

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1432 OF 2014

Dilip Haridas Deshmukh .. Petitioners
& Ors.

v/s.

The Additional Commissioner & Ors. .. Respondents

Mr. Ajay Joshi for the petitioners
Mr. Sarang Aradhye for respondent no.2
Mr. S.H. Kankal, AGP for respondent no.1

**CORAM : M.S. SANKLECHA, J.
DATED : 6th NOVEMBER, 2017**

P.C.

1. This petition under Article 227 of the Constitution of India challenges the order dated 14th August, 2012 passed by the respondent no.1 - Additional Commissioner, Pune Division, Pune dismissing the petitioners' appeal under Section 16 of the Maharashtra Village Panchayat Act, 1959 (Act), as time barred. The petitioners' appeal before the Additional Commissioner was from the order dated 17th June, 2011 passed by the Additional Collector rejecting the petitioners' application to disqualify the respondent no.2 from the post of member of Gram Panchayat of Village Koregaon, Tal, Pandharpur, Dist. Solapur as he has more than two children.

2. The impugned order dated 14th August, 2012 dismissed the appeal from the order of the Additional Collector as it was filed beyond the period of 15 days as provided under Section 16 (2) of the Act and there is no power under the Act to condone the delay in filing an appeal.

3. The issue of entertaining an appeal under Section 16 of the Act even if filed beyond the period of 15 days as provided therein, is no longer *res integra*. This Court in ***Maruti Vasant Kashid Vs. The Divisional Commissioner, Pune & Ors.*** (Writ Petition No. 1213 of 2011) rendered on 8th July and 11th July, 2011, while dealing with an identical issue has held that though the Act does not provide for any condonation of delay, yet an appeal under Section 16(2) of the Act could be entertained beyond the period of 15 days, provided the same is filed within a reasonable time from the date of the order.

4. Mr. Joshi, learned Counsel appearing for the petitioners states that the tenure of the member of the Gram Panchayat has come to an end as the election, which has been challenged was held in 2010. Thus, the petitioners are not interested in prosecuting the present

petition. However, he seeks liberty to urge the same issue (more than two children) as and when the occasion arises i.e. when the respondent no.2 contest the elections.

5. In view of the fact that the tenure of the Gram Panchayat to which the respondent no.2 so elected has already expired. No useful purpose would be served by restoring the matter to the Additional Commissioner to consider the petitioners' delay application in the light of the decision of this Court in *Maruti Vasant Kashid (supra)*.

6. Therefore, the liberty as sought for by the petitioners is granted. It would be open to the petitioners to challenge the eligibility / election of the respondent no.2 to the Village Panchayat and carry the same in appeal from the orders of the Additional Collector as the successor would be bound by the order dated 17th June, 2011 of his predecessor. However, the withdrawal of this petition would not preclude the petitioners from preferring an appeal from the subsequent order of the Additional Collector to the Additional Commissioner within the time provided and the same would be decided on its own merits.

7. Accordingly, the petition is disposed of as withdrawn with liberty as aforesaid.

(M.S. SANKLECHA, J.)