

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.266 OF 2019
IN
REVIEW PETITION [L] NO.35 OF 2019
IN
WRIT PETITION NO.1166 OF 2018

Deputy Director of Education & Anr. Applicants
In the matter between
Deputy Director of Education & Anr. Review Petitioners
Vs.
Shekhar Deshmukh & Others Respondents (in
Review Petition)

WITH
REVIEW PETITION [L] NO.35 OF 2019
IN
WRIT PETITION NO.1166 OF 2018

Deputy Director of Education & Anr. Review Petitioners
(Ori. Respondent
Nos.1 & 3)
Vs.
Shekhar Deshmukh & Others Respondents

Mr. Kedar Dighe, AGP, for the Applicants/State.
Mr. Swaraj Jadhav for Respondent No.1.
Mr. Lancy D'Souza with Ms Deepika Agarwal &
Ms V.M. Parkar for Respondent No.2.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : OCTOBER 11, 2019

P.C:

1. This notice of motion seeks condonation of delay of 328 days in filing the review petition.

2. The applicants before us are the Deputy Director of Education and the State of Maharashtra.
3. They are seeking a review of the Judgment and Order delivered by this Court in the main writ petition.
4. Admittedly, this Judgment and Order was passed in the presence of the parties. The applicants who have filed this review petition were aware of the same throughout. Yet, in para 1 of the affidavit in support of the application seeking condonation of delay, it is stated as under:-

“1. I say that after the receipt of the order under review by the Applicants, the Applicants sought legal opinion from the Asst. Govt. Pleader as to whether the State should challenge the order under review before the Hon’ble Supreme Court in SLP. Vide letter dated 08-10-2018, the AGP opined that the order under review requires to be challenged before the Hon’ble Supreme Court. Accordingly, as per procedure the said opinion was forwarded to Law & Judiciary Department for their instructions/approval for filing of appeal. The said approval took some time and ultimately on receipt of approval from the Department of Law & Judiciary the file was forwarded to the Government Pleader in the Hon’ble Supreme Court for filing SLP. However, vide letter dated 03-04-2019, the Ld. GP, Supreme Court opined that since this Hon’ble Court did not have the benefit of perusing the GR dated 29-11-2010, the same requires to be placed before this Hon’ble Court through review and hence the present Review Petition is being filed. As such there is a delay of 328 days in filing the present Review Petition which is not deliberate and beyond control of the Applicants and hence the delay requires to be condoned.”

5. It is too well settled that in a review petition the State Government is not a special litigant. It is not exempt from the law of limitation. The Limitation Act, 1963 prescribes a period for filing of a review petition. That period is known to the State as well. It cannot say that it is unaware of the provisions of law. Further, the usual administrative delay or that in the course of administration the file has to be processed by several officers who have to render their opinions, is no ground to condone an enormous delay of 328 days. Further, there is absolutely no explanation other than this usual administrative exercise. Once that is not found to be a valid ground to condone the delay, as has been ruled on numerous occasions by the Hon'ble Supreme Court, we do not think that we should condone the delay of 328 days in filing the review petition only on the ground stated above. That cannot be a sufficient cause for condoning the delay in filing of this review petition. The explanation can neither be said to be satisfactory nor reasonable. The notice of motion is, therefore, dismissed. Consequently, the review petition is also dismissed.

6. Before parting, we may only invite the attention of the applicants to the Judgment of the Hon'ble Supreme Court in the case of **Office of the Chief Post Master General & Ors. vs. Living Media India Ltd. & Anr.**, reported in AIR 2012 SC 1506. Paras 12 and 13 of the Judgment read thus:-

"12. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

13) In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The Government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for Government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay."

(SMT. BHARATI H. DANGRE, J.)

(S.C. DHARMADHIKARI, J.)