

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

MISCELLANEOUS APPLICATION NO.2 OF 2018

IN

ORIGINAL APPLICATION NO.7 OF 2018

(Subject : Delay)

Shri Prasad Rajaram Bhusal)
Aged 21 Yrs, Occ. Nil,)
R/o. Lekha Nagar, Near Shopping Centre,)
Old CIDCO, Nahsik-9) ...Applicant

Versus

1. The Commissioner of Police,)
Nashik, Having office at Nashik.)
2. The State of Maharashtra.)
Through Principal Secretary,)
Home Department, Having office)
At Mantralaya, Mumbai-400 032.) ...Respondents

Shri A.V. Bandiwadekar, learned Advocate for the Applicant.

Shri A.J. Chougule, learned Presenting Officer for the Respondents.

CORAM : **SHRI A.P. KURHEKAR, MEMBER (J)**

DATE : **17.05.2019**

J U D G M E N T

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. This is an application for Condonation of Delay of two years and seven months, caused in filing the Original Application No.7 of 2018, seeking challenging to the impugned order dated 28.05.2014 whereby, the application of the Applicant for appointment on Compassionate Ground has been rejected.

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3. Briefly stated facts giving rise to the application are as follows :-

The father of the Applicant has retired on medical ground in 2000. Thereafter in 2001, Applicant's mother made the application for appointment on Compassionate Ground. Her name was taken in waiting list, but she having crossed 40 years of age, her name was deleted from the waiting list in terms of Government Resolution and the same was communicated to the Applicant's mother on 23.05.2008. At that time applicant was minor. The Applicant attained majority on 28.04.2014. Thereafter, he again made application on 12.05.2014 for his appointment on Compassionate Ground. However, it came to be rejected and the same was communicated to the Applicant by letter dated 28.05.2014. The Applicant was informed that for want of provision for substitution of heir his request, for appointment on Compassionate Ground, cannot be accepted and the same has been rejected.

4. The Applicant has challenged this order dated 28.05.2014 by filing the Original Application No.7 of 2018 along with the application for Condonation of Delay of two years and seven months caused in filing the Original Application. The Applicant contends that on receipt of the order on 28.05.2014, he bonafidely believed that he cannot ask for appointment on Compassionate Ground in view of the decision communicated to him. Thereafter, he completed B.Com in 2017. Meantime, he participated in various recruitment process, but could not succeed. His main contention is that in March, 2017 he came to know about the decision of this Tribunal in the matter in O.A.No.636 of 2016 (Mr. Sagar Baliram Raikar Versus The Superintending Engineer & 2 Ors. decided on 21.03.2017) and O.A.No.1006 of 2015 (Shri Amol Gautam Deore & Anr Versus The Additional Commissioner of Sales Tax & 4 Ors. decided on 07.08.2017), [hereinafter referred as Raikar and Deore's case) wherein direction of consideration of the name of legal heir of the deceased were issued for consideration for appointment on Compassionate Ground. According to him in view of the decision of the Tribunal rendered in 2017 his hope has been revived

and thereafter he collected necessary documents about the decision rendered in the matter of Raikar and Deore's case. With these pleadings he approached the Tribunal by filing O.A.No.7 of 2018 along with the application for Condonation of Delay of two years and seven months caused in challenging the order dated 28.05.2014.

5. The Respondents strongly opposed the application contending that the theory propounded by the Applicant seeking condonation of delay of two years and seven months cannot be accepted much less if cannot be termed as sufficient cause within the meaning of Section 5 of Limitation Act. The Respondents, therefore, contend that there is absolutely no acceptably reasons much less legally acceptable and the application of Condonation of Delay on the ground mentioned in the application itself, ex-facie, beyond legal parameters and the same deserves to be rejected.

6. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to contend that this being the matter relating to appointment on Compassionate Ground the Tribunal needs to adopt liberal approach while considering the application of Condonation of Delay and the grounds set out in the application deserves to be considered to condone the delay. He sought to place reliance on the judgment of Hon'ble Supreme Court (2014) 2 SCC (L& S) 595, **Esha Bhattacharjee Versus Managing Committee of Raghunathpur Nafar Academy and Others.** and judgment of Hon'ble High Court of Bombay in 2018(1) Mh.L.J. **Dr. Ashok Rajmal Mehta Versus Shree Tirthankar Co.**

7. Par Contra, learned Presenting Officer submits that there is absolutely no convincing reason or ground to condone the huge delay of two years and seven months and certain decisions rendered by the Tribunal which the Applicant considered favourable to him cannot be the ground for Condonation of Delay.

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8. In **Esha Bhattacharjee Versus Managing Committee of Raghunathpur Nafar Academy and Others**, the Hon'ble Supreme Court laid down the principles applicable to the applicant for Condonation of Delay which are as follows :-

- "(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 legalise injustice but are obliged to remove injustice.*
- 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.*
- iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*
- 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.*
- v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*
- 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.*
- vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.*
- viii) 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.*
- ix) The conduct, behaviour 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.*
- 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.*
- 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.*
- 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.*

- xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*
- xiv) *An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*
- xv) *An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*
- xvi) *Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.*
- xvii) *The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner required to be curbed, of course, within legal parameters."*

9. Whereas in case of **Dr. Ashok Rajmal Mehta Versus Shree Tirthankar Co.,** the Hon'ble Bombay High Court reiterated the well settled principles that expression "sufficient cause" must be construed liberally so as to advance substantive justice and when there are no latches on the part of the Applicant delay deserves to be condoned. It has been further held that length of delay is no matter and acceptability of explanation is only criterion. In paragraph No.9 and 10 the Hon'ble High Court held as follows :-

"9. In *N. Balakrishnan vs M. Krishnamurthy* reported in (1998) 7 Supreme Court Cases 123 the Supreme Court has held that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But, it is a different matter when the first court refuses to condone the delay, In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10 The Supreme Court proceeds to observe that the reason for such a different stance is that the primary function of the court is to adjudicate the dispute between the parties and to advance substantial justice.

The rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly."

10. There could be no dispute about the principles laid down in the aforesaid decision and the Court or Tribunal should not adopt hypo-technical approach. The Tribunal needs to see the reasons or grounds put forth for the Condonation of Delay to find out whether it comes within the expression "sufficient cause" used in Section 5 of Limitation Act. Whether the ground put forth by the party could come within the ambit of sufficient cause has obviously depend upon the facts of the case and the nature of the explanation offered by the party in this behalf. Needless to mention that where the person found failed to seek remedy promptly and guilty of lethargy or negligence then he is not entitled to take benefit of his own wrong.

11. Now turning to the facts of the present case, this is not the matter where the Applicant is prevented by filing the application within time by sufficient cause, which was not within his control. Here is the case where the Applicant slept over his right to challenge the impugned order dated 28.05.2014 for two years and seven months. The ground raised by the Applicant is that in 2017 he learnt about certain decision passed by the Tribunal in the matter of Raikar and Deore's case which he construed to be favourable to him and therefore approached the Tribunal late can hardly be accepted ground must less acceptable or convincing to condone the delay. The Applicant has filed copies of the judgment of the Tribunal in O.A.No.636 of 2016 (Mr. Sagar Baliram Raikar Versus The Superintending Engineer & 2 Ors. decided on 21.03.2017) and has also filed copy of O.A.No.1006 of 2015 (Shri Amol Gautam Deore & Anr Versus The Additional Commissioner of Sales Tax & 4 Ors. decided on 07.08.2017).

12. In O.A.No.636/2016 directions were issued to take the name of the Applicant here in waiting list for appointment on Compassionate Ground which was earlier rejected in view of the deletion of name of his mother. Whereas in O.A.No.1006/2015 benefit of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred as Disabilities Act) was granted and the order of retirement on medical ground was quashed. Besides option was also given to the Applicant to apply for the appointment on Compassionate Ground in alternative i.e. in the case of the Applicant elect to forego benefit of Section 47 of Disabilities Act.

13. Day in and day out, Courts or Tribunal delivered various orders or judgment which are obviously based on the facts of the case and law governing the facts. The question is whether such decisions delivered by the Courts or Tribunal during intervening period of limitation particularly after the lapse of period of limitation prescribed under the law to challenge the decision can be termed 'sufficient cause' within the meaning of Section 5 of Limitation Act. In my considered opinion, the answer is in negative.

14. Basically, the litigant is required to challenge the impugned order within the period of limitation provided in law and he is not suppose to wait for any such decision which may be favourable to his case indefinitely and to keep statutory remedy of filing the application or appeal in abeyance indefinitely. If the party is allowed to take such ground for Condonation of Delay than it would defeat very purpose of Limitation Act and in that event it may amount to giving liberty to the Applicant to file Appeal or Application at any point of time in future whenever some decision of the Court is rendered favourable to his situation. Law does not contemplate that any such decision rendered by the Tribunal or Court could revive time bared claim of the litigants. Suffice to say it is self serving and engineered ground which cannot be accepted in law.

14/11/2018

15. In the contention raised by the Applicant in this behalf that the decision rendered in O.A.No.636 of 2016 and O.A.No.1006 of 2015 are the grounds for the Condonation of Delay is accepted then there would be no certainty and it may result in filing an Appeal of Application at any time depending upon the future decisions. Suffice to say the decision rendered by the Applicant does not revive the cause of action not it can be termed as 'sufficient cause' as contemplated under Section 5 of the Limitation Act. It is engineered ground and not within a realm of law.

16. It is obvious from the pleadings made in the Application that the Applicant was fully aware of the impugned order dated 28.05.2014 and its consequences after receipt of impugned order. He participated in other recruitment process and has also completed graduation. However, he choose not to challenge the impugned order for years together. As such there is complete in action and negligence on the part of the Applicant and he cannot be allowed to say that the decision rendered in Raikar and Deore's case revived cause of action. Suffice to say the grounds raised for condonation is fallacious and misconceived. There is absolutely no other acceptable or convincing reason to condone the delay of two years and seven months. Application therefore deserved to be rejected.

ORDER

- (a) M.A.No.2 of 2018 is dismissed.
- (b) Consequently O.A.No.7 of 2018 is disposed of with no order as to costs.

Sd/-
(A.P. Kurhekar)
Member(J)

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