

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**REVIEW APPLICATION NO.7 OF 2021  
IN  
ORIGINAL APPLICATION NO.1125 of 2019**

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1. The State of Maharashtra )  
Through Addl. Chief Secretary, )  
Home Departemtn, Mantralaya, )  
Mumbai 400 032. )
2. The Director General of Police, )  
Shahid Bhagat Singh Road, )  
Mumbai. )
3. The Addl. Director General of Police, )  
& Director of Police (Wireless), )  
Dr. Homi Bhabha Road, Chavan )  
Nagar, Pune 411 008. )...Applicants  
**(Org. Respondents)**

**Versus**

1. Shri Satish V. Lolge, )  
R/at Ashish Co.op. Hsg. Soc. )  
Plot No.65, Omkar Nagar, Peth Rd. )  
Nashik 422 004. )
2. Shri Arivind V. Patil, )  
Raw Houses, R. H. No.13, behind )  
Ambika Paradise, Apartment near )  
Comfort Zone, Edkant Nagar, Datir )  
Mala, Ambad, Nashik 422 010. )
3. Shri Dilip S. Panchbhai, )  
R/at Flat No.6, Sanskar Residency, )  
S.No.17, Pakhal Road, Wadala, )  
Shivar, behind Devare Patrol Pump, )  
Nashik 422 006. )
4. Shri Sudhir G. Bendre. )  
Residing at C/o. Rohit S. Bendre, )  
Building No.1A, Room No.001, )  
Ground Floor, Survodaya Mangal )

Co-op.Hsg.Soc.Ltd, Near Sairaj )  
 Park, 90 Ft. Road, )  
 Thakurli (E) – 421 201. )

5. Shri Juzer E. Soni. )  
 Residing at A/703, Jupiter Co-op. )  
 Hsg.Soc, Oppo. Tanwar Hospital, )  
 P.K. Road, Deepak Hospital Lane, )  
 Mira Road (E) – 401 105. )

6. Shri Bhalchandra B. Chatre. )  
 Residing at 1055, Shreepad )  
 Apartment, Opp. Gaobhag Police )  
 Chowky, Sangli – 416 416. )

7. Shri Vinod S. Panchbhai. )  
 Residing at 1/3B, Tapowan Society, )  
 Tapodham Road, Near Jijai Garden )  
 Hall, Warje, Pune – 411 058. )

8. Shri Shivaji N. Chavan. )  
 Residing at At & Post : Varunji )  
 Tal.: Karad, Near New Koyana Mala )  
 Bridge, Near Mauli Hotel, )  
 NH-4 Highway, )  
 District : Satara 415 110. )...Respondents (Ori. Applicants)

Smt. Archana B. K., learned Advocate for the Applicants (Ori.  
 Respondents)

Shri R.M. Kolge, learned Presenting Officer for the Respondents (Ori.  
 Applicants)

CORAM : Shri A.P. Kurhekar, Member-J

DATE : 18.11.2021

### **J U D G M E N T**

This R.A. is filed in respect of order passed by this Tribunal in O.A.No.1125 of 2019 decided on 28.01.2021 thereby setting aside the impugned order with direction to extend the benefit of Time Bound

Promotion to the Applicants from the date they have completed the age of 45 years.

3. This R.A. is filed mainly on the two grounds, firstly O.A. was heard and decided without deciding M.A.No.29/2020 which was filed for condonation of delay and secondly as per office order, the subject matter of O.A. was pertaining to Division Bench.

4. Heard Smt. Archana B. K., learned Presenting Officer for the Applicants (Ori. Respondents) and Shri R.M.Kolge, learned Counsel for the Respondents (Ori. Applicants).

5. At the very outset, it needs to be stated that there is no denying that M.A.No.29/2020 was filed for condonation of delay but it was not listed before the Tribunal while hearing of O.A. nor it was brought to the notice of the Tribunal by the Counsels. As such, the Tribunal proceeded to hear and decide the O.A.No.1125/2019 as if there was no application for condonation of delay. In fact, it was obligatory on the part of Applicant as well as learned P.O. to bring the said aspect to the notice of the Tribunal but it seems to have been escaped from the notice. It is only after the decision in O.A., in R.A. the ground is raised that application for condonation of delay was pending and without deciding the same, O.A. could not have been heard.

6. Learned P.O. for the Applicants (Original Respondents) referred to the decision of the Hon'ble Supreme Court in **Navinchand Majithia V/s State of Maharashtra & Ors. decided on 04.09.2000** where second appeal was decided by the court without deciding application for condonation of delay. The Hon'ble Supreme Court remanded the matter to Hon'ble High Court for disposal of the application to condone the delay in filing second appeal and thereafter if the delay is condoned, the second appeal was directed to be disposed of in accordance to law.

7. Per contra, Shri R. M. Kolge, learned Counsel for the Respondent (Ori. Applicant) sought to contend that now the ground of limitation cannot be raised under R.A. since the scope of R.A. under Order 47 of Rule 1 of C.P.C. is very limited. According to him, this ground could be raised in appeal or writ petition only and not in R.A. He referred to the decision of the Hon'ble Supreme Court in **AIR 2000 SC 85 Ajit Kumar Rath V/s State of Orissa & Others** which is on the point of review jurisdiction under Section 22(3)(f) of the Administrative Tribunal Act read with Section 47 of C.P.C. It was not arising from the issue of deciding the matter without firstly deciding the application for condonation of delay and of little assistance to him in present context.

8. Scope of review under Order 47 of Rule 1 of C.P.C. undoubtedly is restricted to the parameter laid down in Order 47 Rule 1 of C.P.C. which *inter-alia* provides permissibility of review on the discovery of new important evidence which after exercise of due diligence was not within the knowledge of party or could not be produced by him at the time when the decree was passed or made on account of some mistake or error apparent on the face of record or for any other sufficient reason.

9. Now turning to the fact of the present case, admittedly M.A. was filed along with O.A. but inadvertently it was not listed before the Tribunal while hearing of O.A. nor it was pointed out by the parties. As such, it was happened inadvertently and it has to be construed as error on the face of record.

10. Insofar as provisions of Administrative Tribunal Act, 1985 are concerned, in terms of Section 21, the limitation is provided for filing O.A. within one year from the date on which impugned final order has been made or where the representation is made and not decided, the O.A. has to be filed within one year from the date of expiry of period of six months of making representation whereas in the present case, O.A. being not filed within the period of limitation, M.A. was filed for condonation of delay. As such, it was essential and obligatory to decide the M.A. first and then to hear the O.A. on its own merit. Such

error has to be construed as an error apparent on the face of record within the ambit of Order 47 Rule 1 of C.P.C.

11. As regard second ground of listing of the matter before the Division Bench, it will be dealt with later during the course of hearing of O.A.

12. For the aforesaid reasons, R.A. No.07/2021 is allowed. The order dated 28.01.2021 delivered in O.A.No.1125/2019 is set aside and O.A. will be heard afresh only after deciding application for condonation of delay.

13. M.A. No.29/2020 be listed for hearing of the application for condonation of delay on 03.12.2021.

Sd/-

**(A.P. KURHEKAR)**  
**MEMBER (J)**

Date : 18.11.2021  
Place : Mumbai  
Dictation taken by :  
Vaishali Santosh Mane

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