

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

WRIT PETITION NO. 6394 OF 2009

1) Gulabrao s/o Himmatrao Shinde,
Age 35 years, Occ. Nil, r/o. Ridhora,
Post Koltakali, Tq. Bhokardan, Dist.
Jalna.

2) Bandu s/o Ambadas Arekar,
Age Major, Occ. Nil.
R/o. Arvi, Tq. Shirur-Kasar,
Dist. Beed.

... **Petitioners.**

VERSUS

1) Bajaj Auto Limited Company
Incorporated as per provisions of
Companies Act having its office at
MIDC Area, Waluj, Aurangabad.

2) Ramdas s/o Bapurao Kharat,
Age Major, Occ. Nil.
R/o. Sangvi (Pathan), Post. Khilad,
Tq. Ashti, Dist. Beed.

3) Dnyandeo s/o Vithoba Zinjurke,
Age Major, Occ. Nil.
R/o. Dhamangaon, Tq. Ashti,
Dist. Beed.

... **Respondents.**

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Advocate for the Petitioners : Mr. P. V. Barde h/f Mr. S.P. Shah.

Advocate for the Respondent No. 1 : Mr. Y.R. Marlapalle.

Advocate for Respondent No. 2 & 3 : Mr. E.G. Irale.

CORAM	:	MANGESH S. PATIL, J.
RESERVED ON	:	26.08.2021.
PRONOUNCED ON	:	01.09.2021.

JUDGMENT :

The petitioner No. 1 is invoking the powers of this Court under Article

227 of the Constitution of the India in challenging the judgment and order passed by the learned Member of the Industrial Court in his Misc. Civil Application (ULP) No. 5/2007 thereby rejecting his application for condonation of delay in filing an application for setting aside the order of dismissal of Complaint (ULP) No.140/1999, which he had filed under Section 31(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter 'the Act').

2. The petitioners along with other employees including the respondent Nos. 2 and 3 had filed the complaint alleging that the respondent No. 1/Company had indulged in unfair labour practice under Items 5, 6, 9 and 10 of Schedule IV of the Act. When the complaint reached the final stage, the rest of the complainants submitted to cross-examination but the petitioners and respondent Nos. 2 and 3 did not turn up and the complaint was directed to be proceed with in respect of the complainants who were attending the matter but was disposed of as against the petitioners, respondent Nos. 2 and 3 and other complainants who did not attend.

3. The petitioners and the respondent Nos. 2 and 3 filed separate applications seeking restoration of the complaint to their extent as contemplated under Section 31(2) of the Act but since there was a delay, they submitted separate applications for condonation of delay. According to petitioner No. 1, the delay had occasioned as he was only in a temporary employment and had to go back to his native to earn his livelihood. It is only when in December 2007 he read in the news paper about the judgments passed in favour of the other complainants that he got the knowledge and tried to contact his advocate Mr. Kekani. However, he learnt that Mr. Kekani had ceased to practise having joined Judiciary. This added to some delay. Ultimately he applied for a certified copy and filed the application for setting aside the *ex parte* order along with the present application for condonation of delay.

4. The respondent No.1/Company contested the application by filing a reply. It submitted that the petitioner No. 1 was remiss. His request suffered from negligence and lapses. There were thousands of similar complaints filed against the respondent No.1-Company and every decision made or order passed in those proceedings was given wide circulation by print media. It is only when the petitioner No. 1 came to know that the other complainants have succeeded that he has become greedy and has filed the application for restoration of his complaint. No reasonable or sufficient ground was mentioned in the application and even the delay was not calculated and therefore the application was liable to be rejected.

5. In addition to that it was also contended that there was no provision for condonation of delay contained and contemplated under Section 31 of the Act for filing application for restoration and in the absence of which, the Industrial Court had no jurisdiction to entertain the application which was filed beyond 30 days.

6. Having noticed that there were conflicting decisions of this Court touching the controversy regarding power of the Industrial Court to condone delay in filing an application under sub Section 2 of Section 31 of the Act, by the order dated 24.06.2014 Writ Petition was admitted and the Rule was granted.

7. I have heard the learned advocate Mr. Barde h/f advocate Mr. S.P. Shah and learned advocate Mr. Marlapalle for the respondent No. 1. I have also heard Mr. E.G. Irale learned advocate for the respondent Nos. 2 and 3.

8. Learned advocate for the petitioners Mr. Barde at the outset would submit that the issue regarding power of the Industrial Court to condone delay by invoking the provisions of Section 5 of the Limitation Act, 1963 in respect of which there were some conflicting decisions, is no more *res integra* in view of the decision of the Division Bench of this Court in **Writ Petition No. 6694/2018, Maharashtra State Cotton Marketing Employees**

Co-Operative Spinning Mill Ltd., Akola Vs. Satish Narayanrao Gawande (Nagpur Bench), decided on 24.06.2021, on a reference made by the Chief Justice of this Court. He would submit that the Division Bench has answered the reference and has emphatically held that the period of 30 days mentioned in Section 31(2) of the Act is to be counted not from the date of the *ex parte* order but from the date of receipt of the certified copy of the order. He would further submit that the Division Bench had also gone to the extent of concluding that this period is to be counted from the date of obtaining of the certified copy irrespective of the distance or time lag between the date of the order and receipt of the certified copy. The Division Bench has also emphatically held that the provisions of Section 5 of the Limitation Act would be applicable to the applications for setting the *ex parte* order if it was preferred beyond the 30 days period provided therein by virtue of the provisions of Section 29(2) of the Limitation Act.

9. The learned advocate Mr. Barde would further submit that though the complaint was disposed of to the extent of the petitioners and the respondent Nos. 2 and 3 on 21.08.2004, the petitioner No. 1 had applied for a certified copy on 15.01.2007. He received it on 20.01.2007 and filed the application for restoration on 22.01.2007. Since the application was filed within 30 days of obtaining the certified copy, following the decision of the Division Bench, in fact there was no delay and therefore irrespective of any other ground being put forth by the petitioner No. 1, the application ought to have been allowed by the learned Member of the Industrial Court since there was no option.

10. The learned advocate Mr. Barde would then submit that even otherwise, even if it is assumed that there was a delay, the petitioners had made a genuine attempt to explain the delay. They had put forth few grounds which could have been appreciated by the learned Member of the Industrial Court but he has taken a hyper technical view. The petitioner No. 1 was left with no other alternative but to go back to his native having lost the

job of respondent No. 1-Company. In the absence of any material there was no reason to disbelieve his such version. It is only after he learnt about the decision in favour of the other complainants in December 2007 that he tried to contact his advocate who by then had joined Judiciary and therefore he could not apply for certified copy in time and this was the major cause for the delay.

11. The learned advocate for the respondent No. 1 would submit that there is a legitimate scope and a sound reason for him not to agree with the proposition laid down by the Division Bench of this Court in the case of **Maharashtra State Cotton Marketing Employees Co-Operative Spinning Mill Ltd. Akola**, case (*supra*). If the reply to the question No. 1 referred to the Division Bench is perused and is to be followed then in fact there would be no time limit to challenge an *ex parte* order and the party may conveniently choose not to apply for a certified copy and allow the time to lapse. The learned advocate would submit that the very purpose of providing for a period of 30 days for moving an application for setting aside an *ex parte* order would be lost if the party is allowed to apply for a certified copy according to his own convenience at any time and then file an application within 30 days of obtaining such a certified copy. He would therefore submit that this aspect has not been dealt with and considered by the Division Bench.

12. On factual front the learned advocate for the respondent No. 1 would submit that the petitioner No. 1 has been negligent. When several other co-complainants were attending the proceeding and the Member of the Industrial Court had even indulged in meticulously taking a roll call of a sort to verify if each complainant was present and finding that the petitioners and the respondent Nos. 2 and 3 were not present had proceeded *ex parte* against them. This clearly shows their utter negligence since inception.

13. The learned advocate would further submit that the very ground

being put forth in the application regarding failure of the advocate to inform him about the decision is false. He would submit that the self-same advocate through whom the petitioner No. 1 submitted the application for condonation of delay Mr. Gondikar was representing him even during the complaint. The order passed by the Industrial Court directing the matter to proceed *ex parte* itself reads that the self-same advocate Mr. Gondikar was personally present and had made a request to the Court to proceed with the complaint in respect of the complainants who had faced the cross-examination and the matter be disposed of to the extent of the complainants who were not turning up. The learned advocate, therefore, would submit that it is in view of such peculiar state of affairs, the ground being put forth by the petitioners is clearly false and if a discretionary relief of condonation of delay is being put forth, coming with such a false ground itself is sufficient to dismiss the Writ Petition.

14. In addition, the learned advocate Mr. Marlapalle would submit that Section 31 of the Act does not provide for a situation of the kind of matter in hand. It speaks about a decision *ex parte* whereas in the matter in hand the complaint of the petitioners has merely been disposed of because of their failure to turn up.

15. Lastly, Mr. Marlapalle submitted that the petitioners have been sitting on the fence overlooking the fate of the matter in respect of the other complainants and having learnt about their complaints having been allowed have belatedly approached the Industrial Court with the sole objective of getting monetary benefit. In view of their such conduct no fault can be found with the impugned order refusing to condone the delay.

16. I have carefully considered the rival submissions and perused the papers. As regards the preliminary objection in respect of the maintainability of the application for condonation of delay, admittedly the matter now stands concluded in view of the decision in the case of **Maharashtra State**

Cotton Marketing Employees Co-Operative Spinning Mill Ltd., Akola (*supra*) wherein the question No. 1 that was referred to as also question No. 2 formulated by the Division Bench on its own are answered as under :

Sr. No.	Question	Answer
1.	Whether the Court under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 has the power to set aside an <i>ex parte</i> order made under Section 31(1) of the said Act if an application to set aside such order as contemplated by the provisions of Section 31(2) of the said Act is made after a period of thirty days from the date of that <i>ex parte</i> order despite such application having been made within a period of thirty days of receiving a copy of that order ?	The period of 30 days as mentioned in Section 31(2) of the Act of 1971 is to be counted not from the date of the <i>ex parte</i> order passed under Section 31(1) but from the date of receipt of the certified copy of the <i>ex parte</i> order, which would be irrespective of the distance or time lag between the date of passing of the <i>ex parte</i> order and receipt of the certified copy thereof and the Court is empowered to entertain the same and set aside the <i>ex parte</i> order, upon receipt of such an application.
2)	Whether an application received after 30 days of the receipt of copy of the order could be dealt with in accordance with the provisions contained in Section 29(2) of the Limitation Act, so that in	An application under Section 31(2) of the Act of 1971, for setting aside the <i>ex parte</i> order, filed after 30 days of receipt of the copy of the order, can be entertained and dealt with by applying the provisions of Section

	appropriate cases, the delay could be condoned under Section 5 of the Limitation Act, 1963 ?	5 of the Limitation Act, 1963, in view of the mandate of Section 29(2) of the Limitation Act and the delay, if reasons found sufficient, can be condoned in appropriate cases.
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17. As can be seen, the Division Bench has emphatically held that the period of 30 days mentioned in sub Section 2 of Section 31 of the Act has to be counted from the date of receipt of a certified copy and not from the date of the order. The Division Bench has proceeded to the extent that it has laid down further that this would be irrespective of the time lag between the date of the order and the date of obtaining a certified copy. Since it is a decision of a Division Bench, indeed I am bound by it.

18. In view of such emphatic decision, when there is no dispute as regards the date on which the application for certified copy was filed (15.01.2007), the date on which it was obtained (20.01.2007) and the date of the application for condonation of delay (22.01.2007) there was no delay in filing the application by the petitioner No. 1 under Section 31(2) of the Act, since it was filed within 30 days of obtaining the certified copy of the order.

19. As submitted by Mr. Marlapalle there could be possibility of some different opinion and a debatable issue as to if a party would be then at liberty to apply for a certified copy leisurely at its will and then file an application under Section 31(2) of the Act within 30 days of obtaining such a certified copy. But let that be considered in an appropriate proceeding.

20. In view of such a state of affairs, there should not be any problem in allowing the Writ Petition for the sole reason that the application under Section 31(2) of the Act was filed within 30 days of obtaining the certified

copy and there was no delay.

21. Assuming for the sake of arguments that there still has been a delay which needs to be considered in the light of the provision of Section 5 of the Limitation Act, true it is that since the same advocate Mr. Gondikar was representing the petitioners and it is on his request that the complaint to the extent of the petitioner No 1 was allowed to be disposed of because of his failure to turn up for cross-examination and even the application for condonation of delay along with the restoration application was filed by the same advocate on his behalf, the averment in the application in paragraph No. 3 about non appearance of the advocate as the cause for disposal of the complaint is factually incorrect.

22. But then, when admittedly the petitioner No. 1 is a worker and the self-same advocate has drafted this application for condonation of delay on his behalf, such factual error cannot be attributed to the petitioner No. 1. One can easily appreciate the fact that it is purely a mistake or error on the part of his advocate in coming out with such incorrect ground when in fact the complaint was allowed to be disposed of on his own submission. Admittedly the petitioner No. 1 was not present when the incident had taken place he cannot be attributed with the knowledge of the happenings before the Industrial Court on that day. Therefore, I am unable to accept the contention of learned advocate Mr. Marlapalle that the delay condonation application deserves to be dismissed for coming out with a false ground. When it is clearly a mistake of his advocate, *actus curea neminem gravabit* would be the principle which will have to be invoked (actions of the Officers of the Court should prejudice none).

23. The petitioner No. 1 is coming with a specific stand in his application that since he was a worker he had to go back to his native for earning his livelihood no sooner he was terminated. In fact when his such specific stand has not been squarely met in the say filed by the respondent No. 1, there

was no reason for the Member of the Industrial Court to straight way conclude that there was no proof regarding this fact. In my considered view the learned Member has grossly erred in taking such an approach.

24. Much emphasis has been laid by the respondent No. 1 in its say to the application for condonation of delay as also by its learned advocate Mr. Marlapalle that the petitioner No. 1 having become greedy after coming to know that the Supreme Court had decided the matters in favour of the similarly situated complainants and has been sitting on the fence but has taken a chance by filing the application for restoration of the complaint. Assuming for the sake of arguments that this is the state of affairs, I sincerely feel as to how the petitioner No. 1 can be blamed if he now thinks that since several other similarly situated workers have succeeded even he should get that benefit. It is not that he was to gain any thing by allowing his rights to be extinguished by passage of time. He was a worker and had chosen to go back to his native after he was terminated. If such is the case, the respondent No. 1 Company cannot be allowed to take advantage of his precarious condition. It is not that he is seeking to bring on record something new or some additional relief to which he was otherwise not entitled to. True it is that it was a common complaint by several workers and the petitioner No. 1 may be had lost interest and had gone back to his native and avoided to prosecute his cause. But to my mind it would be like granting a premium to the respondent No. 1 Company if his claim is allowed to be defeated on the ground of limitation.

25. The whole approach of the learned Member of the Industrial Court criticising the petitioner No. 1 for his absence and branding it to be his lack of interest in litigation is incorrect, once having observed that he had lost the job in 1997 when he was dismissed from the service. The learned Member of the Industrial Court has proceeded to reject the application by making observations as if he was intending to punish the petitioner No. 1 for his lapse rather than undertaking an exercise to appreciate all the attending

facts and circumstances. In my considered view, the impugned order has been passed overlooking all the aforementioned facts and circumstances and clearly shows that the learned Member of the Industrial Court has decided the application for condonation of delay without bearing in mind the principles which should weigh with the Court as laid down in the case of **Collector Land Acquisition, Anantnag Vs. Mst. Katiji & Ors; AIR 1987 Supreme Court 1353** and host of other cases. To repeat, while considering such applications it is to be borne in mind that a party is not to gain anything by allowing his right to be defeated by time constraints. As can be seen there are no reasons to attribute him with having any *mala fides* in approaching the Court belatedly. If that be so, the learned Member of the Industrial Court ought to have allowed the application for condonation of delay may be by imposing some costs. Therefore, the impugned order is clearly illegal and deserves to be quashed and set aside even if it is held that there was some delay in filing an application under Section 31(2) of the Act.

26. Since I have already concluded that in view of the judgment of the Division Bench in the case of **Maharashtra State Cotton Marketing Employees Spinning Mill Ltd. Akola** (supra) there was no delay at all, the petition deserves to be allowed primarily on this count only. I have considered the petition independently of such conclusion as well. Consequently, in any case, the petition deserves to be allowed to the extent of petitioner No. 1.

27. This takes me to one more issue which needs to be discussed and decided because of the peculiar happenings in the matter in hand. The petition as it was filed originally was by the petitioner No. 1 alone. Admittedly, the petitioner No. 2 was initially arrayed as respondent No. 4. It is by way of an order in Civil Application No. 15681/2010 dated 20.12.2010 that the application of the respondent No. 4 seeking his transposition as the petitioner No. 2 was allowed.

28. As can be noticed, the impugned order was in fact a common order passed on separate applications filed by the petitioner No. 1, petitioner No. 2, respondent No. 2 and respondent No. 3 bearing Misc. Application (ULP) Nos. 3/2007, 4/2007, 5/2007 and 8/2007. Though it was a common order and all of them were shown to be applicants in a common title devised by the learned Member of the Industrial Court, when he ought to have mentioned the title of each of the application separately, the error seems to have percolated while drafting the present petition as well. The other three complainants whose applications were being decided by the impugned common order were arrayed as respondent Nos. 2 to 4 by the petitioner No. 1. Needless to state that they were not the parties in his independent and exclusive application for condonation of delay. If that was so, they could not have been arrayed at the first instance as respondents in his petition. If at all they were aggrieved by the self-same common order refusing to condone the delay for restoration of their own applications, they ought to have challenged that order by filing independent Writ Petitions.

29. The comity of errors did not abate here. As is mentioned above, subsequently even the petitioner No. 2 who was originally the respondent No. 4 got himself transposed as a petitioner.

30. Be that as it may, the petition was filed by the petitioner No. 1 alone impugning the order passed by the Member of the Industrial Court refusing to condone the delay in his application under Section 31(2) of the Act. If the petitioner No. 2 and the respondent Nos. 2 and 3 were similarly aggrieved by that order they ought to have challenged that independently. They having not done so, they are not entitled to seek any relief in this petition. It is precisely for this reason that though by virtue of such transposition of petitioner No. 2 there are two petitioners, I have intentionally referred to the petitioner No. 1 alone in this judgment while discussing his cause.

31. The Writ Petition is allowed to the extent of the petitioner No. 1. The impugned order is quashed and set aside. His Application for condonation of delay is allowed. His Application preferred under Section 31(2) of the Act may now be registered and decided in accordance with law.

32. The Rule is made absolute in above terms.

(MANGESH S. PATIL, J.)

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