

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

WRIT PETITION NO.13437 OF 2018

Mahesh Auto Care Centre,
Ashti, Through its Proprietor
Mrs Damayanti w/o Bhimrao Dhonde .. Petitioner

Versus

Bharat Petroleum Corporation Ltd.,
Mumbai and anr. .. Respondents

Mr B.T. Bodkhe, Advocate for petitioner
Mr A.P. Bhandari, Advocate for respondents no.1 and 2

**CORAM : PRASANNA B. VARALE AND
ANIL S. KILOR, JJ.**

DATE : 10.01.2020

ORAL ORDER :

1. Heard the learned Counsel for petitioner.
2. The petitioner, who was the allottee of a petroleum outlet was subjected to an order of termination of agreement dated 21.11.2018. Being aggrieved by the said order, the petitioner immediately approached this Court by filing the present Writ Petition on 28.11.2018, i.e. within a week from the date of the order impugned in the petition.
3. The learned Counsel Mr Bodkhe appearing for petitioner submitted before this Court that as per the reply-affidavit filed on behalf of respondent – Oil Corporation, there is an alternate remedy available to the petitioner and that is in the form of presenting appeal before the Dispute Resolution Panel. Annexure to the affidavit-in-reply 'R-1' states about the remedy of appeal and the procedure in respect of presenting the appeal. Mr Bodkhe, learned Counsel for petitioner submitted before this Court that in view of this alternate

remedy available to petitioner, the petitioner be permitted to withdraw the petition with a liberty to avail the alternate remedy in the form of appeal. It is also the submission of Mr Bodkhe that the annexure to the affidavit-in-reply refers to stipulation of period for filing appeal and that is of thirty days from the date of termination. Learned Counsel then submits that the petitioner apprehends that on a mechanical consideration, the appeal presented before the appellate forum may not be entertained treating the same as an appeal beyond the period of limitation. The learned Counsel for petitioner then submitted that the delay so caused is only on purely unintentional and bona fide reasons, namely the petitioner immediately approached this Court raising her grievance in the present petition. It is then the submission of learned Counsel Mr Bodkhe that the respondent – Corporation in general and the appellate forum in particular be directed to entertain the appeal treating the same as an appeal within the prescribed limitation period, otherwise the petitioner would face a serious prejudice and would ultimately left remediless. Though the later part of submission of Mr Bodkhe, learned Counsel for petitioner seeking the condonation of delay, in the appeal to be presented before the appellate forum is opposed by learned Counsel Mr Bhandari appearing for respondents no.1 and 2, we see sufficient substance in the submissions made by learned Counsel for petitioner as there is no dispute that the petitioner is challenging the order of termination of agreement within one week. As such, it cannot be said that the petitioner was casual in raising a challenge to the communication whereby the petitioner is faced with termination of agreement.

4. Considering the submissions of learned Counsel for petitioner, the petition is allowed to be withdrawn with liberty to avail the alternate remedy of appeal. The petitioner is directed to present the appeal before the appellate authority within two weeks from today. In case the appeal is presented before the appellate forum within two weeks, the appellate forum should not raise the objection of delay and to entertain the appeal and decide the same on its own merits.

5. With these directions, the petition is disposed of.

(ANIL S. KILOR, J.)

(PRASANNA B. VARALE, J.)

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