(2019) 07 BOM CK 0054

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 2640 Of 2019

Gautam Kathalu Hiwale		APPELLANT
	Vs	
State Of Maharashtra And Ors		RESPONDENT

Date of Decision: July 4, 2019

Acts Referred:
Limitation Act, 1963 â€" Section 5, 29(2), 116A, 116A(2)#Bombay Village Panchayat Act, 1958 â€" Section 35(3), 35(3B)#Maharashtra Recognition Of Trade Unions And Prevention Of Unfair Labour Practices Act, 1971 â€" Section 44#Bombay Industrial Relations Act, 1946 â€" Section 85#Constitution Of India, 1950 â€" Article 136, 227

Citation: (2019) 07 BOM CK 0054

Hon'ble Judges: Ravindra V. Ghuge, J

Bench: Single Bench

Advocate: Tope Sambhaji S, Girase A. B., Kawre A.D., Murkute J.M.

Final Decision: Allowed

Judgement

Ravindra V. Ghuge, J

1. Heard the learned counsel for the respective parties.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final hearing.

4. The petitioner / original complainant is aggrieved by the order dated 16.1.2019 passed by the Honourable Cabinet Minister, Food, Civil Supplà¥§ieà¥§sà¥§ aà¥®nd

Consà¥§uà¥¯mà¥©er Protecà¥¨tià¥§on, State of Maharashtra, impleaded in person as respondent No.2, vide which he has allowed the Revision No. Ã‚â€‹ /

. . / . . , filed by the fair price shop license holder, Respondent No.5.

5. This matter was heard on 3.7.2019 and posted for orders on 4.7.2019 in view of the request of the learned Government Pleader.

6. The grievance of the petitioner is that the Honourable Minister has ignored the statements of the 21 card holders and the concurrent findings of the

District Supply Officer and the Deputy Commissioner, Civil Supplies and has allowed the Revision by holding that the license holder deserves to be

granted one opportunity of running a business. Rs.10,000/Ã, penalty was imposed on the license holder / respondent No.5 and his license was restored

after almost eight years of its cancellation.

7. On 3.7.2019, the learned Government Pleader Shri Girase submitted, on instructions, that the order passed by the Honourable Minister dated

15.1.2019, is being withdrawn. If the Revision is maintainable, the Honourable Minister would hear the parties and reÃ, decide the Revision

Application.

8. The learned Advocate for the petitioner then raised the following grounds as regards the maintainability of the Revision filed by respondent No.5.

(a) He relied upon Clause 24(1) of the Maharashtra Scheduled Commodities (Regulation of Distribution) Order 1975, to contend that the said provision

vests the competent authority with the power to cause a revision suo motu or on an application.

(b) Only 30 days limitation period, from the date of the receipt of the order, is provided.

(c) There is no provision under the Essential Commodities Act, 1955 or the Order for empowering a revenue authority or the Honourable Minister to

condone the delay in filing of a revision.

9. The learned Advocate appearing on behalf of respondent No.5 submitted that though he has challenged the order dated 9.4.2010, passed by the

District Supply Officer and the order dated 4.6.2011 passed by the Deputy Commissioner (Civil Supplies), Aurangabad, by preferring his Revision on

9.10.2018, there is no limitation applicable to a Revision proceeding. He submits that the Honourable Minister has sufficient powers to condone the

delay, if he is convinced that just and proper reasons are assigned for seeking condonation of delay. He further submits that as respondent No.5 /

license holder comes from a rural background, he may not be aware of the provisions of law. He sought time to research as to whether there is any

judicial pronouncement in such matters allowing condonation of delay at the hands of the Honourable Minister. Hence, the matter was adjourned and

kept today.

10. Learned Advocate submits through his colleague Advocate Shri Kawre that this Court may pass an appropriate order in the light of the record and

law applicable as there is no judicial pronouncement on the issue raised in this case.

11. The learned Government Pleader submits that Clause 24 of the Order would not permit entertaining a Revision Application after 30 days from the

date of the receipt of the order.

12. Considering the above, since the impugned order passed by the Honourable Minister has now been withdrawn, I have no reason to go into the

legality of the said order, despite the submissions of the learned Advocate for the petitioner that the same Honourable Cabinet Minister has passed

identical orders in hundreds of matters and this Court has already made adverse observations, while setting aside such orders, in atleast five cases.

13. As such, the issue to be considered is whether the revision filed by respondent No.5 can be entertained by the Honourable Minister, if it is filed

after 30 days from the date of the receipt of the impugned order. If this period has expired, the issue would be, whether the Honourable Minister could

condone the delay and entertain the Revision Application.

14. Clause 24(1) under the Order of 1975 reads as under:Ã‚â€‹

Ã¢â‚¬Å“24 (1). Power to call for an examine records of proceedings and revise orders. Ã‚ If any person is aggrieved by an order passed by the Collector,

the Commissioner, and if any person is aggrieved by an order passed by the Commissioner, the State Government, may, on an application made to him

or it by the aggrieved person, within thirty days from the date of receipt of such order, stay the enforcement of such order. The Commissioner or the

State Government, as the case may be, may also call for and examine the record of any enquiry or proceedings of the concerned Officer exercising or

failing to exercise the powers under this Order to add, to amend, vary, suspend or cancel any authorisation issued or deemed to be issued under clause

3 or any supply card issued or deemed to be issued under clause 6 or to forfeit the deposit for any part deemed thereof paid or deemed to be paid by a

fair price shop or authorised agent as security or to take any other action under the provisions prescribed by or under this Order, for the purpose of

satisfying himself or itself as to the legality or propriety of the order passed by such officer, and as to the regularity of the proceedings of such officer

and may pass such order thereon as he or it, as the case may be, thinks fit:

Provided that State Government may at any time, during the pendency of any enquiry or proceedings or within one year from the date of any order

passed by any officer under the provisions prescribed or under this Order, suo motu stay any pending enquiry or proceedings or the enforcement of

such order if considered necessary and may call for an examine the record of any such enquiry or proceedings, and pass such order thereon as it

thinks fit:

Provided further that, the Commissioner or the State Government, as the case may be, shall not pass any order under this clause which adversely

affects any person unless such person has been given a reasonable opportunity of being heard.Ã¢â‚¬‹

(Emphasis supplied)

15. It is not disputed by respondent No.5 that he has received the Order dated 9.4.2010, passed by the District Supply Officer cancelling his license

for running the fair price shop at Mauje Wadiwadi, Tq. and District Jalna. It is also not disputed that he has received the order passed by the Deputy

Commissioner (Civil Supplies), Aurangabad dated 4.6.2011 long time ago. It is equally undisputed that he has preferred the Revision Application under

Clause 24 (1), which was presented in the office of the Honourable Minister on 9.10.2018.

16. The learned Advocate for respondent No.5 has questioned the locus standi of the petitioner and has contended that a petition at his behest, cannot

be entertained.

17. I find from the record that the complaint dated 19.7.2007 was filed by the petitioner himself along with other villagers. Notice was issued by the

Tahsildar to respondent No.5 on 17.8.2007, which indicates the name of the petitioner as being the complainant. Copy of the notice was also marked

to the petitioner and several other villagers. The order passed by the Deputy Commissioner (Civil Supplies), Aurangabad dated 4.6.2011 also mentions

that the Advocate for the petitioner was present at the time of hearing held on 19.4.2011. It is only after respondent No.5, moved his revision on

9.10.2018, after 7 years and 4 months, that he did not implead the petitioner in the said proceedings and kept him in the dark.

18. Considering the above, I am of the view that the petitioner has the locus standi to file this petition.

19. The State of Maharashtra issued a notification dated 4.7.2007 through the Food, Civil Supplies and Consumer Protection Department, introducing

the power of review under Clause 24 (2) and 24(3), which read as under:Ã‚â€‹

Ã¢â‚¬Å“24 (2) Government may on an application made or suo motu at any time before the expiry of one year from the date of any order passed by it in

revision under this clause may review such order if it is satisfied about the reasons to do so on any of the following grounds namely:Ã‚â€‹

(1) Discovery of new and important matter of evidence which after the exercise of due diligence, was not within the knowledge of the applicant or

could not be produced by him at the time when the order was passed or order was made;

OR

(2) some mistake or error apparent on the face of the record;

OR

(3) for any other sufficient reason.

And upon such review if it shall appear to the State Government that such order should be modified annulled or confirmed, it may pass such order it

deem fit.

24 (3) Order passed in review shall on no account be reÃ‚â€‹ reviewed.Ã¢â‚¬â€‹

(Emphasis supplied)

20. It is, therefore, apparent that, in this case, even if it is presumed that the fifth respondent may desire to file a review instead of a revision, even

such a review would not be maintainable, if an application is filed after one year from the date on which an order sought to be reviewed and passed in

revision, was delivered more than one year ago. As respondent No.5 failed to approach the State within 30 days of the receipt of the order, there was

no occasion for passing any order under Order 24(2).

21. In so far as, the issue of condonation of delay by the Honourable Minister is concerned, as is canvassed by the learned Advocate for respondent

No.5, this Court has dealt with a similar situation in the matter of Prabhakar Sabaji Kandalkar Vs. Tahsildar, Sangamner and others [2002 (Supp.)

Bom.C.R.548], holding that Section 5 of the Limitation Act would vest the power only in a Court to condone the delay. It has been specifically

observed in paragraph Nos.11,12, 13 and 16, as under:Ã‚â€‹

Ã¢â‚¬Å“11. It is an admitted position that the petitioner did not raise the dispute with regard to validity of the motion carried under SubÃ‚section (3) of

Section 35 of the Act of 1958 within seven days from the date on which the motion of noÃ‚confidence was passed. The NoÃ‚confidence motion was

passed against the petitioner on 20Ã‚10Ã‚2000. Therefore, it is beyond doubt clear that there was no valid dispute before the Collector. The Collector is

under obligation to decide the dispute within 15 days from the date on which it was received by him. In the instant case, there was no valid dispute

before the Collector and, therefore, the Collector refused to entertain the dispute which was raised beyond the period of limitation prescribed by

SubÃ‚â€‹ section (3B) of Section 35 of the Act of 1958.

12. The scheme of the Indian Limitation Act is that it only deals with the application pending before the Courts. The word ""Court"" in Section 5 of the

Limitation Act, 1963 signifies a ""Court"" in stricto sensu. The quasi judicial tribunal and executive authorities are not ""Courts"". The authority referred in

SubÃ, section (3B) of Section 35 of the Act of 1958 is not the Court. The dispute contemplated under SubÃ‚section (3B) of Section 35 of the Act of

1958 is not a proceeding in the Court. Therefore, it prima facie appears to me that the provisions of Section 5 of the Limitation Act, 1963 read with

Section 29 SubÃ‚â€‹clause (2) of the aforesaid Act are not attracted to the facts of the present case.

13. In case of Sakuru (cited supra), the Supreme Court has observed that the provisions of the Limitation Act, 1963 apply only to proceedings in

Courts and not to appeals or applications before bodies other than Courts such as quasiÃ‚judicial Tribunals or executive authorities, notwithstanding

the fact that such bodies or authorities may be vested with certain specified powers conferred on Courts under the Codes of Civil or Criminal

Procedure.

14. .....

15. .....

16. Turning to the facts of the present case, I am of the clear opinion that the authority who is supposed to decide the validity of the motion carried

under SubÃ‚section (3) of Section 35 of the Act of 1958, is a statutory authority and not the Court so as to attract the provisions of Section 5 of the

Limitation Act, 1963 for the purpose of condonation of delay. Under the circumstance, I hold that both the impugned orders do not suffer from any

illegality.Ã¢â‚¬â€‹

22. The Honourable Apex Court, while considering the aspect of delay, has held in Ganga Bai Vs. Vijay Kumar [AIR 1974 SC 1126.] that there must

be a power to condone the delay and the grounds for seeking condonation must be such that they appear to be just and proper.

23. The Honourable Apex Court in the matter of Sakuru Vs. Tanaji [1985 (3) SCC 590], has concluded that in the absence of any express provision,

the power to condone the delay under Section 5 of the Limitation Act, cannot be exercised by the statutory authorities created under the Special

Statutes.

24. The Honourable Apex Court has then held in the matter of Sneh Gupta Vs. Devi Sarup [(2009) 6 SCC 194,] and concluded in paragraph No.49 as

under:Ã‚â€‹

Ã¢â‚¬Å“ Even otherwise, we do not think that any error has been committed by the High Court in arriving at the finding that the appellant had knowledge

of the passing of the compromise decree much earlier. She did not file any application for condonation of delay. She filed two more applications for

recall of the order dated 6.11.2004 in other enacted appeals. Those applications were also filed after expiry of the period of limitation and none of

those applications were also accompanied with an application for condonation of delay. In absence of any application for condonation of delay, the

Court had no jurisdiction in terms of Section 3 of the Limitation Act, 1963 to entertain the application for setting aside the decree. [See Dipak Chandra

Ruhidas v. Chandan Kumar Sarkar [AIR 2003 SC 3701; and Sayeda Akhtar v. Abdul Ahad [2003 (7) SCC 52].Ã¢â‚¬â€‹

25. The Honourable Apex Court, therefore, relied upon the judgments delivered in Deepak Chandra (supra) and Syeda Akhatar (supra), while

concluding that unless there is a power to condone the delay, there can be no enlargement of the limitation period and an application, therefore, cannot

be entertained.

26. In Dipak Chandra Ruhidas Vs. Chandan Kumar Sarkar [(2003) 7 SCC 66}, the Honourable Apex Court has held as under:Ã‚â€‹

Ã¢â‚¬Å“ Learned counsel then urged that this special leave petition may be treated as an appeal under Section 116A of the Act. An appeal is required to

be filed within 30 days of the order and judgment of the Tribunal (High Court) and the power has been given to the Supreme Court to condone the

delay in case of the appeal having been filed after 30 days. In the present case no application for condonation of delay has been filed in terms of the

proviso appended to SubÃ‚section (2) of Section 116A of the Act. As the appeal would have otherwise been barred by limitation, we are not in a

position to treat this appeal as an appeal under Section 116A of the Act. We are, therefore, of the opinion that the said special leave petition was not

maintainable and leave under Article 136 of the Constitution of India was wrongly granted. It is, accordingly, revoked. The special leave petition is

dismissed. Ã¢â‚¬â€‹

27. In view of the above, I do not find that the 1975 order prescribes any such power, by which, the Commissioner or the Honourable Minister, as the

case may be, could condone the delay, caused in filing the Revision. In some enactments, like Section 44 of the Maharashtra Recognition of Trade

Unions and Prevention of Unfair Labour Practices Act, 1971, there is no limitation prescribed for filing a revision. This Court has held that even if a

revision provision does not contain a limitation clause, it would not mean that such a revision could be filed after a lapse of a long period.

28. In the matter of Maharashtra State Road Transport Corporation Vs. R.D.Toplewar, ExÃ‚Conductor and another [1986 (3) Bom. C.R. 689], in

paragraph No.7, this Court has held as under:Ã‚â€‹

7. In considering the above submissions made on behalf of the petitioner, it is first necessary to understand the true nature of the proceedings

contemplated by section 44 of the Act. It may be seen that section 44 of the Act does not in terms provide for a remedy of ""revision"" against the

Order passed by the Labour Court, as the expression ""revision"" is known and understood in law. Although the proceedings under section 44 of the Act

are described as ""revisional proceedings"" a perusal of section 44 would show that a power of superintendence is conferred upon the Industrial Court

over all the Labour Courts. The phraseology used in section 44 of the Act is similar to the phraseology of section 85 of the Bombay Industrial

Relations Act and also of Article 227 of the Constitution of India. In regard to the proceedings under Article 227 of the Constitution of India as well as

in regard to the proceedings under section 85 of the Bombay Industrial Relations Act, the power of superintendence conferred upon the Industrial

Court includes judicial power of superintendence and, therefore, the applications which are described as revisions against the orders passed by Labour

Courts are entertained by the Industrial Court under section 44 of the Act. The concepts of the power of superintendence is well settled by various

decisions under Article 227 of the Constitution of India. The exercise of power of superintendence is always discretionary and since it is an equitable

power conferred upon the Court, it has to be exercised upon equitable considerations. It is, therefore, necessary that when a power of

superintendence of the Industrial Court is invoked, the party invoking such a power must act diligently and expeditiously, and it would be open to the

Industrial Court to dismiss the applications filed under section 44 of the Act in its discretionary jurisdiction if it finds that there is an inordinate delay in

filing the said applications. Even after entertaining the said applications under section 44 of the Act, it is open to the Industrial Court to modulate the

relief in such a manner so as to avoid any hardship or injustice being caused to the opposite party by reason of the delay in invoking its jurisdiction.

29. This Court, in the case of The Gram Panchayat Office Vs. Ramdas Asaram Kalhapure and Ors. [2017 (I) CLR 103], has held as under:Ã‚â€‹

11. However, though no limitation has been prescribed under Section 44 of the MRTU & PULP Act, 1971 for filing a revision petition, a sleeping

litigant cannot be permitted to pose a challenge to an order passed by the Labour Court after a long passage of time. Having not assailed the order of

the Labour Court for a considerable time, would also be construed to be an indicator of the fact that the Petitioner does not desire to question such an

order. Nevertheless, the Industrial Court, while considering a revision petition filed after passage of considerable time from the date of the Labour

Court's order, will have to scrutinize on case to case basis and the facts of each case as to whether, it should entertain a revision petition which may

appear to have been filed belatedly.

30. In view of the above, this petition is allowed. Considering the fact that the State Government has recalled the order passed by the Honourable

Minister, the revision proceedings filed by respondent No.5, would not be tenable and the same stands disposed off.

31. Rule is made absolute in the above terms.