

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10677 OF 2014

MUNJAJI UMAJI TIDKE
VERSUS
THE COLLECTOR, PARBHANI AND ANOTHER

...
Advocate for Petitioner : Shri Kale Mahesh P.
AGP for Respondents: Shri Shelke V.G.

...
CORAM : RAVINDRA V. GHUGE, J.
Dated: February 24, 2015

...

PER COURT :-

1. On 17.12.2014, I had passed the following order:-

"1. Leave to amend and add the order dated 18.6.2014 in prayer clause.

2. The petitioner is aggrieved by the impugned order passed by the learned Divisional Commissioner, Aurangabad dated 20.8.2014, by which delay of 45 days has not been condoned.

3. The Collector, Parbhani had passed it's order on 9.4.2014. The petitioner had preferred an appeal under Section 18 of the Arms Act, 1959. There was a delay of 45 days since the said appeal was preferred on 18.6.2014. It is contended that Section 18(1) of the Arms Act, 1959 prescribes the period of 30 days to prefer an appeal. Section 18(2) of the said Act prohibits filing of an appeal after expiry of the period. However, the proviso thereunder indicates that the appeal could be admitted even after the expiry of the period, if the appellate authority is convinced that there was a sufficient cause for not preferring an appeal.

4. *The petition submits that reasons have been assigned for the delay of 45 days in paragraph Nos.2 and 3 of the application for condonation of delay and yet the said application has been rejected by the impugned order dated 18.6.2014. The Review Petition filed by the petitioner, thereafter, is rejected by the impugned order dated 20.8.2014.*

5. *Issue notice before admission to the respondents returnable on 28.1.2015.*

6. *Learned AGP waives service for respondents 1 & 2."*

2. Learned AGP strenuously contends that the delay of 45 days was not properly explained and as such, by the impugned orders dated 20.8.2014 in Review and 18.6.2014 on the application for condonation of delay, have been rightly passed.

3. Having considered the submissions of the learned Advocate for the petitioner and the learned AGP, it is apparent that the delay is only of 45 days and as such cannot be termed as being an inordinate delay. The apex Court in the case of Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji and others [(1987) 2 SCC 107], has laid down the law that when a litigant does not benefit out of a delay caused in preferring a proceeding, laches can not be attributed. In the instant case, the petitioner has not benefitted out of the delay caused in preferring the appeal. In fact, it has caused sufficient hardships to the petitioner.

4. Section 18(1) with proviso thereunder and Section 18(2) with proviso

thereunder, of the Arms Act, 1959, read thus:-

"Section 18 - Appeals

(1) Any person aggrieved by an order of the licensing authority refusing to grant a licence or varying the conditions of a licence or by an order of the licensing authority or the authority to whom the licensing authority is subordinate, suspending or revoking a licence may prefer an appeal against that order to such authority (hereinafter referred to as the appellate authority) and within such period as may be prescribed:

Provided that no appeal shall lie against any order made by, or under the direction of, the Government.

(2) No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefor:

Provided that an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within that period."

5. It is, therefore, clear that the proviso below Section 18(2) enables the appellate authority to entertain an appeal, after the expiry of the period prescribed, if the appellate authority is satisfied with the justification put forth by the appellant for not preferring the appeal within the said period.

6. Considering the fact situation and with due circumspection, I find it appropriate to condone the delay of 45 days caused by the petitioner in

preferring an appeal under Section 18 of the Arms Act, 1959, for the reasons set out in the application for condonation of delay.

7. In the light of the above, this petition is allowed. The application for condonation of delay is allowed. The impugned orders dated 18.6.2014 and 20.8.2014 are quashed and set aside.

8. The appellate authority shall, therefore, register the appeal filed by the petitioner under Section 18 of the Arms Act, 1959, shall issue notice of hearing to the parties and decide the Appeal in accordance with law.

9. No order as to costs.

(RAVINDRA V. GHUGE, J.)

...

akl/d