

(1983) 07 AHC CK 0025

In the Allahabad High Court

Case No : F.A.F.O. No. 5 of 1983 and Civil Miscellaneous Application No. 812 of 1983

Employees State Insurance Corporation

APPELLANT

Vs

Punjab General Manufacturing and Another

RESPONDENT

Date of Decision : 14-07-1983

Acts Referred:

Employees State Insurance Act, 1948 — Section 25
Limitation Act, 1963 — Section 5

Citation : (1983) 07 AHC CK 0025

Hon'ble Judges : N.N. Mithal, J

Bench : Single Bench

Advocate : B.N. Asthana, for the Appellant;

Final Decision : Dismissed

Judgement

N.N. Mithal, J.—This F.A.F.O. has been filed by Employees State Insurance Corporation against an order passed by the City Magistrate exercising powers u/s 25 of Employees State Insurance Act, 1948, with a delay of 75 days. An application supported by an affidavit for condoning the delay has also been filed trying to explain the reasons for delay in filing the appeal. On 18-1-83 when the appeal came up before a learned single Judge of this Court he did not feel satisfied with the explanation for the delay given in the affidavit. Time was, therefore, granted to the Appellant to file a supplementary affidavit to explain the delay properly. A supplementary affidavit was consequently filed on 10-5-83.

2. Having heard Sri B.N. Asthana, learned Counsel appearing for the Corporation I do not feel satisfied that the corporation had been acting in a reasonably diligent manner in the prosecution of this case and there is no justifiable ground made out in the two affidavits so as to persuade the Court to condone the delay.

3. According to the affidavit one Sri P.C. Sharma, an Inspector of the Employees State Insurance Corporation at Agra was looking after the case in which arguments were closed on 14-7-82. The Court had fixed 28-7-82 for delivery of

its judgment but as the Magistrate was not available that day no judgment was delivered and he was informed by the Reader of the Court that the Corporation will be informed as and when judgment is delivered. Acting on this assurance, no effort was made thereafter to enquire if any order has been passed in the proceedings. It is alleged that sometime in early October, 1982 a rumour was heard that an order against the Corporation has been passed. This prompted the said Inspector to proceed to Mathura on 6-10-82 where he came to know that the order had been pronounced on 27-8-82. Without loss of further time he applied for the certified copy on the same day which was received on 13th October 82. This copy was sent to the Regional Director, legal branch of the corporation at Kanpur along with a covering letter for taking further action. It is said that this letter was received in the regional office only on 4-11-82 i.e. almost after 20 days. The regional office sent the papers, to its head-quarter in New Delhi for sanction to file an appeal on 11-11-1982 and its decision was communicated by a letter dated 4-12-82 received by the regional office on 12-12-82. It appears that instead of taking any prompt action a letter dated 13-12-82 was sent to the Inspector to explain why copy of the judgment was received after a long delay. When his explanation was received file and copy of the judgment were sent to the office of the Corporation at Allahabad on 4-1-83 where it was received on 14-1-83. Thereafter an appeal was filed on 17th January, 1983.

4. In the supplementary affidavit the only relevant thing stated is that the sanction from the head office of the corporation to file the appeal was obtained on or about 3-1-83 and papers were sent to Allahabad through registered post in the hope that in the normal course delivery would be made within two days and for this reason document was not sent through special messenger

5. Sri B.N. Asthana has contended that in Government bodies and corporation, the rules require that before an appeal is filed papers are to be processed on several levels and only after obtaining the sanction from the head-office an appeal can be filed. According to him as usual in the office it takes sometime to proceed from one level to another and it is because of this that a lenient view should be taken in the case of the corporation and the Court should therefore condone the delay. In my opinion, the submissions made by Sri B.N. Asthana have no basis. On the expiry of the period of limitation a valuable right accrues to the other party and unless there are strong and cogent reasons to satisfy the Court about the delay in filing the appeal there can be no justification for allowing an application u/s 5 merely because the department, for its own reason, has devised multi-tier system of processing the file and which, for no reason, wants to take advantage of the inefficiency of its employees to contend that the delay should be condoned or a lenient view of it should be taken. In appeals filed by the State or other semi Govt. bodies or Corporation no distinction can be made between a private individual and the corporation or the State. Before the Courts both stand on the same footing and are governed by the same period of limitation for filing the appeal. It is not my intention to say that in no case

circumstances like these have to be looked into but the Court has always to see whether really diligent effort was being made to file the appeal within time and the department was prevented from not filing the same within time for reasons that were beyond its control. Even if it may be assumed that the statement of the Inspector was right although he has not filed his own affidavit, that the reader had himself undertaken to inform the department about the result of the case and that he came to know of passing of the order dated 27-8-82 only on 6-10-82, there is no explanation why after the copy had been received on 13-10-1982 effort was not made to process the filing of appeal before the period of limitation expired which was still there aplenty. According to the office report the appeal was within time upto 3-11-82. If the copy of the judgment has been received on 13-10-82 there does not appear to be any reason why immediate steps were not taken to obtain sanction form the bead office for filing the appeal before the High Court within time. There could be no difficulty in sending the papers to the head office through a special messenger and to obtain sanction immediately. Even after the decision to file the appeal had been taken on 4-12-82 this could also have been communicated by the head quarter to the regional office on telephone and further proceedings could have been taken for filing the appeal expeditiously. Nothing of the kind was done either before or even after receipt of the sanction. The first thing which curiously engaged the attention of the regional office was to send a letter to the Inspector for explaining why there was delay in obtaining the copy of the judgment instead of trying to catch upon the lost time and rush to first have the appeal filed and departmental action could wait for sometime. There could be no justification for not sending the file immediately on receipt of sanction from the head office. It was also urged that the regional office in expecting that papers will reach Allahabad within two days as stated in para 4 of the supplementary affidavit. There was no reason for such fond hopes as the letter of regional office to the head office had taken 20 days to reach and the sanction sent by the head office was received by the regional office after eight days. Who can close his eyes for what is happening each day around him, the Courts included. I cannot also ignore the every day experience of inordinate delay that takes place in delivery of letters, If one be delivered at all. The postal inefficiency could not have remained unknown to the corporation. I cannot, therefore, place any reliance on this affidavit.

6. On a perusal of the affidavits and the manner in which the file has been processed at various stages one cannot help but form an opinion that the department was taking the matter in a most casual manner, without ever realising that there is something like "period of limitation" for filing an appeal. The Courts have been viewing liberally so far while considering applications u/s 5 Limitation Act, whenever the State or a corporation have filed an appeal beyond time but I think a stage has come when this must cease and the Courts have to be firm in such matters, lest an impression be carried by the departments that they can with impunity file appeals even after limitation without having to incur

any evil consequences. If it appears to the Courts in any case that the department has not been acting with necessary despatch and promptitude or care, or where it finds that the matter is being taken casually, it can always refuse to condone the delay.

7. Having given my anxious consideration to the facts of the present case I cannot help remarking that in the present case the department has been most slack and casual in dealing with the matter and that at no stage it showed any sense of urgency and importance in filing of the appeal even after the period of limitation had expired much earlier. u/s 5 of the Limitation Act each days delay has to be explained and in the present case where there is a delay of 75 days it has remained almost unexplained. I do not feel satisfied with the explanation given in the two affidavits and therefore, most reluctantly I have to reject the application. Orders accordingly.