

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

WRIT PETITION NO.7553 OF 2021

- 1) Deputy Conservator of Forest
Nandurbar Forest Division
Shahada, Tq. Shahada,
Dist. Nandurbar.
 - 2) The Range Forest Officer,
Nandurbar Forest Division,
Shahada, Tq. Shahada, Dist.
Nandurbar.
- ... **Petitioners.**

VERSUS.

- 1) The State of Maharashtra,
Through Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai - 32.
 - 2) Supdu Gopal Chavan
Age 52 years, Occ. Service,
R/o. Ranale, Tq. & Dist. Nandurbar.
- ... **Respondents.**

...

Advocate for Petitioners : Mr. Brahme Shailesh P.
AGP for Respondent No. 1/State : Mr. P.G. Borade.
Advocate for Respondent No. 2 : Mr. Shelke Avishkar S.

CORAM : MANGESH S. PATIL, J.
DATE : 20.08.2021.

ORAL JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. With the consent of both the sides the matter is heard finally at the stage of admission.

2. The petitioners who are the Officers of the Forest Division are impugning the order passed by the Industrial Court refusing to condone the delay of more than 500 days in challenging the judgment and order passed

in Complaint (ULP) No. 33/2016 on 31.07.2018 *ex parte*.

3. The learned advocate Mr. Brahme for the petitioners would first of all submit that the observation and conclusion in the impugned order that the Industrial Court does not have power of condoning the delay can be no more *res integra* in view of the decision of the Division Bench of this Court in the case of **Maharashtra State Cotton Marketing Employees Co.Operative Spinning Mill Ltd., Akola Vs. Satish Narayanrao Gawande in Civil Writ Petition No. 6694/2018 (Nagpur Bench) dated 24.06.2021**, wherein it has been settled that Industrial Court does have a power to condone the delay in preferring an application for setting aside *ex parte* order as contemplated under Section 31 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter ‘ the MRTU & PULP Act’).

4. Learned advocate Mr. Brahme would then submit that a reasonable and plausible explanation was accorded while seeking condonation of delay. It was an *ex parte* order. The period of 30 days provided for in Section 31 of the MRTU & PULP Act should be reckoned from the date of obtaining a certified copy. Going by that date when the certified copy was obtained on 22.10.2019 and when the application for condonation of delay and setting aside the *ex parte* order was filed within 30 days therefrom, in fact there was no delay.

5. The learned advocate Mr. Brahme would thereafter submit that since the matter pertains to a Government department, the delay has occasioned because of the internal correspondence and for obtaining legal opinion without which the application for setting aside the *ex parte* order could not have been filed. Such procedural delay has resulted in causing the delay. There are no mala fides. The petitioners were not to gain any thing by allowing the remedy of getting the *ex parte* order set aside barred by technicalities. It is trite that several factors need to be borne in mind while

considering the request for condonation of delay. The landmark judgment in the case of **Collector Land Acquisition Officer, Anantnag Vs. Mst. Katiji & Ors;1987 AIR 1353** and catena of other judgments govern the field. The impugned order has the effect of depriving the petitioners of their legitimate right to challenge the *ex parte* order. The decision should be allowed to be taken on merits rather than by default. The learned Member of the Tribunal has overlooked all these circumstances and law and has illegally rejected the application that too by imposing costs of Rs. 7000/- which is *de hors* the provisions of any law.

6. Learned advocate Mr. Shelke for the respondent No. 2 would submit that though the Industrial Court has power to condone the delay the facts and circumstances are peculiar. In spite of having obtained an opinion conceding to the rights of the respondent No. 2, no emergent steps were taken to prefer the application which has resulted in enormous delay. If the petitioners have chosen to wait for a favourable legal opinion, that cannot be regarded as a sufficient cause for condoning the delay.

7 The learned advocate Mr. Shelke would further point out that within 10 days of the passing of the *ex parte* order the respondent No. 2 had along with his covering letter served a copy of the decision to the petitioners and therefore they were aware about passing of the *ex parte* order and the limitation of 30 days should be reckoned from that date. Obtaining a certified copy and its service is not contemplated under Section 31 of the the MRTU & PULP Act. The starting point would be the knowledge of passing of the *ex parte* order. All these facts and circumstances have been taken into account by the learned Member holding that there was no sufficient cause.

8. I have carefully considered the rival submissions and perused the papers. Suffice for the purpose to begin with a reference to the Division Bench judgment in the case of **Maharashtra State Cotton Marketing Employees Co.Operative Spinning Mill Ltd., Akola (supra)** which now settles

the law on the point that the Industrial Court does have a power under Section 31 of the the MRTU & PULP Act even to condone a delay occasioned in seeking setting aside of an *ex parte* order.

9. Again, the scope and ambit of the power to condone the delay have been well settled in catena of judgments of the Supreme Court like the decision in the case of **Collector, Land Acquisition Officer, Anantnag (supra)**.

10. Even if one intends to take a pragmatic view of the matter, it is quite eye catching that in spite of getting the knowledge of passing of the *ex parte* order, except soliciting opinions after opinions the petitioners have not shown any promptness in either applying for a certified copy or preparing an application for getting the *ex parte* order set aside.

11. To my mind the period of 30 days provided under Section 31 of the the MRTU & PULP Act has to be reckoned not from the date when the certified copy is obtained, because in that eventuality, a party may not or rather chose not to apply for a certified copy. That cannot be the purport of the provision. Even if a copy is served to a party against whom an *ex parte* order is passed that should be regarded as the date on which he has been put to notice about passing of the *ex parte* order and the period of 30 days contemplated in that provision should reckon from that day.

12. Surprisingly, immediately after service of a copy from the respondent No. 2 the petitioners had chosen to solicit an opinion of the Government Pleader as also their standing Counsel, who had in fact opined for conceding to the request of the respondent No. 2. But no prompt action seems to have been taken by the petitioners to apply for setting aside the *ex parte* order. They seem to have again solicited some opinion, waited for months together even for submitting an application for a certified copy and have leizurely applied for setting aside the *ex parte* order.

13. All these circumstances clearly indicate that the delay has not

occasioned for some sufficient cause but has been caused *mala fide*.

14. The conclusion arrived at by in the impugned order is clearly based on the facts and circumstances which justify it.

15. However, the learned Member of the Tribunal seems to have got swayed away by emotions rather than could persuade himself by some law while directing the petitioners to deposit costs of Rs. 7000/- even while the application for condonation of delay was being rejected. Certainly, the direction is illegal and de hors the provision of law and liable to be quashed and set aside.

16. The Writ Petition is partly allowed.

17. The Writ Petition is dismissed to the extent of challenge to the impugned order refusing to condone the delay. However, the direction in the impugned order to the petitioners to pay Rs. 7000/- is quashed and set aside.

18. Rule is made absolute in above terms.

(MANGESH S. PATIL, J.)

mkd/-