

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.8105 of 2019

Hussain Chandu Bhawaniwale

vs.

Deputy Registrar Cooperative Societies (Fishery) & others

*Office Notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.*

Court's or Judge's Orders

*Mr. R.S. Kurekar, Advocate for the Petitioner.
 Mr. H.D. Dubey, A.G.P. for Respondent Nos.1 to 4.
 Mr. S.D. Chande, Advocate for Respondent No.5.*

CORAM : MANISH PITALE, J.
DATE : 31st MARCH, 2022.

By this writ petition, the petitioner is challenging order dated 24/10/2019, passed by the Deputy Registrar Cooperative Societies (Fishery), whereby an application for condonation of delay filed on behalf of the petitioner has been dismissed.

02] The Joint Registrar of Cooperative Societies had issued 'no objection certificate' dated 09/07/2014 in favour of respondent No.5 in respect of Surkandi Minor Irrigation Tank. Issuance of said 'no objection certificate' was sought to be challenged by the petitioner by filing an appeal before the Deputy Registrar in the year 2018. The appeal was accompanied by an application for condonation of delay of four years. In the application for condonation of delay, the petitioner referred to the merits of the matter and in a few paragraphs, it was sought to be explained that he was pursuing the matter with the concerned authorities. The petitioner claims to be concerned with a proposed society in the business of fisheries.

03] The Deputy Registrar of Cooperative Societies (Fishery) took into consideration the contentions of the rival parties. The learned Counsel for respondent No.5 opposed the application for condonation of delay. After considering the material on record, the aforesaid authority came to the conclusion that sufficient cause was not made out for condonation of delay.

04] Mr. Kurekar, learned Counsel appearing for the petitioner submitted that a perusal of the application for condonation of delay would show that sufficient explanation was given in paragraphs 8 and 9 thereof. He then submitted that in the matters pertaining to condonation of delay, the Courts have consistently adopted a liberal approach, since the endeavour ought to be decided the matters on merits, rather than on hyper technicality. On this ground, it is submitted that the impugned order deserves to be set aside.

05] Mr. Chande, learned Counsel appearing for contesting respondent No.5, opposed the prayers made in the present writ petition. It was highlighted that there was a delay of more than four years on the part of the petitioner in filing the appeal to challenge the 'no objection certificate' issued in favour of respondent No.5 on 09/07/2014. It was submitted that the application for condonation of delay contained only general statements and no particulars were given to explain sufficiently the delay in approaching the concerned authority. On this basis, it is submitted that the writ petition deserves to be dismissed.

06] This Court has considered the material on record. The 'no objection certificate' was issued in favour of respondent No.5 on 09/07/2014, in pursuance of which the said respondent has been carrying out its activities of fisheries in the Surkandi Minor Irrigation Tank. The appeal challenging issuance of such certificate was admittedly filed in the year 2018. There was a delay of four years in approaching the concerned authority.

07] In such a situation, considering the length of delay, it is necessary to peruse the application for condonation of delay to examine as to whether, sufficient cause was made out by the petitioner while seeking condonation of delay. A perusal of the application shows that the petitioner harped upon the merits of the matter, even in the application seeking condonation of delay, in paragraphs 8 and 9, an attempt was made to explain the delay of four years in approaching the concerned authority. A perusal of the said paragraphs shows that general statements have been made to the effect that from the year 2010 to 2018, the petitioner had addressed several communications pertaining to his proposal in respect of the proposed fishery society. It is contended in these paragraphs that all relevant documents for registration were forwarded to the concerned authority. The contents of said paragraphs do not show as to when the petitioner became aware about issuance of the aforesaid certificate dated 09/07/2014 and what prevented him from moving the concerned authority within the period of limitation, which admittedly extends to 90 days.

08] There is no semblance of explanation as to what prevented the petitioner from knocking the doors of the concerned authority by filing the aforesaid appeal

09] In the said application seeking condonation of delay, the petitioner has repeatedly submitted that the delay was not intentional or a deliberate and that it is incumbent upon the authority to decide the appeal on merits to advance the cause of justice. Thereafter, several statements have been made on the merits of the matter.

10] In view of the contents of the application for the condonation of delay, this Court finds that the petitioner failed in demonstrating the sufficient cause for condonation of delay. It is significant that the delay was considerable and extended up to four years. In such a situation, even if the petitioner was not required to explain the delay of each date, there ought to have been semblance of explanation for having approached the authority after delay of four years. In the absence of any such pleadings, it cannot be said that the Deputy Registrar Cooperative Societies (Fishery) committed any error in rejecting the application for condonation of delay. The insistence on the part of the petitioner that the merits of the matter also ought to be considered while considering the application for condonation of delay, cannot be accepted as per the settled position of law.

11] In view of the above, the writ petition is dismissed.

Signed by: SANDESH DAULATRAO
WAGHMARE
Private Secretary to the Hon'ble Judge
Signing Date: 06.04.2022 10:51

JUDGE