



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

WRIT PETITION NO.1508 OF 2016

Sharad s/o Sadashivrao Kulkarni,
Age: 56 Years, Occu. Social Worker & Contractor,
R/o : 26, Shiveshwar Colony,
Near Auditor Society, Jalgaon Road,
CIDCO. Aurangabad. ... **Petitioner.**

VERSUS

1. The State of Maharashtra,
Through Chief Secretary,
Maharashtra State, Mantralaya, Mumbai-32.
2. Hon'ble Mr. Pruthaviraj Dajisaheb Chavan,
(Ex-Chief Minister), R/o 243/D,
Patan Colony, Shaniwar Peth,
Karad, Dist. Satara.
3. Hon'ble Dr. Padamsinha Patil,
(Ex-Water Conservation Minister &
Ex Member of Legislative Assembly),
R/o: Osmanabad.
4. Hon'ble Mr. Ajit s/o Anantrao Pawar,
(Ex Water Conservation Minister &
President of Godavari Mandal),
R/o: Baramati, Dist. Pune.
5. Hon'ble Mr. Sunil s/o Dattatrya Tatkare,
(Ex-President of Godavari Mandal),
R/o Sutarwadi, Jamgaon, Tq: Roha, Dist. Raigad.

6. Mr. M. K. Kulkarni,
(Ex-Principal Secretary Water Conservation),
R/o: N-1, Town Center, CIDCO,
Near Police Chowki, Aurangabad,
Plot No.26, C-3, N-1, Town Center, CIDCO,
Aurangabad.
7. Mr. V. V. Gaikwad,
(Ex-Secretary Water Conservation &
Ex-Executive Director Godavari Mandal),
R/o: Omerga, Dist. Osmanabad.
8. Mr. E. B. Patil, (Ex-Secretary Water Conservation),
Through Principal Secretary, Water Conservation,
Maharashtra State, Mumbai-32.
9. Mr. S. A. Nagre,
(Retired Executive Director Godavari Mandal,
R/o: N-3 CIDCO, Aurangabad.
10. Mr. P. K. Zapke,
(Then Executive Director Godavari Mandal,
Aurangabad & Then Executive Director Vidharbh
Patbandhare Vikas Mahamandal, Nagpur,
Through Principal Secretary, Water Conservation,
Maharashtra State, Mumbai 32.
11. Mr. D. R. Kandi,
Retired Executive Director, Godavari Mandal,
Aurangabad, R/ Padampura, Aurangabad.
12. Mr. B. N. Kandrale,
Retired Executive Director, Godavari Mandal,
Aurangabad, R/o "Krushna", N-5, CIDCO,
Jalgaon Road, Aurangabad.

13. Mr. R. K. Niturkar,
(Then Superintending Engineer),
NIC Circle, through, Chief Engineer,
Water Conservation Regional Department,
Sinchan Bhavan, Jalna Road, Aurangabad.
14. Mr. R. B. Ghote,
(Then Superintending Engineer),
NIC Circle, Executive Director, Krushna Khore,
Patbandhare Vikas Mahamandal,
Sinchan Bhavan, Mangalwar Peth, Pune.
15. N. L. Sawale,
Superintending Engineer, NIC Circle,
through Superintending Engineer, Nanded
Patbandhare Mandal, R/o : Post Box No.520,
Sinchan Bhavan, Nanded.
16. Mr. A. D. Kokate,
Then Superintending Engineer, Kada Office,
Aurangabad Road, Ahmednagar.
17. Mr. Atul Kapole,
Superintending Engineer,
(Then Executive Engineer, M. I. Division,
Aurangabad) Pune Patbandhare Mandal,
R/o 2nd Floor, Sinchan Bhavan, Pune-11.
18. Mr. L. G. Patil,
(Then Executive Engineer, Nandur
Madhameshwar Canal, Division-II, Vadigodri),
Walmi, Paithan Road, Aurangabad.
Plot No 55, New SBH Colony, Jyotinagar, Aurangabad.

19. Mr. R. P. Kale,
(Then Executive Engineer, Minor Irrigation Division,
Aurangabad) Asstt. Chief Engineer,
Water Conservation Regional Office,
Sinchan Bhavan, Jalna Road, Aurangabad.
20. Deleted.
21. Mr. V. B. Nath,
(Then Executive Engineer),
Vishnupuri Project-2, Nanded
Through Superintending Engineer,
Minor Irrigation Canal, Nanded.
22. Deleted.
23. Deleted ... Respondents.

...

Advocate for the Petitioner : Mr. Joshi Milind M.
APP for Respondent/s-State : Mr. D. J. Patil.
Advocate for respective Respondents : Mrs. Priyanka Y. Sarnaik
h/f Mr. U. L. Momale and Mr. M. S. Deshmukh.

...

CORAM : S. G. MEHARE, J.
DATE : 01.07.2024

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally
by consent of the parties.
2. The Contractor turn social worker petitioner had initially
filed a public interest litigation against the respondents.
However, the Division Bench of this Court directed him to

approach the Trial Court. Accordingly, he filed a complaint before the learned Judicial Magistrate First Class. The learned Judicial Magistrate First Class held that it has no territorial jurisdiction. After 47 days, the petitioner preferred the revision with an application for condonation of delay. He sought condonation on the grounds that he was neither a legal expert nor a degree holder, so he spent the time taking advice and consulting. It has also contended that he was spending the money from his own earnings. On this sole ground, the delay has been sought to be condoned.

3. The learned Additional Sessions Judge decided the application for condonation of delay and rejected the application. Against the said order, he has before this Court.

4. Learned counsel for the petitioner has vehemently argued that the intention of the party is to be seen. There was no deliberate delay on the part of the applicant in impugning the order of the Magistrate. There was a sufficient cause for not preferring the revision in time.

5. To bolster his arguments, he relied on the case of *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others* ; 2013 AIR SCW 6158, *Kailas*

Dinkar Wani Vs. Agrasen Urban Co-operative Credit Society Ltd. Jalgaon and others ; 2011 (2) Mh.L.J. 603, Sheshrao Vithobaji Lakhapurkar Vs. Shyamrao Shiladin Jaiswal ; 2012 (1) Mh.L.J. 695, Collector, Land Acquisition, Anantnag and another Vs. Mst. Katiji and others ; AIR 1987 Supreme Court 1353 and N. Balakrishnan Vs. M. Krishnamurthy ; AIR 1998 SC 3222.

6. Based upon the law laid down by the Hon'ble Supreme Court, on the point of condonation of delay, he would submit that the case laws placed on record are squarely applicable to the present case.

7. Per contra, the learned counsel for the contesting respondents and learned APP would submit that the petitioner has no good ground. He had the knowledge of law. Hence, he was pursuing the petition in person. There was no sufficient cause to condone the delay. On the contrary, it was his gross negligence. The application was lacking bonafide. The reasons mentioned in the application are false and contrary to the facts that he claimed to be the legal expert and had good knowledge of the law to pursue the petition in person, even in the High Court. Both of them would submit that none of the case laws relied upon by the petitioner applied to this case.

8. In the case of Esha Bhattacharjee (supra), the Hon'ble Supreme Court laid down the principles that can be culled out while considering the application for condonation of delay. The guidelines have been issued by the Hon'ble Supreme Court while considering the delay condonation. One of the guidelines at serial No.(iv) was that 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. The term "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. Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact. The concept of the liberal approach has to encapsulate the conception of reasonableness, and it cannot be allowed a totally unfettered free play. 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 the balance of justice in respect of both parties and the said principle cannot be given total go-by in the name of a liberal approach.

9. The report of the guidelines is that the Court should raise the scale of balance of justice for both parties. While taking the liberal approach, the Court should not ignore the scale of the balance of justice. Gross negligence on the part of the counsel or litigants shall also be required to be considered. The sufficient cause should be understood in their proper spirit, philosophy and purpose regard being had to the fact of the case, that means the facts of the case should be to understand the sufficient cause.

10. In the case of N. Balakrishnan (*supra*), the Hon'ble Apex Court based on the facts of the case allowed the application. It has been observed that the word "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice. It has also been observed that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of the dilatory strategy, the Court must show utmost consideration. The landmark judgment of the Collector, Land Acquisition, Anantnag, is also placed on record. The view taken in this case was based upon 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. In the case of Sheshrao Vithobaji Lakhapurkar (supra), this Court observed that the party should be allowed to prosecute its remedy on merits rather than being thrown out on technicalities. In the case of Kailas, the ratio of the case of N. Balakrishnan has been reproduced.

11. There shall be a sufficient cause to condone the delay, and there shall not be malafide on the part of the person seeking condonation of delay. The reasons must be true and correct. The petitioner came with the case that since he is not the legal expert, he has to take the advice and consult to take action. The statement cannot be believed for the reason that he filed the PIL against the public servant in person. He has to establish before the competent officer of the Court that he has sufficient knowledge of the law to address the Court. In PIL, he had personally addressed the Court, which means he was tested for having good knowledge of the law to initiate action against the respondents. Considering these facts, the explanation of delay appears not bona fide.

12. After having gone through the reasons for the application for condonation of delay and the impugned order, this Court is not satisfied that this is a fit case to condone the delay, though it is for a short period.

13. For the above reasons, the writ petition stands dismissed.

14. Rule made discharged.

15. No order as to costs.

(S. G. MEHARE, J.)

...

vmk/-