IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2868 OF 2016

Sachin Marotrao Sathone .. Petitioner.
Vs.
The Commissioner of Maharashtra
State Lotteries and Others .. Respondents.

Mr. V.R. Kasle i/b Ram and Company for the Petitioner.
Mr. Manish M. Pabale AGP for the Respondent Nos.1 to 4.

CORAM : A.S. OKA & A.K. MENON, JJ.

DATED : 18TH APRIL, 2017

P.C.

1. Rule.

2. Learned A.G.P. waives service for the respondents. We have forthwith taken up petition for final disposal.

3. The petitioner preferred an appeal under Section 13 of the Maharashtra Tax on Lotteries Act, 2006 (for short 'Act of 2006'). By the impugned communication dated 5th November, 2014 issued by the Additional Chief Secretary of the State Government, the Petitioner was informed that the said appeal has been dismissed for non prosecution. The said communication records that by a letter dated 9th October, 2014, the petitioner was called upon to remain present for hearing on 13th October, 2014. It is further stated that by a letter dated 20th October, 2014 the petitioner was called upon to remain present for hearing on 27th October, 2014. However, the petitioner did not appear and therefore, the appeal was dismissed.

4. Learned counsel appearing for the petitioner has taken us through the documents annexed to the petition. He pointed out that both the intimations of the dates fixed were received by the petitioner after the dates fixed for hearing. He would therefore submit that there was no justification for dismissing the appeal preferred by the petitioner on the ground that the petitioner did not remain present at the time of hearing. Learned A.G.P supported the impugned order and submitted that no interference is called for.

5. We have given careful consideration to the submissions. Exhibit-M to the petition is a letter dated 8th October, 2014 addressed by the State Government to the petitioner. It only records that the aforesaid appeal has been preferred by the petitioner which will be heard by the Additional Chief Secretary (Finance) in a particular room in the Mantralaya. However, the date of hearing is not mentioned in the said letter.

6. A letter dated 9th October, 2014 issued by the State Government is annexed to the petition as Exhibit-N. It records that the hearing has been fixed on 13th October, 2014 before the Appellate Authority. According to the case of the petitioner, the said letter was received by him on 11th October, 2014. Accordingly, on 11th October, 2014 the petitioner addressed a letter to the Chief Secretary of the Finance department informing him that due to

Diwali festival it was not possible to get railway booking to enable him to attend the hearing on 13th October, 2015 and a request was made to give sufficient advance notice of hearing of the date fixed for hearing.

7. By the letter dated 20th October, 2014 addressed by the Chief Secretary of the Finance department, the petitioner was called upon to remain present on 27th October, 2014 for hearing. The said letter refers to the letter dated 11th October, 2014 written by the petitioner. According to the case of the petitioner, the said letter was received by the petitioner on 27th October, 2014 at 3.30 pm at Nagpur. Accordingly, by a letter of the same date which was sent by Speed Post A.D., the petitioner informed the Chief Secretary of the Finance department, that the letter was received at 3.30 pm on 27th October, 2014. The tracking report of the said letter is also annexed on page 87 of the petition which shows that the letter dated 27th October, 2014 was delivered in the Mantralaya on 29th October, 2014.

8. According to the case of the petitioner, on 7th November, 2014 he visited the Office of the Appellate Authority and submitted an application for serving him notice of the date fixed for hearing at least 15 days in advance.

9. When the impugned communication dated 5th November,

2014 was issued, the Appellate Authority was aware that the letter dated 20th October, 2014 was served to the petitioner at 3.30 pm on 27th October, 2014 and therefore, the petitioner could not have attend the hearing at Mumbai at 12 noon on the same date. By ignoring to the said factual position, the impugned order has been passed. Therefore, the impugned order/communication will have to be set aside.

10. Accordingly, we pass the following order :

(i) The impugned communication dated 5th November, 2014 is hereby set aside and an appeal preferred by the petitioner under Section 13 of the Act of 2006 on 27th January, 2014 is restored to the file of the State Government;

(ii) We direct the petitioner to appear before the Appellate Authority at 3 pm on 15th May, 2017. On that day, the Appellate Authority shall fix a date for hearing in presence of the petitioner. The signature of the petitioner be obtained on the intimation of the date fixed for hearing of the appeal. The Appellate Authority shall endeavor to decide the appeal as expeditiously as possible and in any event within a period of three months from 15th August, 2017;

(iii) All contentions are kept open;

(iv) Rule is made absolute in the aforesaid terms.

(A.K. MENON, J.) **(A.S. OKA, J.)**