

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

WRIT PETITION NO. 14244 OF 2018

Shobhatai w/o Subhash Patekar

...Petitioner

Versus

The Divisional Commissioner,
Aurangabad and Ors.

...Respondents

Mr D.J. Choudhary, Advocate for Petitioner

Mrs. V.N. Patil-Jadhav, Assistant Government Pleader for Respondent
Nos. 1 to 3

Mr. P.P. More, Advocate for Respondent Nos. 4 to 6

**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

DATE : 31ST JANUARY, 2019

ORAL ORDER:

1. We have heard Mr Choudhary, the learned Counsel for the petitioner, the learned Assistant Government Pleader and Mr More, the learned Counsel for Respondent Nos. 4 to 6.

2. After having considered the submissions of the learned Counsel for the parties, it transpires that the Additional Commissioner under order dated 2nd November, 2018, called for the record and proceedings of the authority, whose order was challenged. Under the said order, the stay was granted in favour of the petitioner.

3. It is the case of the petitioner that, without waiting for the record, the Additional Commissioner closed the file for orders that too by preponing the date which was initially given.

4. We had asked the learned Assistant Government Pleader to take instructions as to whether the Additional Commissioner has received the record when the file was closed for orders. The learned Assistant Government Pleader, on instructions, submits that record and proceedings on the said date was not received. It would be sent to the Additional Commissioner by tomorrow.

5. The transfer of the matter cannot be ipse dixit. There appears to be some procedural flaw. However, the same may not be the reason for transferring the matter. The procedural irregularity can be corrected.

6. Considering the above, we pass the following order :-

(i) The parties shall appear before the Additional Commissioner on 7th February, 2019.

(ii) The Additional Commissioner shall allow the parties to peruse the record and fix the date for hearing. After hearing the respective parties, the Additional Commissioner shall decide the appeal on its own merits expeditiously.

(iii) With these observations, the writ petition is disposed of. No costs.

[A. M. DHAVAL]
JUDGE

[S. V. GANGAPURWALA]
JUDGE