

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2640 OF 2019

Gautam Kathalu Hiwale
Age 50 years, Occ. Agriculture
APL Card Holder,
R/o Wadiwadi, Post. Karla,
Tq. and Dist. Jalna.

..Petitioner

Versus

1. The State of Maharashtra
Through Secretary,
Food, Civil Supply and
Consumer Protection Department,
Mantralaya, Mumbai. 32

2. Mr. Girhsji Bapat,
Honourable Minister,
Food, Civil Supply and
Consumer Protection Department,
Mantralaya, Mumbai. 32

3. The Additional Commissioner
(Supply), Aurangabad Division,
Aurangabad.

4. The District Supply Officer,
Jalna, Collector Office, Jalna.

5. Babasaheb Matharba Nikam,
age major, Occ. Business
R/o Wadiwadi, Post, Karla,
Tq. and Dist. Jalna.

..Respondents

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Advocate for Petitioner : Shri Tope Sambhaji S.
GP for Respondents 1 to 4 : Shri Girase A.B.
Advocate for Respondent 5 : Shri Kawre A.D.
h/f Shri Murkute J.M.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 04, 2019

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ORAL JUDGMENT:-

1. Heard the learned counsel for the respective parties.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final hearing.
4. The petitioner / original complainant is aggrieved by the order dated 16.1.2019 passed by the Honourable Cabinet Minister, Food, Civil Supplies and Consumer Protection, State of Maharashtra, impleaded in person as respondent No.2, vide which he has allowed the Revision No. वैअम-१११८/ प्र.क्र.१९३/ ना.पु.२१, filed by the fair price shop license holder, Respondent No.5.
5. This matter was heard on 3.7.2019 and posted for orders on 4.7.2019 in view of the request of the learned Government Pleader.
6. The grievance of the petitioner is that the Honourable Minister has ignored the statements of the 21 card holders and the concurrent findings of the District Supply Officer and the Deputy Commissioner, Civil Supplies and has allowed the Revision by holding that the

license holder deserves to be granted one opportunity of running a business. Rs.10,000/- penalty was imposed on the license holder / respondent No.5 and his license was restored after almost eight years of its cancellation.

7. On 3.7.2019, the learned Government Pleader Shri Girase submitted, on instructions, that the order passed by the Honourable Minister dated 15.1.2019, is being withdrawn. If the Revision is maintainable, the Honourable Minister would hear the parties and re-decide the Revision Application.

8. The learned Advocate for the petitioner then raised the following grounds as regards the maintainability of the Revision filed by respondent No.5.

(a) He relied upon Clause 24(1) of the Maharashtra Scheduled Commodities (Regulation of Distribution) Order 1975, to contend that the said provision vests the competent authority with the power to cause a revision *suo motu* or on an application.

(b) Only 30 days limitation period, from the date of the receipt of the order, is provided.

(c) There is no provision under the Essential Commodities Act, 1955 or the Order for empowering a revenue authority or the Honourable Minister to condone the delay in filing of a revision.

9. The learned Advocate appearing on behalf of respondent No.5 submitted that though he has challenged the order dated 9.4.2010, passed by the District Supply Officer and the order dated 4.6.2011 passed by the Deputy Commissioner (Civil Supplies), Aurangabad, by preferring his Revision on 9.10.2018, there is no limitation applicable to a Revision proceeding. He submits that the Honourable Minister has sufficient powers to condone the delay, if he is convinced that just and proper reasons are assigned for seeking condonation of delay. He further submits that as respondent No.5 / license holder comes from a rural background, he may not be aware of the provisions of law. He sought time to research as to whether there is any judicial pronouncement in such matters allowing condonation of delay at the hands of the Honourable Minister. Hence, the matter was adjourned and kept today.

10. Learned Advocate submits through his colleague Advocate Shri Kawre that this Court may pass an appropriate order in the light of

the record and law applicable as there is no judicial pronouncement on the issue raised in this case.

11. The learned Government Pleader submits that Clause 24 of the Order would not permit entertaining a Revision Application after 30 days from the date of the receipt of the order.

12. Considering the above, since the impugned order passed by the Honourable Minister has now been withdrawn, I have no reason to go into the legality of the said order, despite the submissions of the learned Advocate for the petitioner that the same Honourable Cabinet Minister has passed identical orders in hundreds of matters and this Court has already made adverse observations, while setting aside such orders, in atleast five cases.

13. As such, the issue to be considered is whether the revision filed by respondent No.5 can be entertained by the Honourable Minister, if it is filed after 30 days from the date of the receipt of the impugned order. If this period has expired, the issue would be, whether the Honourable Minister could condone the delay and entertain the Revision Application.

14. Clause 24(1) under the Order of 1975 reads as under:-

“24 (1). Power to call for an examine records of proceedings and revise orders. - If any person is aggrieved by an order passed by the Collector, the Commissioner, and if any person is aggrieved by an order passed by the Commissioner, the State Government, may, on an application made to him or it by the aggrieved person, within thirty days from the date of receipt of such order, stay the enforcement of such order. The Commissioner or the State Government, as the case may be, may also call for and examine the record of any enquiry or proceedings of the concerned Officer exercising or failing to exercise the powers under this Order to add, to amend, vary, suspend or cancel any authorisation issued or deemed to be issued under clause 3 or any supply card issued or deemed to be issued under clause 6 or to forfeit the deposit for any part deemed thereof paid or deemed to be paid by a fair price shop or authorised agent as security or to take any other action under the provisions prescribed by or under this Order, for the purpose of satisfying himself or itself as to the legality or propriety of the order passed by such officer, and as to the regularity of the proceedings of such officer and may pass such order thereon as he or it, as the case may be, thinks fit:

Provided that State Government may at any time, during the pendency of any enquiry or proceedings or within one year from the date of any order passed by any officer under the provisions prescribed or under this Order, suo motu stay any pending enquiry or proceedings or the enforcement of such order if considered necessary and may call for an examine the record of any such enquiry or proceedings, and pass such order thereon as it thinks fit:

Provided further that, the Commissioner or the State Government, as the case may be, shall not pass any order under this clause which adversely affects any person unless such person has been given a reasonable opportunity of being heard.”

(Emphasis supplied)

15. It is not disputed by respondent No.5 that he has received the Order dated 9.4.2010, passed by the District Supply Officer cancelling his license for running the fair price shop at Mauje Wadiwadi, Tq. and District Jalna. It is also not disputed that he has received the order passed by the Deputy Commissioner (Civil Supplies), Aurangabad dated 4.6.2011 long time ago. It is equally undisputed that he has preferred the Revision Application under Clause 24 (1), which was presented in the office of the Honourable Minister on 9.10.2018.

16. The learned Advocate for respondent No.5 has questioned the *locus standi* of the petitioner and has contended that a petition at his behest, cannot be entertained.

17. I find from the record that the complaint dated 19.7.2007 was filed by the petitioner himself along with other villagers. Notice was issued by the Tahsildar to respondent No.5 on 17.8.2007, which indicates the name of the petitioner as being the complainant. Copy

of the notice was also marked to the petitioner and several other villagers. The order passed by the Deputy Commissioner (Civil Supplies), Aurangabad dated 4.6.2011 also mentions that the Advocate for the petitioner was present at the time of hearing held on 19.4.2011. It is only after respondent No.5, moved his revision on 9.10.2018, after 7 years and 4 months, that he did not implead the petitioner in the said proceedings and kept him in the dark.

18. Considering the above, I am of the view that the petitioner has the *locus standi* to file this petition.

19. The State of Maharashtra issued a notification dated 4.7.2007 through the Food, Civil Supplies and Consumer Protection Department, introducing the power of review under Clause 24 (2) and 24(3), which read as under:-

“24 (2) Government may on an application made or suo motu at any time before the expiry of one year from the date of any order passed by it in revision under this clause may review such order if it is satisfied about the reasons to do so on any of the following grounds namely:-

(1) Discovery of new and important matter of evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the order was passed or order was made;

OR

(2) *some mistake or error apparent on the face of the record;*

OR

(3) *for any other sufficient reason.*

And upon such review if it shall appear to the State Government that such order should be modified annulled or confirmed, it may pass such order it deem fit.

24 (3) Order passed in review shall on no account be re-reviewed.”

(Emphasis supplied)

20. It is, therefore, apparent that, in this case, even if it is presumed that the fifth respondent may desire to file a review instead of a revision, even such a review would not be maintainable, if an application is filed after one year from the date on which an order sought to be reviewed and passed in revision, was delivered more than one year ago. As respondent No.5 failed to approach the State within 30 days of the receipt of the order, there was no occasion for passing any order under Order 24(2).

21. In so far as, the issue of condonation of delay by the Honourable Minister is concerned, as is canvassed by the learned Advocate for respondent No.5, this Court has dealt with a similar situation in the matter of Prabhakar Sabaji Kandalkar Vs. Tahsildar,

Sangamner and others [2002 (Supp.) Bom.C.R.548], holding that Section 5 of the Limitation Act would vest the power only in a Court to condone the delay. It has been specifically observed in paragraph Nos.11,12, 13 and 16, as under:-

“11. It is an admitted position that the petitioner did not raise the dispute with regard to validity of the motion carried under Sub-section (3) of Section 35 of the Act of 1958 within seven days from the date on which the motion of no-confidence was passed. The No-confidence motion was passed against the petitioner on 20-10-2000. Therefore, it is beyond doubt clear that there was no valid dispute before the Collector. The Collector is under obligation to decide the dispute within 15 days from the date on which it was received by him. In the instant case, there was no valid dispute before the Collector and, therefore, the Collector refused to entertain the dispute which was raised beyond the period of limitation prescribed by Sub-section (3B) of Section 35 of the Act of 1958.

12. The scheme of the Indian Limitation Act is that it only deals with the application pending before the Courts. The word "Court" in Section 5 of the Limitation Act, 1963 signifies a "Court" in stricto sensu. The quasi judicial tribunal and executive authorities are not "Courts". The authority referred in Sub-section (3B) of Section 35 of the Act of 1958 is not the Court. The dispute contemplated under Sub-section (3B) of Section 35 of the Act of 1958 is not a proceeding in the Court. Therefore, it prima facie appears to me that the provisions of Section 5 of the Limitation Act, 1963 read with Section 29 Sub-clause (2) of the

aforesaid Act are not attracted to the facts of the present case.

13. *In case of Sakuru (cited supra), the Supreme Court has observed that the provisions of the Limitation Act, 1963 apply only to proceedings in "Courts and not to appeals or applications before bodies other than Courts such as quasi-judicial Tribunals or executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on Courts under the Codes of Civil or Criminal Procedure.*

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15.

16. *Turning to the facts of the present case, I am of the clear opinion that the authority who is supposed to decide the validity of the motion carried under Sub-section (3) of Section 35 of the Act of 1958, is a statutory authority and not the Court so as to attract the provisions of Section 5 of the Limitation Act, 1963 for the purpose of condonation of delay. Under the circumstance, I hold that both the impugned orders do not suffer from any illegality."*

22. The Honourable Apex Court, while considering the aspect of delay, has held in Ganga Bai Vs. Vijay Kumar [AIR 1974 SC 1126]. that there must be a power to condone the delay and the grounds for seeking condonation must be such that they appear to be just and proper.

23. The Honourable Apex Court in the matter of Sakuru Vs. Tanaji [1985 (3) SCC 590], has concluded that in the absence of any express provision, the power to condone the delay under Section 5 of the Limitation Act, cannot be exercised by the statutory authorities created under the Special Statutes.

24. The Honourable Apex Court has then held in the matter of Sneh Gupta Vs. Devi Sarup [(2009) 6 SCC 194], and concluded in paragraph No.49 as under:-

“ Even otherwise, we do not think that any error has been committed by the High Court in arriving at the finding that the appellant had knowledge of the passing of the compromise decree much earlier. She did not file any application for condonation of delay. She filed two more applications for recall of the order dated 6.11.2004 in other enacted appeals. Those applications were also filed after expiry of the period of limitation and none of those applications were also accompanied with an application for condonation of delay. In absence of any application for condonation of delay, the Court had no jurisdiction in terms of Section 3 of the Limitation Act, 1963 to entertain the application for setting aside the decree. [See Dipak Chandra Ruhidas v. Chandan Kumar Sarkar [AIR 2003 SC 3701; and Sayeda Akhtar v. Abdul Ahad [2003 (7) SCC 52].”

25. The Honourable Apex Court, therefore, relied upon the judgments delivered in Deepak Chandra (supra) and Syeda Akhatar

(supra), while concluding that unless there is a power to condone the delay, there can be no enlargement of the limitation period and an application, therefore, cannot be entertained.

26. In Dipak Chandra Ruhidas Vs. Chandan Kumar Sarkar [(2003) 7 SCC 66], the Honourable Apex Court has held as under:-

“ Learned counsel then urged that this special leave petition may be treated as an appeal under Section 116A of the Act. An appeal is required to be filed within 30 days of the order and judgment of the Tribunal (High Court) and the power has been given to the Supreme Court to condone the delay in case of the appeal having been filed after 30 days. In the present case no application for condonation of delay has been filed in terms of the proviso appended to Sub-section (2) of Section 116A of the Act. As the appeal would have otherwise been barred by limitation, we are not in a position to treat this appeal as an appeal under Section 116A of the Act. We are, therefore, of the opinion that the said special leave petition was not maintainable and leave under Article 136 of the Constitution of India was wrongly granted. It is, accordingly, revoked. The special leave petition is dismissed. ”

27. In view of the above, I do not find that the 1975 order prescribes any such power, by which, the Commissioner or the Honourable Minister, as the case may be, could condone the delay, caused in filing the Revision. In some enactments, like Section 44 of

the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, there is no limitation prescribed for filing a revision. This Court has held that even if a revision provision does not contain a limitation clause, it would not mean that such a revision could be filed after a lapse of a long period.

28. In the matter of Maharashtra State Road Transport Corporation Vs. R.D.Toplewar, Ex-Conductor and another [1986 (3) Bom. C.R. 689], in paragraph No.7, this Court has held as under:-

"7. In considering the above submissions made on behalf of the petitioner, it is first necessary to understand the true nature of the proceedings contemplated by section 44 of the Act. It may be seen that section 44 of the Act does not in terms provide for a remedy of "revision" against the Order passed by the Labour Court, as the expression "revision" is known and understood in law. Although the proceedings under section 44 of the Act are described as "revisional proceedings" a perusal of section 44 would show that a power of superintendence is conferred upon the Industrial Court over all the Labour Courts. The phraseology used in section 44 of the Act is similar to the phraseology of section 85 of the Bombay Industrial Relations Act and also of Article 227 of the Constitution of India. In regard to the proceedings under Article 227 of the Constitution of India as well as in regard to the proceedings under section 85 of the Bombay Industrial Relations Act, the power of superintendence conferred upon the Industrial Court includes judicial power of superintendence and, therefore, the applications which are

described as revisions against the orders passed by Labour Courts are entertained by the Industrial Court under section 44 of the Act. The concepts of the power of superintendence is well settled by various decisions under Article 227 of the Constitution of India. The exercise of power of superintendence is always discretionary and since it is an equitable power conferred upon the Court, it has to be exercised upon equitable considerations. It is, therefore, necessary that when a power of superintendence of the Industrial Court is invoked, the party invoking such a power must act diligently and expeditiously, and it would be open to the Industrial Court to dismiss the applications filed under section 44 of the Act in its discretionary jurisdiction if it finds that there is an inordinate delay in filing the said applications. Even after entertaining the said applications under section 44 of the Act, it is open to the Industrial Court to modulate the relief in such a manner so as to avoid any hardship or injustice being caused to the opposite party by reason of the delay in invoking its jurisdiction. "

29. This Court, in the case of The Gram Panchayat Office Vs. Ramdas Asaram Kalhapure and Ors. [2017 (I) CLR 103], has held as under:-

"11. However, though no limitation has been prescribed under Section 44 of the MRTU & PULP Act, 1971 for filing a revision petition, a sleeping litigant cannot be permitted to pose a challenge to an order passed by the Labour Court after a long passage of time. Having not assailed the order of the Labour Court for a considerable time, would also be construed to be an

indicator of the fact that the Petitioner does not desire to question such an order. Nevertheless, the Industrial Court, while considering a revision petition filed after passage of considerable time from the date of the Labour Court's order, will have to scrutinize on case to case basis and the facts of each case as to whether, it should entertain a revision petition which may appear to have been filed belatedly. "

30. In view of the above, this petition is allowed. Considering the fact that the State Government has recalled the order passed by the Honourable Minister, the revision proceedings filed by respondent No.5, would not be tenable and the same stands disposed off.

31. Rule is made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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