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

WRIT PETITION NO.7445 OF 2021

Nandakumar s/o Murlidhar Gandhile,
Age: 49 years, Occu: Agri.,
R/o: Pimparkheda, T. Gangapur,
Dist. Aurangabad

....PETITIONER

VERSUS

1. The State of Maharashtra,
through the Secretary,
Department of Cooperation, Marketing
And Textile, Mantralaya, Mumbai
2. The Hon'ble Minister,
Department of Cooperation, Marketing
and Textile, Mantralaya, Mumbai
3. The Divisional Joint Registrar,
Cooperative Societies,
Aurangabad Region, Aurangabad
4. Nanasaheb s/o Manikrao Gaikwad,
Age: 60 years, Occu: Agri.,
r/o : Bolegaon, Tq. Gangapur,
Dist. Aurangabad
5. The Aurangabad District Central
Cooperative Bank Ltd., Aurangabad,
Through its Managing Director

....RESPONDENTS

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Mr V. D. Sapkal, Senior Advocate i/b Mr K. F. Shingare,
Advocate for petitioner;
Mr P. G. Borade, Advocate for respondent Nos.1 to 3
Mr S. C. Arora, Advocate for respondent No.4

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CORAM : SMT. BHARATI DANGRE, J.**DATE : 21st February, 2022****JUDGMENT :**

1. Rule. Rule made returnable forthwith. Heard by consent of the respective parties.

I have heard the learned Senior Counsel Shri. Sapkal for the petitioner, the learned A.G.P. for respondent Nos.1 to 3 and the learned Counsel Shri. Arora for respondent No.4.

2. The petitioner is aggrieved by an order passed by the Hon'ble Minister, Cooperation, Marketing and Textile, on 01/06/2021, thereby condoning the delay in filing the revision at the instance of respondent No.3.

The sequence of events would reveal that the petitioner came to be elected as a 'Member' of the Managing committee of respondent No.5 - Aurangabad District Central Cooperative Bank Ltd., Aurangabad in the year 2015. In the year 2018 and to be precise on 06/03/2018, respondent No.4 submitted an application before the Divisional Joint Registrar, Cooperative Societies, Aurangabad Division, Aurangabad, under Section 73-CA (i)(f)

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(vii) and 78A of the Maharashtra Cooperative Societies Act, 1960, on the ground that the petitioner is having five children; three from the first wife and two from his second wife and this will incur his disqualification and deserves his removal. The claim of the respondent No.4 came to be contested by the petitioner and he denied the allegation of having third child being born after the cut-off date. He specifically avert that respondent No.4 had prepared false and fabricated documents and was relied upon the same, while he sought disqualification of the petitioner.

3. The Divisional Joint Registrar, Cooperative Societies, Aurangabad Region, Aurangabad, rejected the application by recording that the complainant/respondent No.4 had failed to produce the original documents in respect of his accusations.

Respondent No.4, being aggrieved, filed revision against the said order dated 15/05/2019 before the Hon'ble Minister in the month of October 2020, which was accompanied with the application for condonation of delay. It was pleaded by respondent No.4 that he came to know about the order dated 15/05/2019 in the month of March 2020 and since he was aged and ailing, the delay was sought to be condoned.

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4. The petitioner objected to the application for condonation of delay by submitting that the delay is vaguely explained and in absence of satisfactory explanation being offered, approach was deprecated as casual one and the revision was sought to be dismissed on the ground of delay. The Hon'ble Minister for Department of Cooperation, Marketing and Textile, by his judgment and order dated 16/12/2020, allowed the revision application filed by respondent No.4 vide No. 337/2020, by condoning the delay. The delay application was considered in a perfunctory manner and there was no adjudication upon the contentions raised by the petitioner, opposing the condonation of delay in filing the revision and this constrained the present petitioner to approach this Court by filing Writ Petition No.551/2021, challenging the said order passed by the Hon'ble Minister.

On 26/02/2021, this Court recorded as under :

“5. It appears that respondent No.4 had fled a separate application seeking condonation of inordinate delay caused in filing the revision. The petitioner herein had strongly resisted the said application by filing say. Thus, it was expected from the Hon'ble Minister to consider the said application and the say filed by the other side after

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hearing both the parties, on its own merits. It appears that the Hon'ble Minister has not taken pains either to consider the grounds raised in the application for condonation of delay or the grounds raised by the other side seeking rejection of the said application.

7. In view of the same and considering the ratio laid down in the above cited cases, I am of the considered opinion and I am left with no other choice to remand the matter to the Hon'ble Minister to decide the application seeking condonation of delay afresh. Though learned counsel for respondent No.4 has repeatedly submitted before this Court that the Hon'ble Minister should decide the application seeking condonation of delay and the main revision simultaneously, however, such directions cannot be given for the reason that learned counsel for respondent No.4 is assuming that the Hon'ble Minister is going to condone the delay in any way. Learned counsel for respondent No.4 has not considered the other possibility that the Minister may reject the application seeking condonation of delay and that even there is no possibility of simultaneous hearing. However, without getting influenced by the observations made in this order, it is for the Hon'ble Minister to consider the application seeking condonation of delay caused in filing the revision on its own merits. Hence, I proceed to pass the following order :-

I. Writ Petition is hereby partly allowed.

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II. The impugned order dated 16.12.2020 passed by the Hon'ble Minister for Co-operation, Marketing and Textile, Mantralaya, Mumbai in Revision No.337 of 2020 is hereby quashed and set aside.

III. The matter is remanded back to the Hon'ble Minister with following directions :-

a) The application seeking condonation of delay caused in filing the revision be restored to the file of the Hon'ble Minister.

b) The Hon'ble Minister shall decide the said application separately after giving opportunity of being heard to both the parties within three months from the date of appearance of the parties before him.

c) The parties shall appear before the Hon'ble Minister on 12.3.2021.

IV) Writ Petition is accordingly disposed of."

5. Pursuant to the matter being remanded, the Hon'ble Minister once again passed an order dated 01/06/2021 and condoned the delay on being impressed by the justification offered to the effect that the order dated 15/05/2019 was received in the month of Month 2020 and on account of his advancing age and his illness, he was unable to approach the Hon'ble Minister within period of limitation and the delay was sought to be

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explained as bona fide and unintentional. Though the application was contested by the petitioner on the ground that no attempt was made to explain the delay on day to day basis and it was not bona fide, since it was not justified to be condoned, the Hon'ble Minister arrived at a conclusion that by adhering the principle of natural justice, the delay deserve to be condoned and the matter is directed to be decided on merits.

It is this order dated 01/06/2021, which is impugned in the present writ petition.

6. Perusal of the proceedings reveal that in the first round of litigation, since condonation of delay was granted in a perfunctory manner, this Court specifically observed that, it was expected from the Hon'ble Minister to consider the said application and say filed by other side on it's own merits. The position of law to the effect that the delay may be condoned only when it is sufficiently explained and justified and was not found to be breached, and therefore, this Court had remanded the matter to the Hon'ble Minister, so as to afford an opportunity to contest the application seeking condonation of delay and thereafter, revision on it's merits. Perusal of the impugned order reveal that the Hon'ble

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Minister was convinced with the reasons cited by the revision applicant, when he submitted his explanation to the effect that the impugned order dated 15/05/2019 was brought to his notice only in Month 2020 and thereafter, the whole nation was grappling with Covid-19 pandemic, and there was lock-down and that is the reason which was offered justification in condoning the delay in filing the revision application.

Perusal of the said application for condonation of delay disclose the following justification being offered :

“11. The respondent no.1 has rejected the application filed by the present petition by order dated 15.5.2019, only on the ground that, the petitioner failed to produce the relevant original record.

12. The copy of order dated 15.5.2019 was not served upon the applicant. The applicant was also not well because of old age. The applicant came to know about the order dated 15.5.2019 in the month of March, 2020. Thereafter the lock down was declared by the State government, which was continued upto 31.8.2020 from time to time. Therefore the applicant could not file the revision application within time.

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13. In view of the above facts, the delay of .. Days caused in filing the revision may kindly be condoned if the delay is not condoned then the applicant would suffer from great loss which cannot be compensated by any means, therefore the delay deserves to be condoned in the interest of justice.”

7. It is settled position of law that though the power may vest in the Authority to condone the delay, the delay must be satisfactorily explained and though it is not necessary in every case to explain day to day delay, it is expected that a convincing reason is offered which would justify it's condonation at the hands of the Authority.

Perusal of the application reveal that the application came to be filed before the Hon'ble Minister in the Month of October 2020, seeking condonation of delay when an order dated 15/05/2019 was sought to be challenged. Old age, ill health and the knowledge about the said order in March 2020, is projected as reasons, which constrained him for bringing the application within time and the Hon'ble Minister was satisfied with the said reasons, without expecting the revision applicant to file any proof as regard his illness.

8. The learned Counsel for the revision applicant has placed on record a document dated 25/06/2019, which is an application preferred to the Joint Registrar, Cooperative Societies, for obtaining certified copy of the order passed in case No.10/2018. The said application is placed on record at Page No.64 of the record book, bearing signature of the revision applicant on the said application, which is also countersigned by his Advocate. This application dated 25/06/2019 rendered as a stand raised in the application about knowledge of the impugned order being gained in the month of March 2020, is unbelievable and untrustworthy. If the impugned order was passed on 15/05/2019 and immediately on 25/06/2019, the revision applicant preferred an application for certified copy, it can be well presumed that he had knowledge of the impugned order being passed and I do not find any substance in the application. The learned Counsel Shri. Arora state that he is not aware of such application being made. The Advocate/Counsel is expected to act on the instructions of his client and under the signature of his client, when he prefer an application for obtaining certified copy of the order, he cannot be said to be unaware of the order being passed. Reason projected in the application for condonation of delay that the knowledge about

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the impugned order being passed on 15/05/2019 was gained by him only in March 2020, therefore, loses it's ground and deserve a rejection.

9. The Hon'ble Minister, in the impugned order dated 01/06/2021 was lenient in granting the application for condonation of delay, though it failed to offer satisfactory explanation to condone the delay.

10. In this circumstances, the order passed on 01/06/2021, which is based on incorrect averment being made that the applicant had no knowledge of the impugned order till the month of March 2020, do not justify it's contention and the impugned order deserve to be quashed and set aside and accordingly, the same is quashed and set aside.

The writ petition is allowed. Rule is made absolute. No order as to costs.

(SMT. BHARATI DANGRE, J.)

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