

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

WRIT PETITION NO.11794 OF 2023

**MANSOOR KHAN AJMER KHAN MULTANI
VERSUS
NAWAB KHA SHABBIR KHA ALIAS MULTANI NAWAB KHA SHABBIR
KHA AND OTHERS**

...
Mr. V.D. Hon, Sr. Advocate i/b Mr. Milind M. Sisode, Advocate for
Petitioner
Mr. A.D. Khot, Advocate for Respondent No.1
...

WRIT PETITION NO.11806 OF 2023

**MANSOOR KHAN AJMER KHAN MULTANI
VERSUS
ASIF KHAN NAWAB KHAN MULTANI AND OTHERS**

...
Mr. V.D. Hon, Sr. Advocate i/b Mr. Milind M. Sisode, Advocate for
Petitioner
Mr. A.D. Khot, Advocate for Respondent No.2
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 21st SEPTEMBER, 2023

PER COURT :

1. Since both these petitions raise similar question of law and fact, they were heard together and are being decided by this common order.
2. Petitioner is aggrieved by the orders dated 29/08/2023 passed by learned Joint Charity Commissioner, Aurangabad, in Misc. Application Nos.06/2023 and 13/2023, thereby condoning delay caused in filing appeal challenging orders dated 28/09/2022 passed

by learned Assistant Charity Commissioner, Aurangabad, in Change Report Inquiry Nos.599/2022 and 600/2022.

3. Petitioner by filing Change Report Inquiry No.599/2022 on 01/09/2022, reported change in respect of election of new executive committee of the Trust namely Multani Bahuuddeshiya Shikshan Sanstha, Tanda Bazar, Tq. Sillod, Dist. Aurangabad. On the same day, Change Report Inquiry No.600/2022 is filed by petitioner reporting change on account of resignation of respondents from membership of Trust and selection of new office bearers of said Trust. Both change reports are accepted by learned Assistant Charity Commissioner-1, Aurangabad, by orders dated 28/09/2022.

4. Respondents challenged acceptance of both change reports by filing appeals on 30/06/2023. Along with appeals delay condonation applications are filed contending that, as soon as respondents got knowledge of acceptance of said change reports, they have preferred appeals and change reports were accepted behind their back. No notice was issued to them about hearing of said change report inquiries. Both the inquiries were decided without giving them opportunity to lead evidence. It is further contended that, when respondents went to School run by the Trust, Headmaster of School informed that they are not office bearers of

the Trust, and new secretary and office bearers are there. Respondents, thereafter went to office of learned Charity Commissioner and on inquiry got knowledge about the change reports. They obtained certified copies and immediately preferred appeals. They, therefore, prayed for condonation of delay by relying on *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Other, (2013) 12 SCC 649*. Applications were opposed by petitioner by filing detail say. Learned Joint Charity Commissioner has allowed delay condonation applications.

5. Heard learned Senior Advocate for petitioner and learned advocate for respondent No.2.

6. Learned Senior Advocate for petitioner submits that, in view of non obstante clause used in Section 70(2), appeals filed by respondents beyond period of limitation, could not have been entertained by appellate authority. According to him, order passed by learned Charity Commissioner is without jurisdiction. He further submitted that no sufficient cause is shown by respondents for condonation of delay.

7. Learned advocate for respondents, on the other hand, supported the impugned orders contending that behind their back they are shown to have resigned from membership of the Trust and without hearing them, change reports filed by petitioner are accepted.

8. Perused the memo of writ petitions, annexures thereto, impugned orders and affidavit-in-reply filed by respondents in both petitions, so also, citations relied upon by the parties.

9. Before advertng to rival submissions, it is apt to consider relevant provisions of the Maharashtra Public Trust Act,

"Section 70 – Appeals from findings of Deputy or Assistant Charity Commissioner:-

(1)

(2) *No appeal shall be maintainable after the expiration of sixty days from the recording of the finding or the passing of the order, as the case may be.*

Section 75 –

In computing the period of appeal under this Chapter, the provisions of Sections, 4, 5, 12 and 14 of the Indian Limitation Act, 1908, shall apply to the filing of such appeals."

10. Section 5 of the Limitation Act, 1963, is as under,

"Section 5 –

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 causes for not preferring the appeal or making the application within such period."

11. On plain reading of Sections 70 and 75, it is clear that provisions of Section 5 of the Limitation Act, are applicable to the appeals filed under Section 70.

12. Merely because sub-section (2) of Section 70 starts with words "*No appeal shall be maintainable after the expiration of sixty days....*", it cannot be said that appeal filed beyond limitation of 60 days would not be maintainable at all.

13. On conjoint reading of Sections 70 and 75 of the Maharashtra Public Trust Act, and Section 5 of Limitation Act, it is clear that, where appeal is preferred beyond prescribed period of limitation, if appellant satisfies Court that he had sufficient cause for not preferring appeal or making application within such period, appeal can be admitted.

14. In *Doma Vithu Ramteke Vs. Assistant Charity Commissioner, 2002 (5) Bom.C.R. 40*, it is held that, "*Delay in filing change report under Section 22 of the Bombay Public Trusts Act even if it is an original proceeding, that by itself would not take away jurisdiction to condone delay. Thus, application under Section 22 of the Act is covered by the Limitation Act*". In view of the observations made in this ruling, it is clear that learned Charity Commissioner has jurisdiction to condone the delay. Therefore, there is no merit in submission of petitioner that learned Charity Commissioner had no jurisdiction to condone the delay.

15. Section 75 of the Maharashtra Public Trusts Act, provides that Section 5 of Limitation Act is applicable to appeal filed

under Section 70. Therefore, argument of petitioner that order passed by learned Joint Charity Commissioner condoning delay caused in filing appeals under Section 70 is without jurisdiction, is devoid of merit and hence, is liable to be rejected.

16. Appellate remedy is statutory remedy provided to the aggrieved party. If interpretation as propounded by petitioner, is accepted, this statutory remedy provided to aggrieved party under Section 70 of the Maharashtra Public Trust Act, would be rendered otiose if appeal is filed beyond limitation.

17. *Prima facie*, there appears substance in contention of respondents that without hearing them change reports were accepted, thereby accepting their alleged resignations from membership of the Trust, which were not tendered by respondents. Since change reports were accepted without hearing respondents, decision impugned in appeal affects substantial rights of respondents. Their grievance, therefore, needs to be adjudicated on merit.

18. In delay condonation applications respondents have shown sufficient cause for condonation of delay, and therefore, appellate authority is justified in condoning delay by relying on ***Esha Bhattacharjee*** (supra). Decision of appellate authority is in consonance with settled legal position that delay is to be liberally condoned.

19. In the light of principles laid down in *Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, (1987) 2 SCC 107*, and as the appellate authority has rightly used discretion in condoning delay, this Court is not inclined to interfere in the impugned orders in exercise of extraordinary writ jurisdiction.

20. In view of aforesaid observations, impugned order cannot be faulted with and the argument of petitioner that learned Joint Charity Commissioner has no power to condone the delay, cannot be accepted. No fault can be found with the orders impugned in present petitions. Writ petitions being devoid of merit are dismissed.

21. Needless to state that observations in this order are *prima facie* and learned Joint Charity Commissioner, Aurangabad, shall not be influenced by them while deciding the appeals on merit.

(NITIN B. SURYAWANSHI, J.)