

Amk

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

WRIT PETITION NO. 8072 OF 2018

Gita Lahanu Pawar @ Gauri Lahanu Pawar.. Petitioner

Vs.

Kalavatibai Kashinath Pawar & Ors.

.. Respondents

Mr. Shrishailya S. Deshmukh for the Petitioner.

Mr. Pratik B. Rahade for Respondent No.1.

Mr. P. P. Pujari, AGP for Respondent Nos.3 & 4.

CORAM : V. L. ACHLIYA, J.

DATE : 1st MARCH, 2019.

ORAL JUDGMENT

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally.

2. In view of limited challenge raised in the Petition, the Petition can be conveniently disposed of finally at the stage of admission.

3. By the present Petition, the Petitioner has challenged the order dated 19.06.2018 passed by the Additional Commissioner, Nasik Division, Nasik. The Appeal has been dismissed solely on the ground that there was a delay of one day in filing appeal by Petitioner, which was filed against order of disqualification passed by Respondent No.3.

4. Learned Counsel for the Petitioner submitted that the Respondent

No.3 has proceeded on erroneous view that there is no provision under Section 16 of the Maharashtra Village Panchayats Act to condone the delay in filing appeal and therefore he has no power to condone the delay and dismissed the appeal. In support of submission, the learned Counsel has referred and relied upon Division Bench decision of this Court in the case of **Sangitabai w/o. Vasudeo Rajput Vs. State of Maharashtra & Ors., 2017(6) Mh. L. J. 841** wherein the Division Bench of this Court has considered the issue and specifically held that the Appellate Authority in exercise of powers under Section 16 of the Maharashtra village Panchayats Act can entertain the Appeal filed beyond the period of limitation provided and condone the delay.

5. On the other hand, learned Counsel for Respondent No.1 submits that the Petitioner has not filed any application seeking condonation of delay and in absence of such application being made, Respondent No.3 was justified in dismissing the appeal.

6. In view of limited challenge raised in the Petition, it is not necessary to discuss the facts leading to filing of appeal. The Petitioner has assailed the decision rendered by Respondent No.3 with contention that the view taken in the matter is not sustainable in the law in the light of law laid down by the Division Bench of this Court in the case of **Sangitabai w/o. Vasudeo Rajput** (supra). In my view, the issue raised in the Petition is

squarely covered by the decision in the case of **Sangitabai w/o. Vasudeo Rajput** (supra). The Division Bench of this Court has referred the decision of this Court in the case of **Maruti Vasant Kashid Vs. The Divisional Commissioner, Pune Division & Ors.** in Writ Petition No. 1213 of 2011 dated 8th July and 11th July, 2011 delivered by Single Judge of this Court (Coram: S. C. Dharmadhikari, J.). While dealing with the issue in the case of **Maruti Vasant Kashid** which is identical to issue raised in the present Petition, in paragraphs 37 and 42 the Court has observed and held as under:

“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 aforestated 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."

7. Thus, in view of decision of this Court in the case of **Maruti Vasant Kashid** and the Division Bench Judgment of this Court in the case **Sangitabai w/o. Vasudeo Rajput** (supra), I have no hesitation to hold the Divisional Commissioner i.e. Respondent No.3 was in error in rejecting the appeal preferred on the ground that the appeal preferred beyond the period prescribed under Section 16 of the Maharashtra Village Panchayats Act cannot be entertained in absence of specific provisions to condone the delay. The decision in the case of **Savita Yuvraj Shinde Vs. State of Maharashtra in Writ Petition No. 1737 of 2018** dated 28.02.2018 have no bearing upon the decision of the case. The said decision in fact lay down the period from which 15 days period is to counted in filing appeal.

8. So far as the submission advanced that no separate application was filed for condonation of delay, I am of the view that filing of application being a matter of procedure, the authority concerned can very well entertain such application even after filing of appeal in the event the appeal is found to be filed beyond the period of limitation prescribed under

the law. Apart from this, there is no set procedure prescribed under the law for filing of appeal under Section 16 of the Maharashtra Village Panchayats Act. Therefore the authority can entertain such application even after filing of appeal.

9. In the result, the Petition deserves to be allowed and the order dated 19.06.2018 passed by Respondent No.3 liable to be set aside and the parties needs to be relegated to appear before Respondent No.3 with direction to Respondent No.3 to decide the matter afresh by giving permission to Petitioner to tender the application for condonation of delay in filing the appeal. Accordingly, the impugned order is set aside. The Petitioner is granted permission to file application seeking condonation of delay in filing the appeal. The parties are directed to appear before the Respondent No.3 on 08.03.2019. On appearance of the parties, Respondent No.3 is directed to hear all concern and decide the application of delay condonation. In case, the delay is condoned, the appeal be heard and decided on its own merits.

10. The Petition is allowed in above terms with no order as to costs.

11. Rule made absolute in above terms.

[V. L. ACHLIYA, J.]