

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

WRIT PETITION NO. 5898 OF 2020

Suvarna w/o Uttam Shinde	... Petitioner
Versus	
The State of Maharashtra and others	... Respondents

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Mr. K. F. Shingare, Advocate for petitioner
 Mr. A. B. Chate, AGP for respondent Nos. 1 to 3 and 7
 Mr. S. G. Jadhavar, Advocate for respondent Nos. 4 and 5
 Mr. P. P. Kale, Advocate for respondent No. 6(absent)

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CORAM : R. G. AVACHAT, J.

DATED : 14th JANUARY, 2021

PER COURT :-

1. Heard learned counsel for the parties.

2. Respondent Nos. 4 and 5 had moved an application for disqualification of the petitioner as a Member and Sarpanch as well of Group Grampanchayat Pimparkheda/Mehandipur, taluka Gangapur, district Aurangabad. The Collector, Aurangabad, allowed the application vide his order dated 14.02.2020. The petitioner, therefore, preferred appeal thereagainst before the Additional Commissioner, Aurangabad, on 11.08.2020. The memo of appeal had not been accompanied with an application for condonation of

delay. The learned Additional Commissioner, vide his order dated 19.08.2020, dismissed the appeal on the ground of having been barred by limitation. The learned Additional Commissioner was pleased to observe that no application for condonation of delay was filed along with the appeal memo.

3. Learned counsel for the petitioner would submit that the learned Collector closed the proceedings for disqualification, on 03.09.2019. No date was fixed for decision to be passed in the proceedings. After having closed the proceedings, the learned Collector had called for a report from the concerned Tahsildar and the Block Development Officer. These authorities submitted their reports on 27.12.2019 and 05.02.2020, respectively. Without giving an opportunity of hearing as regards the said reports, the learned Collector passed the order on 14.02.2020. The learned counsel would further submit that the Advocate for the petitioner had inquired with the concerned Clerk on 04.08.2020 regarding decision to be passed in the proceedings. He was informed that the decision had already been passed. The learned Advocate, therefore, applied for certified copy of the decision on 04.08.2020. He received the certified copy on the very day and thereafter, within a period of

fifteen days, he preferred the appeal. According to the learned Advocate, the learned Collector did not inform the petitioner, regarding the decision of having been disqualified. According to him, the period of limitation would commence to run from the date of knowledge of the decision. Learned Advocate has relied on a few authorities in this regard.

4. Learned AGP representing the State and Mr. S. G. Jadhavar, learned Advocate appearing for respondent Nos. 4 and 5 supports the impugned order. Both of them would submit that the petitioner has not produced on record documents to show as to when she had in fact been communicated the decision of the learned Collector. They would further submit that no application for condonation of delay was filed along with the memo of appeal. The learned Commissioner was justified in dismissing the appeal as there was delay in preferring the same.

5. The petitioner was elected as a Member of Group Grampanchayat Pimparkheda/Mehandipur in the elections held in the year 2017. Then she was elected as Sarpanch of the said village. Respondent Nos. 4 and 5 moved an application to the Collector contending that the husband of the petitioner made an

encroachment on the Government land. He has constructed house thereon and both petitioner and her husband have been staying therein. The learned Collector issued notice to the petitioner and respondent Nos. 4 and 5. It appears that, meanwhile, both the respondent Nos. 4 and 5 withdrew the application. In my view, the same is of a little consequence.

6. A copy of the Rozanama of the proceedings before the learned Collector is on record. The same indicates that the proceedings were closed on 09.09.2019. The proceedings were reserved for judgment. Thereafter, the Additional Collector called for the report from the Tahsildar and the Block Development Officer. They gave their reports. There are no entries in the Rozanama in this regard. The learned Collector gave his decision on 14.02.2020, holding the petitioner to have incurred disqualification to continue to be the Sarpanch and the Member, as well. There is no record to indicate as to when the office of the learned Collector communicated the decision to the petitioner. The petitioner has made a statement on oath that she had not been communicated the decision. It is only when her Advocate on 04.08.2020, approached the office of the learned Collector, she came to know the decision having been given.

Her Advocate, therefore, applied for certified copy of the decision on the very day. He received the same on the same day and preferred the appeal on 11.08.2020. This contention of the petitioner has not been rebutted by the learned AGP. The affidavit filed on behalf the learned Collector is silent to respond these averments. As such, the record indicates the petitioner to have in fact first time come to know on 04.08.2020 about having been disqualified vide order dated 14.02.2020. Within a period of fifteen days from having been learnt of the decision, the appeal came to be preferred.

7. The issue is no longer *res-integra*. This Court, vide order dated 26.09.2017, passed in Writ Petition Nos.12516 of 2016 and 12517 of 2016 has held that when a matter is reserved for order without specifying a date for pronouncement of judgment, then the period of limitation for filing the appeal need to be calculated from the date of petitioner's knowledge of such order. The Additional Commissioner has not addressed the issue of limitation. On the very next day of his decision, the petitioner filed application for condonation of delay.

8. In the aforesaid factual backdrop, the writ petition needs to be allowed, setting aside the impugned order dated 19.08.2020.

9. The writ petition is therefore allowed. The order of the Additional Commissioner dated 19.08.2020, is hereby set aside. The appeal in file No.Grampanchayat/Appeal-2/C.R./73/2020 on the file of the learned Additional Commissioner, Aurangabad, is revived with a direction to the learned Additional Commissioner to first decide application for condonation of delay in the light of aforesaid observations and after giving the parties concerned, an opportunity of hearing. If the Additional Commissioner found the appeal to have not been barred by limitation, he may proceed to decide the appeal.

[R. G. AVACHAT, J.]

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