the stage of trial or before an inferior authority. It means opportunity to be heard or to present one's side of a case. An appeal, therefore, means actively or carefully listening to the grievance of the appellants in regard to the decision of a subordinate Tribunal. It, therefore, postulates rehearing of the grievance on merits. [(See A.I.R. 1996 Rajasthan 119 (FB)]. The power of appeal is being exercised by the State Government. In these circumstances, to hold that the State Government is powerless to entertain and decide an appeal which is filed beyond the period of fifteen days would amount to overlooking and ignoring the intent of the Legislature. The Legislature intends that the appeal can be entertained after this period. However, it must be borne in mind that even if the

appeal can be entertained beyond a period of fifteen days, ultimately the State Government is the authority which is to pass a final order in the appeal. It may refuse to do so in a given case because a person has approached it at the fag end of the term of the elected councillor or that it would not be reasonable and appropriate to exercise the said appellate power on account of the time factor. The State Government, depending upon the facts and circumstances of each case, can take a view that the appeal need not be allowed because the Appellant has been unable to explain as to why he approached it belatedly. If the delay is caused deliberately or by utter negligence, total carelessness or in a given case demonstrates lack of bonafides, then, the State Government may refuse to exercise its powers and put an end to the proceedings. However, merely because the appeal has been filed beyond the period of fifteen days is no ground to reject it and particularly by applying the logic that the appellate authority is not a court and, therefore, section 5 of the Limitation Act is inapplicable.

42) In the view that I have taken, it is clear that the Commissioner was in error in rejecting the appeal preferred by the petitioner. He should have entertained it and the application for condonation of delay ought to have been decided in accordance with law. Rejecting it only on the ground that he is functioning as a statutory authority and not a court and, therefore, Limitation Act is inapplicable is a view which cannot be said to be sustainable in law. In the light of the aforesaid

discussion, Rule is made absolute. The order of the Commissioner dated 24th December 2010 is quashed and set aside. However, in the facts and circumstances of this case, there will be no order as to costs.”

6. In the result, the writ petition succeeds on the limited question discussed above and is allowed. The impugned order is quashed and set aside and the matter is remanded to the respondent no.2. We direct the respondent no.2 to decide the application for condonation of delay in accordance with law. It is made clear that he shall decide it uninfluenced by what has been observed in this order. Rule is made absolute accordingly.

[MANGESH S. PATIL, J.]

[S.C. DHARMADHIKARI, J.]