

(2025) 09 BOM CK 0324

In the Bombay High Court, Aurangabad Bench

Case No : Writ Petition No.13210 Of 2022

Prakash S/o. Gabba Rathod

APPELLANT

Vs

State Of Maharashtra, Through Secretary

RESPONDENT

Date of Decision : 30-09-2025

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2025) 09 BOM CK 0324

Hon'ble Judges : Abasaheb D. Shinde, J

Bench : Single Bench

Advocate : Sambhaji S. Tope, R. P. Gour, A. S. Deshmukh

Final Decision : Allowed

Judgement

Abasaheb D. Shinde, J

1. Rule. Rule made returnable forthwith. With the consent of parties heard finally at the stage of admission.

2. By the present Writ Petition, filed under Article 227 of the Constitution of India, the petitioner is taking exception to the order passed by Respondent No.2-Hon'ble Minister, Food, Civil Supply and Consumer Protection Department, Mantralaya, Mumbai (hereinafter referred to as "Respondent No.2-the Hon'ble Minister") dated 08.12.2022 thereby allowing the Revision Application bearing No. वैअम-११११/प्र.क्र.१११/ना.पु.२१ filed by Respondent No.7. Beside challenging the said order, the petitioner is also assailing the consequential order dated 14.12.2022 passed by Respondent No.4-The District Supply Officer, Nanded, pursuant to the impugned order dated 08.12.2022, thereby regularizing the license of Respondent No.7 for running the Fair Price Shop.

The facts which led to the filing of this Writ Petition can be narrated in brief as under :

3. Suffice it to say that Respondent No.7 was running a Fair Price Shop at Village Gokunda, Taluka Kinwat, District Nanded. Pursuant to several complaints from

the cardholders attached to the Fair Price Shop of Respondent No.7, Respondent No.5-Sub Divisional Officer, Kinwat, Dist. Nanded canceled the license of Respondent No.7 to run the Fair Price Shop at the said village. Respondent No.7 had challenged the said order dated 05.08.2000 by way of revision before Respondent No.3-Deputy Commissioner (Supply), Aurangabad under the provisions of Maharashtra Scheduled Commodities (Regulation of Distribution) Order, 1975 (for the sake of brevity hereinafter referred to as "the Order of 1975). Respondent No.3-Deputy Commissioner (Supply) however rejected the said revision filed by Respondent No.7 vide order dated 23.06.2003 and confirmed the order of cancellation of Fair Price Shop.

4. In the meanwhile, as the license of Respondent No.7 for running the Fair Price Shop was cancelled, the cardholders attached to the Fair Price Shop of Respondent No.7 were diverted to the Fair Price Shop of the Petitioner who is also running a Fair Price Shop at Village Shaniwarpeth, Taluka Kinwat, District Nanded. Respondent No.7 thereafter preferred revision before Respondent No.2-the Hon'ble Minister challenging the orders dated 05.08.2000 and 23.06.2003 under Clause 24 of the Order of 1975. Respondent No.2-the Hon'ble Minister by its order dated 14.10.2009 partly allowed the said revision filed by Respondent No.7 by setting aside both the orders dated 05.08.2000 passed by Respondent No.5 -Sub Divisional Officer and order dated 26.03.2003 passed by Respondent No.3-Deputy Deputy Commissioner (Supply) by imposing certain fine on Respondent No.7 and regularizing his license with further direction to recover an amount of Rs.80,675/- from him.

5. The petitioner therefore challenged the said order dated 14.10.2009 before this Court by filing Writ Petition No.8435 of 2009 inter alia contending that the revision filed by Respondent No.7 after an inordinate delay itself was not maintainable in view of provisions of Clause 24 of the Order of 1975 as the said clause do not empower Respondent No.2- the Hon'ble Minister to entertain the revision after the expiry of 30 days, so also on the ground that while entertaining the revision by Respondent No.2-the Hon'ble Minister, without there being an application seeking condonation of delay, the delay has been condoned.

6. In the said Writ Petition, Respondent No.7 have raised specific objection regarding locus standi of the petitioner in filing the said Writ Petition. This Court by a detailed judgment and order dated 25.01.2010 set aside the said order dated 14.10.2009 passed by Respondent No.2-the Hon'ble Minister and restored the order passed by Respondent No.3-Deputy Commissioner (Supply) dated 23.06.2003 by specifically observing that the petitioner have a locus standi to file the Writ Petition and thus by setting aside the said order dated 14.10.2009 passed by Respondent No.2-Hon'ble Minister, the matter was relegated back to Respondent No.2-Hon'ble Minister for considering the revision application only after Respondent No.7 files an application for condonation of delay and if such an application is filed this Court directed Respondent No.2- the Hon'ble Minister to consider the said application in accordance with provisions of law that too after

giving an opportunity of hearing not only to Respondent No.7 but even to the petitioner as well.

7. An order dated 25.01.2010 passed by learned Single Judge was assailed by Respondent No.7 before the Division Bench of this Court by filing Letters Patent Appeal No.38 of 2010. Initially the Division Bench of this Court by an order dated 26.02.2010 passed an interim order by continuing the earlier order of status quo by dealing the issue about the locus standi of the petitioner in filing the Writ Petition and by prima facie opining about the petitioner's locus standi in filing the Writ Petition. It is a matter of fact that Respondent No.7 thereafter withdrawn the said Letters Patent Appeal, and the Division Bench of this Court by an order dated 11.01.2019, disposed of the said Letters Patent Appeal as withdrawn and even the Division Bench have also passed an order of vacating the interim relief granted by it by an order dated 26.02.2010.

8. Respondent No.7, after withdrawing the Letters Patent Appeal No.38 of 2010 seems to have filed an application for condonation of delay in filing the revision. To the said application for condonation of delay, the petitioner have filed a detailed reply opposing the same not only on the ground of inordinate delay but even by raising an objection with regard to the maintainability of the said application itself. Respondent No.2-the Hon'ble Minister, however, by impugned order dated 08.12.2022 once again allowed the revision filed by Respondent No.7 and set aside the order dated 05.08.2000 passed by Respondent No.5-Sub Divisional Officer as well as order dated 23.06.2003 passed by Respondent No.4-Deputy Commissioner (Supply), Aurangabad and restored the license of Respondent No.7 by imposing a nominal fine of Rs. 5000/- and further directing that an amount of Rs.80,675/- be recovered from Respondent No.7. It was obvious that pursuant to the said order dated 08.12.2022, Respondent No.4-District Supply Officer passed an order dated 14.12.2022 by regularizing the license of Respondent No.7 and that is how the petitioner have approached this Court by way of this Writ Petition.

9. Heard the learned Counsel for the petitioner and the learned AGP for the Respondents/State as well as learned Counsel for Respondent No.7. Perused the Writ Petition as well as the annexures annexed thereto.

10. The learned Counsel for the petitioner have assailed the impugned order mainly on three grounds that (i) Respondent No.2-the Hon'ble Minister have committed an error in entertaining the revision which was hopelessly barred by limitation, (ii) while entertaining revision pursuant to filing a delay condonation application seeking condonation of 9 years, Respondent No.2-the Hon'ble Minister have exceeded its jurisdiction by condoning such a huge and inordinate delay which is contrary to Clause 24 of the Order of 1975, since the said Clause 24 do not empower Respondent No.2-the Hon'ble Minister to condone the delay beyond the period of 30 days and (iii) even assuming that Respondent No.2- the Hon'ble Minister is empowered to condone the delay, however, while condoning the delay of near about 9 years, Respondent No.2-the Hon'ble Minister ought to

have assigned cogent reasons. The learned Counsel for the petitioner has also placed reliance on the judgment of this Court in Writ Petition No.2640 of 2019 in the case of Gautam Kathalu Hiwale Vs. The State of Maharashtra and Others, wherein this court while deciding the said Writ Petition by order dated 04.07.2019 have observed that considering the provisions of Clause 24 of the Order of 1975, the Commissioner or the Hon'ble Minister as the case may be do not have any power to condone the delay caused in filing revision beyond the prescribed period of 30 days in absence of such power and after taking into consideration various provisions analogous to Clause 24 of the Order of 1975, this Court had allowed the said Writ Petition.

11. The learned Counsel for Respondent No.7 on the other hand has mainly raised an objection about the locus standi of the petitioner to file the present Writ Petition by relying on the judgment of the Hon'ble Apex Court in the case of Superintendent Engineer/Dehar Power House Circle Bhakra Beas Management Board (PW) Slapper and another Vs. Excise and Taxation Officer, Sunder Nagar / Assessing Authority, AIR ONLINE 2019 SC 1380, and Poonam Vs. State of U.P. and Others, 2016 (2) SCC 779, and straneously contended that the petitioner cannot be said to be a person affected or aggrieved and therefore, the petitioner have no locus standi to file the present Writ Petition as it is only as a result of cancellation of the license of Respondent No.7, the cardholders those were attached to the Fair Price Shop of Respondent No.7 were diverted as stop gap arrangement to the license of the petitioner.

12. After considering the arguments advanced on behalf of the petitioner as well as respondents, firstly it is pertinent to note that Respondent No.2-Hon'ble Minister has not dealt with the aspect with regard to his power to condone such a huge and inordinate delay of 9 years in filing revision by Respondent No.7 without advertting to the provisions of Clause 24 of the Order of 1975. Be that as it may. Since I propose to decide this petition on the grounds set out in the latter part of this Judgment, the aspect as regards whether Respondent No.2-Hon'ble Minister have power to condone the delay beyond the period of 30 days need not be gone into at this juncture and the said point is kept open to be agitated and considered as and when the occasion would arise.

13. In my considered view, the impugned order is unsustainable on two counts firstly, if the impugned order is perused Respondent No.2-Hon'ble Minister while condoning a huge and inordinate delay of 9 years, has not recorded any satisfaction that the explanation for delay condonation was either reasonable and satisfactory. It is essentially the pre-requisite for condonation of delay. As can be seen from the impugned order the Respondent No.2- Hon'ble Minister have only observed in the operative part of the impugned order that the delay caused in filing the revision application stands condoned. It is settled position of law that while dealing with an application for condonation of delay when the delay is huge and inordinate, recording of satisfaction that explanation for delay is either reasonable or satisfactory is sine qua non. The Hon'ble Apex Court in the

case of P. K. ramachandran Vs. State of Kerala and another, (1997) 7 SCC 556, in paragraph no.3 has observed thus :

"3. It would be noticed from a perusal of the impugned order that the court has not recorded any satisfaction that the explanation for the delay was either reasonable or satisfactory, which is an essential prerequisite to condonation of delay."

14. In the said case before the Hon'ble Apex Court the order passed by the High Court in condoning an inordinate delay of 565 days without assigning reason was set aside. In the case in hand also the impugned order do not depict any such satisfaction nor it has assigned any reason for condonation a huge and inordinate delay of 9 years and on that count also the impugned order is liable to be quashed and set aside.

15. Another ground on which an interference is warranted in the impugned order is, admittedly respondent no.2- Hon'ble Minister has considered the merit of the revision as well as the application for condonation of delay simultaneously which is not permissible. When admittedly there is a huge delay, Respondent No.2- the Hon'ble Minister ought to have first proceeded to decide the application for condonation of delay. It is only when the delay stands condoned by giving sufficient reason that, the revision could have been taken up for considering it on merits.

16. I am of the considered view that any Court, Tribunal, Judicial or quasi judicial authorities should not decide the application for condonation of delay and the main proceeding on merit simultaneously for a simple reason that any decision rendered on delay condonation application gives a right to an aggrieved party to assail the same before a higher or an appropriate forum.

17. By deciding an application for condonation of delay and the main proceeding simultaneously deprives an aggrieved party to challenge the order passed on an application for condonation of delay before the appropriate forum. Similar view has been taken by this Court in the case of Shankar Ramrao Rangnekar Vs. Narayan Sakharam Sawant and Ors, 2013 (1) Mh.L.J. 706. In the light of decision of this Court in the case of Shankar Ramrao Rangnekar (supra), the order deciding revision as well as the application for condonation of delay filed by Respondent No.7 simultaneously is erroneous.

18. So far as objection raised by Respondent No.7 regarding locus standi of the petitioner to file the Writ Petition is concerned, admittedly, while allowing the Writ Petition filed by the petitioner in earlier round of litigation i.e. Writ Petition No.8435 of 2009, an objection of locus standi of the petitioner raised by Respondent No.7 has already been turned down and the said finding have attained finality by virtue of withdrawal of the Letters Patent Appeal No.38 of 2010 by Respondent No.7, so also by virtue of vacation of the interim relief meaning thereby the observations of the learned Single Judge while holding that the petitioner has locus standi to file the petition has not been disturbed and

therefore the objection raised by Respondent No.7 to that extent is devoid of any substance. In short Respondent No.7 had accepted the findings of learned Single Judge that the petitioner have locus standi to file the petition and now again Respondent No.7 cannot be allowed to raise this plea by applying the doctrine of acquiescence.

19. Considering the fact that the impugned order has been passed without assigning any reason for condonation of delay of almost 9 years and also without considering the vital aspect that the application for condonation of delay and revision on merit could not have been decided simultaneously, therefore the Writ Petition deserves to be allowed.

20. I therefore pass the following order :-

:: ORDER ::

- i. The Writ Petition is partly allowed.
- ii. The impugned order dated 08.12.2022, passed by Respondent No.2-Hon'ble Minister for Food, Civil Supply and Consumer Protection, Maharashtra State, Mantralaya, Mumbai, bearing No.वैअम-१११९/प्र.क्र.११९/ना.पु.२१, is hereby quashed and set aside.
- iii. Respondent No.2-the Hon'ble Minister is directed to decide the delay condonation application filed by Respondent No.7 afresh after affording an opportunity of hearing to Respondent No.7 as well as the petitioner by giving cogent reasons.
- iv. All issues to be agitated by both the parties are kept open.
- v. Respondent No.2-the Hon'ble Minister is directed to decide the delay condonation application within a period of 12 weeks from today.
- vi. The Writ Petition stands disposed of with no order as to costs. Vii. Rule is thus made absolute in the above terms.