

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

WRIT PETITION NO. 6224 OF 2017

Gopal Nathu @ Shiva Dighore and ors__ Vs. __Managing Director, Western Transport
Agency and ors

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

Court's or Judge's orders

Mr. G.G.Bade, Advocate for petitioners
Mr. S.Maheshwari, Advocate for respondent Nos.1 & 2.

CORAM : AVINASH G. GHAROTE, J.
DATE : 15/03/2023

1] Heard Mr.Bade, learned counsel for the petitioners and Mr. Maheshwari, learned counsel for respondent nos. 1 & 2.

2] The petition questions the judgment dated 16.8.2016 passed by the learned Industrial Court, Bhandara, refusing to condone the delay of 2 years, 9 months and 12 days in filing the application under Section 50 of the MRTU and PULP Act, 1971 (for short "the Act of 1971").

3] Mr. Bade, learned counsel for the petitioners submits that the right of the petitioners had already stood crystallized and the mere delay in filing an application for a recovery certificate under Section 50 of the Act of 1971 could not be made a

cause, for thwarting the rights already accrued in favour of the petitioners. He further submits that the reasonable and sufficient cause was shown in the application for condonation of delay, which ought to have been accepted by the learned Industrial Court, taking a sympathetic and liberal approach.

4] Mr. Maheshwari, learned counsel for the respondents vehemently opposes the petition and submits that the petitioners have not come to the Court within clean hands, but have indulged in suppression. He further submits that this conduct of the petitioners therefore does not entitle them to any liberal approach at the hands of this Court and therefore petition is liable to be dismissed. Reliance is placed by him upon : (1) **Ouseph Mathai and ors vrs. M. Abdul Khadir**, (2002) 1 SCC 319 (para4) ; (2) **Chandavarkar Sita Ratna Rao vrs. Ashalata S. Guram**, (1986) 4 SCC 447 (paras 16 & 20); (3) **Khalil Ahmed Bashir Ahmed vrs. Tufelhussein Samasbhai Sarangpurwala**, (1988) 1 SCC 155 (para 13); (4) **Pundlik Jalam Patil vrs. Executive Engineer, Jalgaon Medium Project and anr**, (2008) 17 SCC 448 (paras 11, 12 & 14); (5) **Rajendra Namdeorao Akre vrs. Rajkumar Bhalerao Balbudhe and anr**, (2016) 1 Mh.L.J 184 (para 11).

5] **Ouseph Mathai** (supra); **Chandavarkar Sita Ratna Rao** (supra) and **Khalil Ahmed Bashir Ahmed** (supra), are on the parameters for exercise of the jurisdiction by this Court under Article 226 and 227 of the Constitution of India and spell out that the discretion of this Court which should be exercised on the existence of clear-cut down reasons where the question depends upon the appreciation of evidence, and where the error has to be discovered by a long process of reasoning, the same should not be exercised.

Pundlik Patil (supra) holds that where incorrect statements were made to justify the delay, the same may not be condoned.

Rajendra Akre (supra) holds that a proper explanation for delay has to be there for the Court to exercise its discretion.

6] The factual position in this regard is as under :

In a reference under Section 12 of the Industrial Disputes Act, 1971, by an award dated 30.9.2005, the learned Industrial Court directed the respondents to implement the charter of demand dated 8.8.2001 w.e.f 5.8.2002. In view of this award

dated 30.9.2005, an application under Section 28 of the Act of 1971, came to be filed by the petitioners for compliance with the award dated 30.9.2005, which came to be allowed by the learned Industrial Court, by the judgment dated 30.1.2012. Against this judgment, Writ Petition No. 2994/2012 was filed by the respondents, which came to be withdrawn on 3.12.2013. The petitioners thereafter had filed an application under Section 50 of the Act of 1971 for recovery certificate on 18.10.2014, which was kept pending because of objection. Subsequently, a separate application under section 50 of the Act of 1971, for recovery certificate based upon the award dated 30.09.2005 and the judgment dated 30.1.2012, was filed on 13.1.2016 before the learned Industrial Court along with an application for condonation of delay (pg.35). This application has been rejected by the learned Industrial Court by the judgment dated 16.8.2016 (pg.55), holding that it was obligatory for the petitioners to have filed the application under Section 50 of the Act of 1971 within a period of one year from 30.3.2012 and since the same was not done, there is no sufficient cause. The application for condonation of delay spells out that since W.P. No.2994/2012 was pending

and was withdrawn on 3.12.2013, that was one of the reasons for delay.

7] According to Mr. Maheshwari, learned counsel for the respondents, there are three statements which according to him are incorrect : (1) the reference to filing of W.P. No. 2994/2012 is misleading for the reason that though the Writ Petition was filed, since there was no stay, there was no impediment in filing the application under Section 50 of the Act of 1971 within a period of one year from the award dated 30.1.2012; (2) though in para 2, the second last line (pg.33 of the application) states, in reference to the order dated 3.12.2013 that the application under Section 50 of the Act of 1971 was immediately filed thereafter, in fact it was filed after one year and (3) para 4 makes a statement that the delay is of 1 year, 1 month and 28 days from the date of order passed by the Court, which according to him is not correct.

8] In so far as the approach of the Court regarding condonation of delay is concerned, in my considered opinion, the principles laid down by the Hon'ble Apex Court in **Esha Bhattacharjee vrs. Managing Committee of Raghunathpur Nafar**

Academy (2013) 12 SCC 649, govern the position and for the sake of ready reference, are quoted as under :

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

- 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.*
- 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.*
- iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*
- 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.*
- v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*
- 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.*
- vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.*
- 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.*

- 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.*
- 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.*
- 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.*
- xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*
- xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

9] The contention that incorrect statements have been made in the application, has to be construed in light of the background in which they have been made. When the application refers to an earlier application dated 18.10.2014, the delay of 1 year, 1 month and 28 days as referred to in para 4 relates to this application dated 18.10.2014 and merely because this has been indicated in the application, that can always be construed as a bonafide mistake, as it is not as if it has been

portrayed that there was no delay at all. Only the quantum of delay defers, which is understandable in light of the averments made in para 3 of the application relating to earlier application filed on 18.10.2014.

10] In so far as the second contention relating to the filing of W.P. No.2994/2012 is concerned, though it is correct that since there was no stay operating therein, and the running of limitation is continuous, that by itself would not mean that an incorrect statement has been made.

11] In so far as the second last line of para 2 (pg.33) of the application for condonation of delay is concerned, the same is also in reference to the earlier application dated 18.10.2014 and is merely an alternate submission, considering that the plea regarding delay has already been stated in the application.

12] There is no quarrel with the principles laid down in the judgments relied by Mr.Maheshwari, learned counsel for the respondents, however, on facts they would not be applicable. What would be attracted would be the approach

enunciated by the Hon'ble Apex Court in **Esha Bhattarchjee** (supra). In the present matter, it is not as if the rights of the petitioners are yet to be determined, rather on the contrary the rights already stand determined by the award dated 30.9.2005 and the judgment of the learned Industrial Court dated 30.1.2012, which has attained finality on account of withdrawal of W.PNo. 2994/2012, on 3.12.2013. The proceedings under Section 50 of the Act of 1971 are merely for the issuance of recovery certificate so as to implement and recover what the petitioners have been held entitled to, considering which, the impugned judgment of the learned Industrial Court, which rejects the prayer for condonation of delay, cannot be sustained, which is so also for the reason that in a single sentence, it merely holds that the petitioners have failed to show sufficient cause without discussing the pleas raised in the application. I therefore do not see any reason to sustain the impugned judgment passed by the Industrial Court. The same is hereby quashed and set aside. The application for condonation of delay is allowed. The learned Industrial Court is therefore directed to register the application under Section 50 of the Act of 1971.

13] The parties are directed to appear before the learned Industrial Court on 27.3.2023. Considering the time which has already lapsed, the learned Industrial Court is directed to decide the application under Section 50 of the Act of 1971 with all due haste and in any case within the period of six months from the date of this order.

14] Petition is allowed in above terms. No costs.

JUDGE

Rvjalit