

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

**REVIEW APPLICATION (CIVIL) NO.20 OF 2019
IN WP/838/2018**

**DARGAH HAJRAT MOULANA SHAH MUNTAJIBUDDIN ZAR ZARI BAKSH
THROUGH ITS PRESIDENT**

VERSUS

**ABDUL SATTAR BURHAN BAKSH DIED LRS TAJODDIN ABDUL SATTAR
DIED LRS HOORBANO TAJJOD AND OTHERS**

...

Advocate for the Applicant/ Petitioner : Ms.Pradnya S. Talekar i/by
Talekar And Associates.

Advocate for Respondents 1-a-1 To 1-a-6, 1-b To 1-g, 2-a, 2-b, 2-e, 2-h, 2-i
: Shri V.H.Dighe.

Advocate for Respondents 2(c) and 2(g) : Shri Afzal Hussain M. Vakil.

Advocate for Respondents R-D and 2-f : Shri V.D.Sapkal.

AGP for Respondents 5, 6 and 7 : Shri V.D.Sapkal.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 15th February, 2019

Per Court:

1 This Review Petition has been filed by the Petitioner seeking
review of the order dated 04.12.2018 passed by this Court (Coram :
N.M.Jamdar, J.).

2 I have heard the learned Advocates for the respective sides
extensively.

3 The order passed by this Court on 04.12.2018 reads as under :-

- "1. *Heard the learned counsel for the parties.*
2. *The learned counsel for the petitioner, after arguing the matter for some time, submits that the petitioner will challenge the impugned order, whereby the delay has been condoned, before the Deputy Collector, (Atiyat). The learned counsel for the petitioner submits that all contentions which the petitioner has raised, be kept open.*
3. *All contentions of the petitioner raised in this petition regarding condonation of delay granted by the impugned order are kept open, to be urged in the appeal. The proceedings to be disposed by the Deputy Collector, (Atiyat) on its own merits.*
4. *In case, the Deputy Collector (Atiyat), after conclusion of enquiry, comes to the opinion that the position existing as of today in respect of entries in the official record has to be changed as a consequence of the order that is passed, then the Deputy Collector (Atiyat) will suspend the effect of the order for a period of 60 days from the date of such order passed by him.*
5. *With these observations and keeping the contentions open, as above, the writ petition is disposed of.*
6. *Needless to state that ad-interim order passed in this petition stands vacated."*

4 There is no dispute that the impugned order dated 07.07.2016 condoning the delay of 48 years and 06 months has been passed by the Divisional Commissioner, Aurangabad and any aggrieved party can challenge the said order only by preferring a writ petition before this Court.

5 The Petitioners contend that the main proceedings are

pending before the Deputy Collector (Atiyat). It was under a misconception that the statement was made before this Court on 04.12.2018 that as the matter is being considered by the Deputy Collector (Atiyat), the delay condoned by the Divisional Commissioner would be tested by putting forth the contentions of the Petitioners before the Deputy Collector (Atiyat). It was subsequently noticed that the statute does not permit the order of the Divisional Commissioner to be assailed before the Deputy Collector (Atiyat).

6 The learned Advocates for the Respondents have strenuously opposed this review petition. Reliance is placed on the judgment delivered by the Honourable Supreme Court (three Judges Bench) in the matter of *M/s Messrs. Associated Tubewells Ltd. vs. R.B.Gujarmal Modi, AIR 1957 SC 742*, to support the contention that the interaction between the Bench and the Bar is not to be quoted in an application for review. The review could be permitted only if there is an error apparent on the face of the record. The judges cannot be drawn into controversy in such matters and it is not consistent with the dignity of the court or the decorum of the Bar that any course may be permitted which would lead to a controversy as to what a judge stated in the court and as to what view he has held at the relevant time.

7 The learned Advocates for the Respondents submit that the court, which passed the order on 04.12.2018, was not in favour of

entertaining the petition. The proceedings before the Deputy Collector (Atiyat) had commenced in 2016. The public notice was published calling for objections. It was pursuant to such notice that these Petitioners appeared before the Deputy Collector (Atiyat) as objectors on 28.10.2016. They participated in the proceedings on their own merits and it was only on 11.10.2017 that the writ petition challenging the delay condonation was filed. It is pointed out that in this backdrop, this Court was of the view that the Deputy Collector (Atiyat) would decide the proceedings on its own merits and the grievance of these Petitioners to the extent of condonation of delay would be considered by the Deputy Collector (Atiyat).

8 There is no dispute that the Deputy Collector (Atiyat) and his superior, the Collector (Atiyat) would not have jurisdiction for considering the legality of the order of the Divisional Commissioner condoning the delay. It is only if an occasion arises that these Petitioners are required to approach the learned Maharashtra Revenue Tribunal, if adverse orders are passed by the Deputy Collector (Atiyat) or the Collector (Atiyat), that the learned Maharashtra Revenue Tribunal could deal with the issue of condonation of delay by the Divisional Commissioner.

9 It requires no debate, in the light of the judgment delivered by the Honourable Supreme Court in the matter of *Lily Thomas vs. Union of India*, AIR 2000 SC 1650, that the writ petition cannot be re-argued in

a review petition.

10 A peculiar situation has arisen in this matter. The Deputy Collector (Atiyat), insofar as the matter on merits is concerned, is proceeding in accordance with the law. The order passed by the Divisional Commissioner condoning the delay cannot be the subject matter of judicial review before the Deputy Collector (Atiyat). This Court has permitted the Petitioners to raise all grounds as against the condonation of delay and challenge the impugned order before the Deputy Collector (Atiyat), which, considering the provisions of the law, would be impermissible. It is, therefore, obvious that the Petitioners have failed to point out the correct position in law before this Court which passed the order dated 04.12.2018. So also, the Respondents maintained a conspicuous silence.

11 In the light of the above, the only course left open, in view of the directions of this Court in paragraph 3 of the order dated 04.12.2018 being inoperable, is that the said order could be recalled by imposing costs on the Petitioners.

12 The learned Advocates for the Respondents, without indicating that they are consenting to the order being passed by this Court, graciously submit that the amount of costs could be donated for the treatment of poor patients who are treated in the Government hospital at Aurangabad.

13 The learned Advocate for the Petitioners, on instructions, submits that the Petitioners would deposit the costs of Rs.25,000/- as may be directed by this Court.

14 In view of the above, this Review Application is partly allowed. The order dated 04.12.2018 is recalled and Writ Petition No.838/2018 is restored by directing the Petitioners to deposit an amount of Rs.25,000/- (Rupees Twenty Five Thousand) as donation for the Ghati Hospital, Aurangabad (Government Medical College and Hospital, Aurangabad), to be deposited with the Medical Officer, High Court Dispensary, Aurangabad, either in cash or by Demand Draft, to be drawn in the name of "Dean, Government Medical College and Hospital Dengi Samiti, Aurangabad" and produce a receipt of such deposit before the Registry of this Court, on or before 08.03.2019, failing which, this order shall stand recalled and the order dated 04.12.2018 shall stand restored without further reference to the Court on 09.03.2019.

15 Subject to the compliance of the above direction, Writ Petition No.838/2018 shall be listed for hearing on 15.03.2019. It is made clear that the issue of locus-standi of these Petitioners and the issue of having participated before the Deputy Collector (Atiyat) for a period of about one and half years would also be considered while considering the challenge to the order of the Divisional Commissioner condoning the delay of 48 years and 06 months.

16 Since this Court would be considering the Writ Petition finally at the admissions stage, the ad-interim relief granted by this Court in the writ petition earlier is not being continued.

kps

(RAVINDRA V. GHUGE, J.)