

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

WRIT PETITION NO. 11802 OF 2023

Vijay Uttamrao Kale

Age: 46 years, Occu. Retd. Govt. Servant,

R/o. H.No.F1/H-1-6, N-4, CIDCO,

Gursahani Nagar, CIDCO, Aurangabad

... PETITIONER

VERSUS

1. The State of Maharashtra
Through its Principal Secretary,
General Administration Deptt.,
Mantralaya, Mumbai – 400 032

2. Joint Director,
Vocational Education & Training
Office, Regional Office,
Near Bhadkal Gate, PBox No.77,
Aurangabad – 431 001

3. District Collector,
Aurangabad

... RESPONDENTS

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Ms. Divya P. Khandelwal, Advocate,
h/f Mr. S. S. Thombre, Advocate for Petitioner
Mr. V. M. Kagne, AGP for Respondents - State

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**CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.**

**RESERVED ON : 26.09.2023
PRONOUNCED ON : 12.10.2023**

ORDER (Per:- Y. G. KHOBRAGADE, J.) :-

1. Heard the learned Counsel appearing for the Petitioner as well as the learned AGP for the Respondents, at length.

2. By the present Petition, the Petitioner impugned the order dated 09.06.2023 passed in Misc. Appln. No.62 of 2022 in Original Application (Stamp) No.209 of 2022, by the learned Maharashtra Administrative Tribunal, Mumbai, Bench at Aurangabad, thereby dismissed an application u/s 21 (3) seeking condonation delay of 7 years 4 months and 3 days caused while lodging the Original Application u/s 19 of the Administrative Tribunal Act, 1985.

3. The learned counsel for the petitioner submits that, on 01.11.1996, the Petitioner was appointed with the Respondent No.2 Joint Director, Vocational Education, as a 'Clerk-Typist' in class III category on the basis of Freedom Fighter's Nomination letter issued by the Respondent No.3 – Collector. However, subsequently, the Freedom Fighter's Nomination letter was found to be false/bogus, which resulted in his termination from service w.e.f. 07.05.2019 as well as recovery of monetary benefits. Therefore, the Petitioner filed an Application u/s 19 of the Administrative Tribunals Act, 1985 vide O. A. Stamp No.209 of

2022, challenging the Inquiry Report dated 18.06.2014, Cancellation of Nomination Letter dated 01.11.1996, Government Resolutions dated 04.03.1991 & 24.06.1997. Since the Petitioner could not file the said proceeding within the period of one year contemplated u/s 21(1) of the Act, therefore, the petitioner filed the Application under sub-section 3 of Sec. 21 of the Act vide Misc. Application No.62 of 2022 and prayed for condonation of delay of 7 years 4 months and 3 days caused while lodging the Original Application u/s 19 of the Administrative Tribunals Act, 1985 explaining sufficient and bonafide cause as well as circumstances. However, the learned Tribunal has arbitrarily dismissed the said application. Hence, prayed for quashing and setting aside the impugned order.

4. The learned counsel appearing for the petitioner submits that, one Kacharu Bhau Tupe, the Freedom Fighter has nominated the petitioner for securing public employment for his welfare. Accordingly, on 1-11-1996, the Respondent no. 3 Collector issued an appointment order in favour of the petitioner. Since then, the petitioner was discharging his duty. However, one Shri Pandurang Nivrutti Mone, a purported Public Spirited person had filed Writ Petition No.8009 of 2011 of 2014 pointing out earlier Public Interest Litigation No. 43 of 2011, in which

appointments of the nominees of the Freedom Fighters on the basis of false and fabricated nomination within Jalna and Aurangabad District, were questioned. There were many litigation before this court till 2019. On 26-07-2012, this Court passed an order in PIL NO. 43 of 2011 and directed inquiry in respect of appointments on the basis of false and bogus nomination of freedom fighters. In inquiry Report dated 18-06-2014, the petitioner was found to be one of the appointees on false and bogus nomination of freedom fighter and his nomination has been cancelled. Further, with effect from 24.03.2020, due to pandemic Covid-19, there were restrictions. Therefore, the petitioner could not file any proceeding. Hence, delay of 7 (seven) years, 4 (four) months and 3 (three) days is caused, which is substantially and bonafidely explained. However, the Maharashtra Administrative Tribunal illegally declined to condone the delay. Hence, prayed for quashing and setting aside the same.

5. Per contra, Shri V. M. Kagne, the learned Asstt. Government Pleader strongly resisted the petitioner and submitted that, initially the petitioner was appointed with the Respondent No.2 Joint Director, Vocational Education as a 'Clerk-cum-Typist' in class III category on the basis of Freedom Fighter's Nomination letter dated 01.11.1996 issued by the Respondent No.3 Collector.

However, one Shri Pandurang Nivrutti Mone raised the grievance about securing public employment on the basis of false and bogus freedom fighter's nomination. On 26.07.2012, this Court passed an order in said PIL directing the Collector Jalna and Aurangabad for initiation inquiry in that regard in accordance with G.R. dated 24.06.1997 and arrive at appropriate conclusion after providing hearing to the concerned beneficiaries. Therefore, Six Members Committee was constituted and on 18.06.2014, an inquiry was conducted. Accordingly, on 22.11.2013, the Inquiry Committee submitted its Report dated 18.06.2014, wherein, the petitioner was found securing public employment on the basis of false freedom fighter's nomination and terminated service of the petitioner. Therefore, cause of action to file an application u/s 19 of the Administrative Tribunals Act, 1985 within the period of one year commence from the date of order of termination i.e. 22.11.2013 or on 18.06.2014. However, the petitioner filed the application after a period of 7 years, which remain unexplained. Therefore, impugned order does not suffer from illegality. Hence, prayed for dismissal of the petition.

6. Needless to say that, in pursuance to order dated 26.06.1997 in PIL No. 43 of 2011 passed by the coordinate bench of this Court, the Respondent No. 3 Collector constituted Six

Members Committee as per G.R. dated 14.06.1997. Accordingly, the Inquiry Committee thoroughly inquired on 22.11.2013 and submitted its Report on 18.06.2014. In the said inquiry, it was found that there was no relationship between the Petitioner and the Freedom Fighter Shri Kachru Bhau Tupe. The Petitioner and the said Freedom Fighter are not belonging to the same caste. Total 48 nominees including the present Petitioner were found to have false/bogus nomination of the Freedom Fighter. Therefore, on 18.06.2014, the alleged nomination letter dated 01.01.1996 issued in favour of the Petitioner as well others, came to be revoked/cancelled, which resulted in the termination of services of the nominated persons including the Petitioner.

7. The record speaks that, during the intervening period, the affected persons filed a bunch of petitions including W.P. No. 3175 of 2014 which are withdrawn on 11.09.2014 because of directions issued by the then Chief Minister vide General Administration Department order dated 03.09.2014 for not terminating services of those who were found securing job under freedom fighter's nomination. However, again Writ Petition No.8009 of 2014 was filed by Shri Pandurang Nivruti Mone challenging the order dated 03.09.2014 issued by the then Chief Minister. On 25.02.2019, the Coordinate bench of this Court

passed an order and set aside the administrative order dated 03.09.2014. Being aggrieved by said order, the affected persons had filed SLP No.9302 of 2019 before the Hon'ble Apex Court. However, same was dismissed as withdrawn with liberty to file Review Petition. Accordingly, they, including the petitioner, filed Review Application Nos. 66, 67 and 68 of 2019. On 02.05.2019, the coordinate Bench of this Court (Coram: T.V. Nalawade & Sunil K. Kotwal JJ) passed the following order in Review Applications, which reads as under:

::ORDER::

“1) During submissions for issuing notice, learned counsels for the applicants first showed to this Court the order made by the Hon'ble Apex Court in SLP No.9302 of 2019. The operative part of the order shows that the SLP was dismissed as withdrawn. Learned counsel for the petitioners had sought permission to withdraw the proceeding with liberty to file review before High Court. Submission was only recorded by the Apex Court and the proceeding was dismissed as withdrawn. This order was made on 15-4-2019.

2) It appears that the present matter was taken before other Court and not before the present Court which had decided Writ Petition No.8009/2014. This Court has seen the order made by other Court dated 22-4-2019. As the main matter, Writ Petition No.8009/2014, was decided by this Court it was improper to place the matter before other Court when this Court was available. As per the procedure of this Court the matter could have been mentioned before any one of the two Judges of this Court and the matter

ought to have been taken before the Court which decided Writ Petition No.8009/2014.

3) Today learned Assistant Government Pleader submitted that after the decision given by this Court on 25-2-2019 time for execution of the order made by this Court was sought and so on 22-4-2019 extension of six weeks was sought from the other Court. 3

4) This Court had given time only of 30 days for taking action and to submit compliance report and that order was delivered on 25-2-2019. In view of these circumstances and as no stay was granted for subsequent time by any Court including the Hon'ble Apex Court, it was not proper on the part of the Government to move the matter before other Court. When one Court has decided the matter, it is the duty of the counsel who moves the Court for obtaining such order to inform the Court that other Court had decided the matter. When the Hon'ble Apex Court had dismissed the SLP on 15-4-2019 it was not proper on the part of the Government to ask for such extension. The order made by the other Court dated 22-4-2019 does not show that the circumstance that the Apex Court had dismissed the SLP by order dated 15-4-2019 was brought to the notice of that Court. These things are serious. This Court expects that the counsels including the AGP/GP to observe the procedure and make statements which are proper and are as per the procedure.

5) As the other Court was virtually misled and due to that the order dated 22-4-2019 was made and so this Court revokes the order of extension of six weeks granted by other Court. It is to be presumed that there is no such extension. The Government is expected to implement the decision given by this Court on 25-2-2019 immediately. This Court is avoiding to take action at present but the concerned including office

staff should take note of this order so that such things are not repeated in future.

6) In the review applications there is point of limitation. Though the Apex Court has dismissed the SLP on 15-4-2019, it cannot be said that the pendency of that matter in Apex Court had stopped running of limitation period. As the matter was decided by this Court on 25-2-2019 and present proceedings were filed in April, they came to be filed beyond the period of limitation of 30 days. So applications for condonation of delay need to be filed in each review application. List the matters after vacation only when such applications for condonation of delay are filed. There is nothing pending before this Court as the review applications cannot be said to be pending as they are not filed along with delay condonation applications.”

8. Needless to say that in case in hand the Petitioner prayed for condonation of delay of seven years, four months and three days in filing the Original Application challenging the Inquiry Report dated 18.06.2014, Order of Cancellation of Nomination letter dated 01.11.1996, G. R. dated 04.03.1991 & 24.06.1997. Therefore, the petitioner was having every right of his remedy as he already availed described herein above. The Petitioner is also aware about order dated 2nd May, 2019 passed in his Review Application, but the petitioner fail to file proceeding within period of one year from the date of order passed in Review Application.

9. The Apex Court, in the case of *Collector, Land Acquisition, Anantnag v/s Mst.Katiji*, AIR 1987 SC 1353, while dealing with the issue of delay, has observed in paragraph 3 as under:-

“3. The legislature has conferred the power to condone delay by enacting Section 51 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on merits. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

"Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period."

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is

condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. *"Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*

4. *When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*

5. *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala-fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*

6. *It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the State which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a stepmotherly treatment when the State is the applicant praying for condonation of delay. In

fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides."

10. The Apex Court, in a recent judgment in the case of *Esha Bhattacharjee v/s Managing Committee of Raghunathpur Nafar Academy*, (2013) 12 SCC 649, has laid down certain principles applicable to an application for condonation of delay as follows:

“21. *From the aforesaid authorities the principles that can broadly be culled out are:*

21.1. *(i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.*

21.2 *(ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.*

21.3 *(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*

21.4 *(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*

21.5 *(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*

21.6 *(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*

21.7 *(vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

21.8 *(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

21.9 *(ix) The conduct, behaviour and attitude of a party*

relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10 (x) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*

21.11 (xi) *It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*

21.12 (xii) *The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

21.13 (xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

22. *To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:*

22.1 (a) *An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.*

22.2 (b) *An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*

22.3 (c) *Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of*

the adjudicatory system should be made as that is the ultimate institutional motto.

22.4 *(d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters.”*

11. On perusal of the impugned order, it appears that the learned Maharashtra Administrative Tribunal has well considered all facts and circumstances of the case and declined to condone the delay on the ground that, the present Petitioner failed to explain the delay sufficiently, substantially and bonafidely. The impugned order is neither perverse nor unsustainable. Therefore, the present **Writ Petition stands dismissed.**

[Y. G. KHOBRAGADE, J.]

[RAVINDRA V. GHUGE, J.]

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