

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 9996 OF 2018**

Keval Govind Ahire

.....Petitioner.

Vs.

The State of Maharashtra & Ors.

.....Respondents.

Mr. Amey Deshpande i/by J.D. Khairnar for the Petitioner.

Smt. V.S. Nimbalkar AGP, for the Respondent Nos. 1 to 4-State.

Mr. Harsh Nishar for the Respondent No.5.

CORAM : A. S. GADKARI, J.**DATE : 4th OCTOBER, 2019.****P.C.:-**

By the present Petition under Article 227 of the Constitution of India, the Petitioner has impugned Order dated 28th August, 2017 passed by the Additional Commissioner, Nashik Division Nashik i.e. Respondent No.2 herein in Appeal No. 541 of 2017, thereby rejecting the said Appeal filed under Section 16 of the Maharashtra Village Panchayat Act, 1958 (for short, "*the said Act*") on the ground that, there was a delay of 34 days in preferring the said Appeal.

2 Heard Mr. Deshpande, the learned counsel for the Petitioner, Mr. Nishar, the learned counsel for the Respondent No.5

and the learned AGP for the Respondent Nos. 1 to 4.

The note put up by the Registry mentions that, as per Bailiff's report, the Respondent No. 6 is duly served. Despite service, none appears for Respondent No.6.

3 The record indicates that, the Petitioner has been held to be disqualified by an Order dated 25th January, 2017, passed by the Respondent No.3 in Dispute Application No. 35 of 2016 preferred under Sections 14 and 16 of the said Act.

The Petitioner therefore, preferred Appeal No. 541 of 2017 before the Respondent No.2, which has been rejected by the said Authority as noted earlier.

4 The Division Bench of this Court in case of *Sangitabai Vasudeo Rajput Vs. State of Maharashtra & Ors.*, reported in 2018(1) Bom.C.R. 588, while dealing with the provision of Section 16(2) of the said Act has held that, the Additional Commissioner has power to condone the delay in Appeal against the Order of Additional Collector.

It appears from the record that, the said decision was not pointed out to the Respondent No.2 by the concerned and therefore, the Respondent No.2 by relying on the decision this Court *in Writ Petition No. 8727 of 2012, dated 26th February, 2013, (Aurangabad*

Bench) has rejected the said Appeal.

5 In view of the above, the impugned Order dated 28th August, 2017 is hereby set aside and the Appeal No. 541 of 2017 is restored to the file of the Respondent No.2.

6 The Respondent No.2 is directed to take into consideration the ratio laid down by this Court in case of *Sangitabai Vasudeo Rajput (Supra)* and decide the Appeal accordingly.

7 The parties herein are directed to appear before the Respondent No.2 on 31st October, 2019 at 3.00 p.m.

Writ Petition is accordingly allowed, in the aforesaid terms.

(A.S. GADKARI, J.)