

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2609 OF 2019

SHRI. RAJESH LAXMAN GANGURDE)...PETITIONER

V/s.

SHRI. BALU LAXMAN WANKHEDE & ORS.)...RESPONDENTS

Mr. R.N. Gite, Advocate for the Petitioner.

Mr. J.D. Khairnar, Advocate for Respondent No.1.

Mr. C.D. Mali, AGP for Respondent Nos.3 to 5.

CORAM : S.S. SHINDE, J.

DATE : 11th APRIL 2019

P.C. :

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

2. This petition takes an exception to the judgment and order dated 11.02.2019 passed by the learned Additional Commissioner, Nashik Division Nashik in Gram Panchayat Appeal No.4 of 2019 and also the judgment and order dated 27.12.2018 passed by the learned Additional Commissioner Malegaon in Gram Panchayat

Dispute No.17 of 2018.

3. The learned counsel appearing for the petitioner submits that, there was no delay in filing the Gram Panchayat Appeal No.4 of 2019 before the Additional Commissioner, Nashik Division Nashik. The said authority did not take into consideration the time taken by the office of the Additional Commissioner Malegaon, in issuing the certified copy of order and arrived at incorrect conclusion that there was six days delay in filing the appeal. It is submitted that the Additional Commissioner without adjudicating said appeal on merits, has rejected the same on the ground of delay under impression that there is delay in filing the appeal and the said authority is not empowered to consider the prayer for condonation of delay. The learned counsel appearing for the petitioner submits that, in the first place there was no delay in filing the appeal before the Additional Commissioner, Nashik Division Nashik, and secondly, without admitting, but assuming that there was delay of six days in filing the appeal, the Additional Commissioner, Nashik Division Nashik ought to have condoned the delay in filing the appeal. Therefore, the learned counsel

appearing for the petitioner submits that Gram Panchayat Appeal No.4 of 2019 be restored to its original file for fresh consideration by the Additional Commissioner, Nashik Division Nashik on merits and till the appeal is decided afresh, the order disqualifying the petitioner as a member of Panchayat may be stayed.

4. On the other hand, the learned AGP appearing for the State and the learned counsel appearing for the contesting respondents jointly submits that, though there was delay in filing the appeal by the petitioner before the Additional Commissioner, Nashik Division Nashik, the application for condonation of delay was not filed by the petitioner, therefore, they submit that this Court may not cause interference in the impugned judgment and order passed by the Additional Commissioner, Nashik Division Nashik.

5. Upon appreciating the rival contentions and perusal of the order of the Additional Commissioner, Nashik Division Nashik, it is abundantly clear that the Additional Commissioner, Nashik Division Nashik did not enter into the exercise of appreciating the rival contentions on merits, and disposed of the appeal filed by the

petitioner on the ground of delay of six days in filing the appeal. The learned counsel appearing for the petitioner is right in placing reliance on the ratio laid down by the Division Bench (***CORAM : DHARMADHIRAI S.C. & PATIL MANGESH S., JJ***) in the case of ***Sangitabai Vasudeo Rajput Vs. State of Maharashtra & Ors. decided on 19/29-06-2017***, wherein it is held that, the Additional Commissioner has power to condone the delay in filing the appeal.

6. Whether there was delay in filing the appeal or there was no delay, the matter ought to have been considered by the Additional Commissioner, Nashik Division, Nashik. However, the fact remains that there was no adjudication of the appeal filed by the petitioner on merits by the Additional Commissioner, Nashik Division Nashik. Even it is assumed for a moment that there was delay of six days in filing the appeal, the appellate authority keeping in view the exposition of the Division Bench in the case of ***Sangitabai (cited supra)***, ought to have condoned the delay.

7. In the light of the discussion in forgoing paragraphs, the impugned judgment and order passed by the Additional Commissioner, Nashik Division Nashik in Gram Panchayat Appeal No.4 of 2019 is quashed and set aside. The aforesaid appeal is restored to its original file before the Additional Commissioner, Nasik Division Nashik for denovo consideration.

8. The parties to appear before the Additional Commissioner, Nashik Division Nashik on 21st April 2019. In case, the aforesaid authority after hearing the petitioner is of the opinion that there was delay in filing the appeal, the petitioner may be granted liberty to file application/affidavit explaining the delay. The aforesaid authority to decide the appeal on its own merits as expeditiously as possible however within a period of six weeks from causing the first appearance by the parties.

9. Till 25.04.2019 the respondents shall not declare the election for the post of Member of the Gram Panchayat, which was occupied by the petitioner before his disqualification.

10. It may be open for the petitioner to pray for interim relief

before the appellate authority, and it would be open for the appellate authority to consider such prayer on merits.

11. Rule made absolute on above terms.
12. Writ Petition stands disposed of accordingly.
13. All the concerned to act on an authenticated copy of this Order.

(S.S. SHINDE, J.)