

(2005) 04 GUJ CK 0046
In the Gujarat High Court

Case No : Civil Application No. 180 of 2004 in Letters Patent Appeal (Stamp Number) No. 1852 of 2003

Executive Engineer

APPELLANT

Vs

Yogesh P. Parekh

RESPONDENT

Date of Decision : 05-04-2005

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2005) 04 GUJ CK 0046

Hon'ble Judges : R.S. Garg, J; R.R. Tripathi, J

Bench : Division Bench

Advocate : V.M. Pancholi, AGP, for the Appellant; Rule Served, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Garg, J.—Heard learned counsel for the appellant. Mr. Mathurbhai Becharbhai Pankhania, Executive Engineer, Rajkot, who had sworn earlier affidavit and the affidavit filed today, is also present in the Court.

2. The present is an application u/s 5 of the Limitation Act, seeking condonation of delay of almost about 279 days in filing the Letters Patent Appeal.

3. The Special Civil Application No. 10646 of 1994 came to be finally disposed of by the learned Single Judge on 11.10.2002, while the present appeal has been filed on 18th December, 2003.

4. In the Civil Application No. 180 of 2004, the contents of which have been affirmed on oath by Mr. Mathurbhai Becharbhai Pankhania, it has been submitted that the learned Single Judge had passed the order on 11.10.2002 and thereafter, a copy of the order was received in the office of the Superintending Engineer on 19.2.2003, who in his turn, wrote a letter on 20.6.2003 that the order passed by the learned Single Judge should be accepted or should be challenged before the Division Bench. According to the said application, the said

letter was received in the Legal Department on 10.7.2003, simultaneously, a letter was also written to the Under Secretary on 11.7.2003 and the said file was placed before the Deputy Secretary on 11.7.2003. The Deputy Secretary sent the file to the Secretary on 19.7.2003, thereafter the file was placed before the officers in the Legal Department for getting necessary opinion, the Law Department received the file on 21.7.2003 and gave its permission to file an appeal on 9.9.2003 and sent the papers to the concerned department on 15.9.2003, the said decision was informed to the Rajkot Department by letter dated 7.10.2003. According to the deponent, the relevant papers were collected and provided to the office of the Government Pleader on 11.11.2003 and thereafter, the appeal was filed. It is to be seen from the affidavit that a copy of the order was received on 19.2.2003 and almost after four months of the same, the Superintending Engineer wrote a letter to the Law Department, which received it on 10.7.2003. It would also appear that the Law Department gave permission on 9.9.2003 i.e. after almost about 48 days of the receipt of the papers and thereafter, the Government Pleader received the papers on 11.11.2003. The appeal could be filed on 18.12.2003. Finding that the proper explanations are not coming forth from the side of the State Government and its officers, we directed that if the matter remained pending before the Superintending Engineer between 19.2.2003 and 20.6.2003, then this delay is required to be explained and similarly the delay as to why permission could not be granted by the Law Department and it took them the period between 21.7.2003 to 9.9.2003, two affidavits have been filed before us. Mathurbhai Becharbhai Pankhania, the Executive Engineer, who had filed the earlier affidavit, has again pledged his oath before this Court. Another affidavit is filed by one Bhupendrakumar Jivanlal Bhatt, Section Officer of the Law Department. This time, the affidavit sworn by Mathurbhai Becharbhai Pankhania takes a somersault and altogether a different stand. The earlier stand that the copy was received on 19th February, 2003 and thereafter on 20th June, 2003, a letter was written by the Superintending Engineer, has been given a go-bye. This time, it is submitted that the certified copy of the judgment and order passed by the learned Single Judge was dispatched by the office of the Government Pleader vide letter No. nkp/6411/02/5701 on 24th March, 2003. The said letter was received in the office of the Deputy Executive Engineer, Dhoraji on 4.4.2003, who in his turn, sent the certified copy to the Executive Engineer, Rajkot i.e. Mr. M.B. Pankhania, who in his turn, received the same on 7.4.2003. According to Mr. Pankhania, he requested the concerned Government Pleader to give his opinion, a request was made to the learned Government Pleader vide letter dated 16.5.2003. It must be recorded at this stage that the limitation for filing a Letters Patent Appeal is 30 days excluding the time required for obtaining the certified copy. The letter was received by the Executive Engineer on 7.4.2003 and almost after about 38 days, he asked for the opinion of the Government Advocate. Without disclosing the fact that on what particular date, the opinion was received from the learned Government Advocate, it was simply submitted that the opinion was received. We must observe that the Government Advocate

gave his opinion on 21st June,2003, which was received on the same day. Nobody knows why the departmental head or any other officer did not pursue the matter or immediately on reopening of the Court, came to the office of the learned Government Pleader for his opinion. The opinion was received on 21st July, 2003, but the Executive Engineer up to 2nd August,2003 did not forward the opinion to the Superintending Engineer. The Superintending Engineer after receiving the said opinion and papers, sent his opinion on 8.8.2003 to the Deputy Secretary, Irrigation. The Irrigation Department, vide its letter dated 17.10.2003 informed that the Legal Department gave the opinion to file an appeal in the present case. The said decision was received in the office of Mr. Pankhania on 13.10.2003. Thereafter, the officer contacted the Assistant Government Pleader on 15.10.2003, the relevant papers were collected and provided to the office of the Government Pleader on 11.11.2003 and the appeal came to be filed on 18.12.2003.

5. The Law Department received the papers, but did not take action immediately. It is expected of the Law Officers and the officers in the Law Department that they know the law. If they know the legal position about the limitation that a Letters Patent Appeal is required to be filed within 30 days, then it is expected of them that instead of sleeping over the subject, they would take an action immediately and require the concerned department to file an appeal well within the limitation. It is high time that the officers of the State Government at all levels are required to come out of their hibernation, rise to the occasion and take action right in time. They must not forget that any lapse on their part may be a misconduct, but it causes loss to the public. If a wrong judgment is not challenged right in time, then it would convey a message to the public that for certain reasons, the government did not challenge the judgment. It is to be noted that the challenge thrown right in time may or may not be accepted by the appellate forum, but the officers cannot be allowed to go in slumber. In the present matter, from the first affidavit/application, it would appear that the concerned Superintending Engineer was sleeping over the subject for four months and the Law Department did not do anything, at least for a period of 48 days. If the Legal Department slept over the subject for 48 days knowing well that the limitation is 30 days, then, it is virtually failing in its duties. It is also to be seen that according to the affidavit on which Mr. Pancholi places reliance, the papers were received in the office of the Government Pleader on 11.11.2003 and the appeal was filed on 18.12.2003 i.e. almost after 37 days. The supplementary affidavit filed by Mr. Pankhania takes the things from bad to worse. The Law Department recorded the opinion on a particular date that the appeal was required to be filed. They informed the concerned officer by their letter dated 7.10.2003 realising that the period of limitation had already run over and immediate notice was required to be taken.

6. Mr. Bhupendrakumar Jivanlal Bhatt is the Section Officer. He has verified the contents of paragraphs 1,2 and 3 on basis of the knowledge and contents of paragraphs-4 and 5 on basis of the information received by him. When we

wanted an affidavit of a particular person explaining the delay, then the affidavit of the person who had dealt with the matter ought to have been filed. An officer who dealt with the file, was obliged to file his personal affidavit in the matter. We fail to understand as to why the officer occupying high position in the department of Law should feel shy of filing the affidavit. We wanted an affidavit from the Superintending Engineer explaining the delay, but he failed to file the affidavit and required his subordinate Executive Engineer and, when we wanted the affidavit from the officer of the Law Department, who dealt with the file, they are not willing to file their affidavit, but asked the Section Officer to file the affidavit and affirm the statement saying that the same are true to his information. It is most unfortunate that despite the clear order from the High Court, the officers are not ready and willing to file their affidavit in the matter.

7. From the affidavit of Mr. Bhupendrakumar J. Bhatt, Section Officer, it would appear that on 22.7.2003, the file was received in the branch of Legal Department and because of the heavy load of work, nothing could be done, a necessary note was prepared by the concerned Deputy Section Officer on 19.8.2003, the same was sent to the typing branch on 26.8.2003, the file was received in the concerned branch from the typing branch and thereafter, the concerned Deputy Section Officer placed the said file for necessary decision before the Deputy Secretary and the Secretary/RLA on 27.8.2003. Thereafter, on 3.9.2003, the Deputy Secretary and the Secretary took a decision that in the present matter, an appeal was required to be filed. From paragraph-4 of this affidavit, it would appear that Mr. Bhatt did not deal with the file at any level. The file was placed before the Deputy Secretary, but he does not file his affidavit. The file was referred to the Deputy Secretary and the Secretary/RLA by the Law Department, but they are again shy of filing their own affidavit. The delay is sought to be explained under oath of a person who does not know anything.

8. It is yet to be seen in the matter that the learned Government Advocate/ Government Pleader recorded a positive opinion that the subject was not a matter where appeal was required to be filed. In his letter dated 21.7.2003, the learned Government Advocate observed as under:

"... I am of the opinion that the judgment and order is just, fit and legal which does not call for any interference by challenging the same by filing an appeal."

He, however, also advised in the following terms:-

"However, it is advisable to give effect to the judgment and if, the department feels it may take appropriate necessary actions immediately within the period of limitation."

If on 21.7.2003, a clear opinion was given that no appeal was required to be filed and if any action was to be taken, the same should be taken within the limitation, then, this letter should have worked as an eye opener. We do not know what persuaded the Law Department to record an opinion contrary to the opinion of the learned Government Pleader. Government Pleader is not a

subordinate authority to the Law Department, he holds his independent office and after applying his mind, if he records an opinion in the matter at hands that an appeal is not required to be brought to the Letters Patent Court, then his opinion must be given some respect. It is not that any person in Legal Department may brush aside an opinion given by Government Pleader for any whimsical reason and may require the department to file an appeal. When the officers of the Legal Department differ in their opinion or differ with the opinion of the Government Pleader, then they are obliged to record reasons, otherwise, their opinion would be fanciful, whimsical, capricious and arbitrary. Though it is a matter between two departments of the government, but when the departments do not synchronize properly and bring a dispute before the High Court, then the High Court must show its concern. In the present matter, we do not have anything on the record to show or suggest that why delay occasioned at different levels.

9. The State Government had taken different stands at different levels and the very same officer is filing the affidavit, which cannot be reconciled. The officers who are required to explain the delay are sitting behind the curtain and are permitting somebody to file an affidavit. The manner in which the matter has been handled at different levels shows an absolute and utter negligence on the part of the State Government. We find no reason to condone the delay. Civil Application No. 180 of 2004 is rejected. Consequently, the Letters Patent Appeal (Stamp Number) No. 1852 of 2003 is also dismissed.

10. Let the copy of this order be sent to the Chief Secretary, Law Minister and the Law Department so that they know that in what manner the government matters are being handled at different levels. The Law Department is advised by us to look into the Law of Limitation and at least, go through the provisions of Section 5 of the Limitation Act which does not require a simple or good cause but requires sufficient cause, which is something more than a good cause seeking condonation of delay. We expect from the Chief Secretary that after receiving a copy of this order, he will look into the matter and issue necessary instructions to the concerned Head of the Department, Law Department and the Government Pleader so that they synchronize in the matter and unnecessary delay is not occasioned in the appeals.