IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

MISC. APPLICATION NO.322 OF 2016
IN
ORIGINAL APPLICATION NO.842 OF 2016
WITH
MISC. APPLICATION NO.351 OF 2016
IN
ORIGINAL APPLICATION NO.908 OF 2016

DISTRICT : MUMBAI

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MISC. APPLICATION NO.322 OF 2016
IN
ORIGINAL APPLICATION NO.842 OF 2016

Shri Ashok B. Pagare.)...**Applicant**

Versus

1. The Commissioner, Dairy Development & 2 Ors.)
)...**Respondents**

WITH

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IN
ORIGINAL APPLICATION NO.908 OF 2016

Shri Ashok B. Pagare.)...**Applicant**

Versus

1. The Commissioner, Dairy Development & 2 Ors.) ...**Respondents**

Shri A.V. Bandiwadekar, Advocate for Applicant.

Shri K.B. Bhise, Presenting Officer and Shri N.K. Rajpurohit, Chief Presenting Officer for Respondents.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 15.12.2016

ORDER

1. These two Misc. Applications for condonation of delay made by the same Applicant in the facts and circumstances can be disposed of by this common order.

2. The delay in the 1st OA is, according to the Applicant, 11 years and 8 months while in the 2nd OA, it is about 3 and half months.

3. I have perused the record and proceedings and heard Mr. A.V. Bandiwadekar, the learned Advocate for the Applicant in both the MAs and Shri K.B. Bhise, the learned Presenting Officer for the Respondents in the 1st MA and

Shri N.K. Rajpurohit, the learned Chief Presenting Officer for the Respondents in the 2nd MA.

4. The issue is as to whether a cause is made out for condonation of delay and my finding thereon is in the negative for the following reasons.

5. Be it noted right at the outset that I am deeply conscious of the legal position emanating from a number of binding judicial pronouncements that such applications for condonation of delay are required to be approached more with a view to advance the cause of justice rather than technicality and unduly rigid attitude in dealing with such applications is mandated against by the said principle of law. Mr. Bandiwadekar, the learned Advocate for the Applicant in order to serve as guidance referred me to a few Judgments of the Hon'ble Supreme Court and the Hon'ble Bombay High Court which I shall note here and now. He relied upon **Sonerao Vs. Godavaribai, 1999 (2) MLJ 272**. That was a matter where an appeal against an ex-parte decree was preferred but the application for condonation of the delay was not granted by the Appellate Court and the matter was carried in revision to the Hon'ble Bombay High Court. It was held therein that the approach of the Court ought to have been more justice oriented than technical.

Mr. Bandiwadekar then referred me to **Gulabrao Vs. Union of India, 2004(4) MLJ 701**. That was a matter carried from this Tribunal where the application for condonation of delay was not allowed. It was held by a Division Bench of the Bombay High Court that the approach should be justice oriented and not hyper-technical.

6. Mr. Bandiwadekar then relied upon **Isha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others, (2014) 2 SCC (L & S) 595 = (2013) 12 SCC 649**. For principles, I will have to revert back to this particular Judgment a short while from now.

7. I, therefore, would like to make it quite clear as indicated at the outset that the principle of law is that such applications must not be too rigidly approached but they should be approached in a justice oriented manner. There is another aspect to the matter which I shall turn to a short while from now for which as already mentioned above, I may have to again seek guidance from **Isha Bhattarcharjee** (supra). Here, I may only mention that the judicial forum has also to take into consideration the state of affairs with regard to the other side while the approach has to be justice oriented. Ultimately, it should not so

happen that the other side for no fault of his is needlessly subjected to facing a stale dispute which could have been and ought to have been brought within time or at least soon thereafter. Similarly, if a right has accrued in the meanwhile in favour of the other side and the result of a particular order on such applications could as well be to divest such a right, then the judicial forum would have to be that much more cautious and careful rather than going by the doctrinaired approach. This, in my opinion, should be the parameter which to work within.

8. Turning to the present facts, the Applicant in both these MAs is working as Assistant Security Officer in Mother Dairy, Kurla. He came to be promoted to that post in the year 2012. It appears that, that was his 2nd promotion. The 1st Respondent is the Commissioner of Dairy Development. The 2nd Respondent is the State in Animal Husbandry, Dairy Development and Fisheries Department. The 3rd Respondent Shri Udas D. Tulse is an Assistant Security Officer, the post which the Applicant also holds, but in the manner of speaking, the 3rd Respondent is senior to the Applicant. It was in the year 2003 that the 3rd Respondent came to be appointed by nomination (directly) to that post. The Applicant has given out the details of the contemporaneous events in 2003

when the 3rd Respondent was appointed to the post of Assistant Security Officer. According to the Applicant, he was under a belief that the 3rd Respondent must have been appointed in a proper manner and strictly in accordance with the Recruitment Rules of 14.12.1965. As already mentioned above, even the Applicant in due course of time (31.3.2012) came to be promoted to that very post. A seniority list came to be circulated on 5.5.2015 under what is Exh. 'G' (Page 32 of the Paper Book (PB)). There, naturally, the 3rd Respondent was shown above the Applicant and they were at Serial Nos. 10 & 14 respectively. Quite pertinently, however, the Applicant has not annexed the seniority list itself, but it is absolutely clear that the 3rd Respondent would be senior to the Applicant. But the point remains that the Applicant did not take trouble to submit the entire list itself. Be it as it may. I proceed further.

9. According to the Applicant, after he came to know about the above fact, he started making enquiries under Right to Information Act (RTI hereinafter). Before proceeding further, be it noted that when an appeal is made to the conscience of a judicial forum for judicial indulgence, the 1st requirement would be that such a party has to come up with what has come to be known as clean

hands. It is absolutely impossible to believe that the seniority list was the 1st source of knowledge to the Applicant about, he being junior to the Respondent No.3. There is some subtle suggestion that he knew this fact but in the OA itself to turn around and try to feign that the 1st knowledge was from the seniority list adversely reflects upon, "clean hand theory" in so far as the Applicant is concerned.

10. This is an important backdrop to the whole matter which one cannot afford to lose sight of. However, granting all latitude to the Applicant and proceeding further, I find that according to him, he received responses to his RTI query on 29th January, 2016, 17th February, 2016 and 24th May, 2016. They are at Exh. 'E' collectively. It appears, however, that the persons who put the questions were also Mr. M.R. Padi and Mr. D.V. Chaugule and the Applicant himself. Be that as it may, the Applicant according to him, studied those documents and then realized that the 3rd Respondent practised fraud upon him in collusion with the 1st Respondent in the matter of his appointment by direct recruitment on 31.12.2003 when the 3rd Respondent was in fact not eligible to apply for the said post. He has in this behalf referred to the Caste Validity Certificate or rather the absence thereof and a few

other aspects including height of the 3rd Respondent for which according to the Applicant, the 1st Respondent was a little more charitable than even the 3rd Respondent himself because he showed his height enhanced by 6 inches.

11. In both the OAs, the substance of the allegations is the same that is fraud committed by the Respondent No.3 in collusion with the Respondent No.1. Very pertinently, this alleged fraud has not been particularized at all and granting all latitude to the Applicant, it appears that he has not realized the difference between a mere mistake or a wrong statement on one hand and fraud on the other. Fraud is a much stronger and graver vitiating factor than say a mistake. I must, however, hasten to add that it is not my finding that there was anything wrong or incorrect in so far as the 3rd Respondent was concerned. However, the point remains that on a mere say so or *ipse-dixie* of a party, the judicial forum cannot act upon the serious allegations of fraud and here, even those allegations are not specifically particularized. There are certain aspects of the matter which become clear from a bare perusal of the OAs themselves. In the first place, the Applicant was nowhere in picture in the year 2003 when the 3rd Respondent came to be appointed directly, and therefore, to say that he played some fraud on the

Applicant is quite simply a statement which must be verging on being completely incorrect or may be something graver and more serious. Further, there are allegations that there was collusion between the 1st Respondent and the 3rd Respondent and that again in the context of fraud. Now, the 1st Respondent is Commissioner, Dairy Development. That is not a person, but a post and position and it is ridiculously simple to take that no post or position as inanimate objects can indulge in fraud. Fraud can be indulged in by human beings and in a matter spread over a period of more than 13/14 years, there must have been some human beings associated with the 1st Respondent who according to the Applicant must have played dirty. No particularization in that behalf is made. He has left them unidentified because may be they are non-existing and nobody did anything of the sort alleged by the Applicant. The issue of *modus operendi* of the alleged fraud is also a best kept secret by the Applicant. He has not given out the details thereof. I am quite conscious of the fact that the statutory procedural law enshrined in the Code of Civil Procedure is not applicable to the proceedings before this Tribunal, and therefore, the express text of order VI, Rule 4 thereof may not be applicable. However, the underlying principles would surely apply in accordance with the provisions of Section 22 of the Administrative

Tribunals Act, 1985, and why, even generally when a serious allegation of fraud is made against anybody, be it 3rd Respondent or any other human being. There has to be some particularization not just with regard to the human identity but also with regard to the mode and manner in which the alleged act was committed. For otherwise, the Applicant merely proceeds on the self-serving conclusion and believes too much in himself with regard to the allegations of fraud without in any manner making it even possible for the Respondents to meet with those allegations and it is based on such bald allegations that he wants the delay to be condoned. I am very firmly of the view that in such a case, the delay of even one day cannot be condoned much less of the duration which is involved in these two OAs. Therefore, it is clear in my view that a basic requirement that the party seeking condonation of delay approaches the judicial forum with clean hands has to be there and if that much is there, then over much significance to the technicality will be ill-advised.

12. In the above background, I may now turn to **Isha Bhattacharjee** (supra) where Their Lordships of the Hon'ble Supreme Court have been pleased to cull out the principles that must inform the minds of all judicial fora in dealing with such applications. They are culled out in

Paras 21.1 to 22.4 and I think, I had better reproduced the same which I do hereby do.

> "**21.1** (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalize injustice but are obliged to remove injustice.
>
> 21.2 (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.
>
> 21.3 (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.
>
> 21.4 (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.
>
> 21.5 (v) Lack of bonafides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6 (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7 (viii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8 (ix) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9 (ix) The conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10 (X) If the explanation offered is concocted or the grounds urged in the application are fanciful, the

courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11 (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12 (xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception."

13. A careful perusal of the above said principles would make it quite clear that even as the approach should be liberal, pragmatic and justice oriented and the same approach should inform the effectuation of the term, "sufficient cause", but then the other side of the coin is equally important for which useful reference could be made *inter-alia* to Paras 21.1 to 22.4 hereinabove. Were that approach to be adopted, I am clearly of the view that the present Applicant would be found severely wanting in so far as the success of his MAs are concerned. It is no doubt true that the approach should be liberal but then, it cannot be so liberal as to completely ignore the other side and any amount of liberal approach cannot encourage the

litigant like the present Applicant who has not cared to even put forth basic particularization of the alleged fraud and if the Applicant wants to act as a whistle blower than the point in my view remains that this is neither the occasion nor the forum to put it before. This Tribunal adjudicates the dispute with regard to the service conditions of the State Government employees and there has to be some ground even in the MA to show that the Applicant has an arguable case in the OA. That is necessary because of the peculiar set of facts in the MA itself. This is a matter where the Applicant cannot carry the day merely by saying that, in this MA, the Tribunal should only see as to whether a sufficient cause is made out for condonation of delay. The facts are so inter-twined in the MAs and OAs that even at this stage, I have to be sure that if these applications were to be allowed, the Applicant will have at least a reasonably sustainable case in his OA, otherwise, I must repeat that these MAs will not stand the test of **Isha Bhattacharjee** (supra) and that is something that cannot be glossed over or ignored because that would tantamount to violating the law of the land. In my view, therefore, the basic particulars of fraud were too essential to be ignored and I do not think that the Applicant has even been reasonably bonafide in bringing these two OAs. The 2nd OA impugns the seniority list and

in a longish Prayer Clause, what the 1st OA really seeks is to set aside a particular communication detailed in Prayer Clause 9(a) and also seeks some kind of a declaration voiding the appointment of the 3rd Respondent and somewhat curiously without having appeared in the test in 2003, he claims entitlement for himself for being directly appointed to that particular post. In my opinion, the unnecessary verbose manner in which the OAs are phrased is a design to make the whole thing vexed and complicated and to create confusion and get away with something by the means which are not necessarily honourable.

14. The Applicant could possibly argue that in the set of facts, such as they are, he could possibly not have been in the know of the details of the events that took place, and therefore, his *ipse-dexie* about fraud must be acted upon by this Tribunal. I have absolutely no hesitation in completely rejecting such a contention for the simple reason that it raises various presumptions which are outrageous to say the least. It is difficult to believe that some unnamed people in the office of the 1st Respondent in the year 2003 could be fastened with the mischief of fraud, etc. and on such a mere say so, the Tribunal should allow public time to be wasted in hearing such OAs. Normally,

in such MAs, the merit of the main cause is not meticulously examined. But here, as I mentioned above, the whole thing is so inextricably, inter-twined that it is difficult to segregate them, and therefore, unless I was sure about Applicant's own bonafides, I do not think, I could have written an order for the Applicant.

15. Reliance was placed by Mr. Bandiwadekar on **Bishwanath Das Vs. State of Jharkhand, (2015) 15 SCC 422** and **District Collector and Chairman Vs. M.T. Sundaridevi, 1990 (4) SLR 237**. He also relied upon **State of Gujrat Vs. Arvindkumar T. Tiwari, (2012) 9 SCC 545**. As far as **Arvindkumar Tiwari** is concerned, the issue apparently arose in the context of the Applicant himself having been found not to be eligible for being appointed to the said post, which is not the case over here and as far as **Bishwanath Das** and **District Collector and Chairman**, those facts were with regard to the merit of the matter and those facts were entirely different.

16. The upshot, therefore, is that the Applicant has been driven merely by his fancy and no case is made out capable of being called a sufficient cause for condoning the delay. If, even such a delay was to be condoned, it would clearly violate the law laid down in **Isha Bhattacharjee**

cited by Mr. Bandiwadekar himself. It is with a little bit of effort that I decide against saddling cost on the Applicant. Both the MAs stand hereby dismissed with no order as to costs and the still born OAs stand hereby disposed of.

Sd/-

(R.B. Malik)
Member-J
15.12.2016

15-12-16

Mumbai
Date : 15.12.2016
Dictation taken by :
S.K. Wamanse.
E:\SANJAY WAMANSE\JUDGMENTS\2016\12 December, 2016\M.A.322.16 in O.A.842.16 with M.A.351.16 in O.A.908.16.w.12.2016.Delay.doc