

(2008) 08 DEL CK 0117

In the Delhi High Court

Case No : Writ Petition (C) No. 3679 of 2008

Kumar Enterprises

APPELLANT

Vs

The Mines Tribunal and Others

RESPONDENT

Date of Decision : 06-08-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 97
Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 378(3)
Limitation Act, 1963 — Section 5
Mineral Concession Rules, 1960 — Rule 54(1)
Mines and Minerals (Development and Regulation) Act, 1957 — Section 30, 5(1)

Citation : (2008) 08 DEL CK 0117

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : Arun Verma and Aman Anand, for the Appellant; Dhruv Mehta and Ankur S. Kulkarni for Respondent No. 1 and Krishan Venugopal, U.N. Tiwari and Kamal Sethi, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sistani, J.

W.P. (C) No. 3679/2008

1. The present writ petition is directed against an order passed by the Mines Tribunal, dated 23.4.2008, condoning a delay of twenty-four days on the part of respondent No. 2 in filing a revision application against re-grant of a mining lease to the petitioner.

2. Brief facts, leading to the present petition, may first be noticed:

i. The Karnataka Government vide notification dated 15.3.2003 had called for applications for re-grant of mining lease over an area of 7.69 hectares in Ramandurga Range, Sandur Taluk, District Bellary. The petitioner, who is engaged in the business of exporting granite and mining of iron ore in the State

of Karnataka, was amongst the various applicants who applied for the re-grant.

ii. Following the procedure prescribed u/s 5(1) of the Mines and Minerals (Development and Regulation) Act, 1957, the Karnataka Government, on 6.8.2004, recommended the application of the petitioner to the Central Government, who, on 18.7.2006, approved the case of the petitioner for re-grant of the mining lease in the notified area.

iii. The respondent No. 2, who was also a contender for re-grant of the mining lease in question, filed a writ petition bearing W.P. (C) No. 1110/2006 in the Karnataka High Court assailing the orders dated 6.8.2004 and 18.7.2006 approving the case of the petitioner for re-grant of the mining lease. The said writ petition was, however, subsequently withdrawn.

iv. In the meanwhile, the re-grant of the mining lease to the petitioner was notified by the Karnataka Government vide notification No. Cl.28:MMM.2004, dated 27.9.2007, which notification was duly published in the State Gazette on 18.10.2007.

v. The notification dated 27.9.2007 was challenged by the respondent No. 2 by way of a revision application u/s 30 of the Mines and Minerals (Development and Regulation) Act, 1957. In addition thereto, the respondent No. 2 filed an application seeking condonation of delay for filing the revision.

vi. A preliminary challenge was made by the petitioner to the admissibility of the revision application filed by the respondent No. 2 on the ground that the same was barred by limitation.

vii. The Mines Tribunal, however, found the challenge made by the petitioner to the admissibility of the revision application unsustainable, and consequently, vide order dated 23.4.2008, condoned the delay on the part of the respondent No. 2 and admitted the latter's revision application for hearing on merits.

viii. Aggrieved, the petitioner has filed the present petition.

3. Mr. Arun Verma, learned Counsel for the petitioner, has vehemently contended that the delay on the part of respondent No. 2 in filing the revision application has been condoned by the Mines Tribunal in its impugned order dated 23.4.2004 in a totally unreasonable, arbitrary and fanciful manner, thereby resulting in infringement of valuable rights of the petitioner. The sum and substance of the submissions made on behalf of the petitioner may be outlined as under:

i. The notification for re-grant of the mining lease to the petitioner was issued by the Karnataka Government on 27.9.2007 and was subsequently published in the State Gazette on 18.10.2007. The respondent No. 2, for the purpose of challenging the notification dated 27.9.2007, was statutorily entitled to a limitation period of 90 days beginning from 18.10.2007 and expiring on 17.1.2008. The revision application challenging the notification dated 27.9.2007 was, however, filed by the respondent No. 2 on 11.2.2008. Inasmuch as the

notification dated 27.9.2007 came into the public domain on the date of its publication on 18.10.2007, the period of limitation for challenging the said notification ought to have been calculated from the date of its publication and none other. In these circumstances, the decision of the Mines Tribunal in considering a date different than 18.10.2007, and consequently, the delay of twenty-four days on the part of respondent No. 2 in filing the revision application, as computed by the Mines Tribunal, is erroneous and illegal, and thus, liable to be set aside.

ii. The Mines Tribunal, while computing a delay of twenty-four days in filing the revision application, has obviously premised its finding on the assumption that a copy of notification dated 27.9.2007 was received by the respondent No. 2 only on 16.1.2008. This assumption, however, stands uncorroborated by the documents filed on record. The respondent No. 2, in its application seeking condonation of delay, contended that it was not in possession of the notification dated 27.9.2007 and that it received the said notification only on 16.1.2008 in pursuance of its applications dated 7.1.2008 and 8.1.2008 filed under the Right to Information Act, 2005. However, bare perusal of the application dated 8.1.2008 reveals that no request has been made therein by the petitioner for a copy of the notification dated 27.9.2007. All that was placed on record by the petitioner before the Mines Tribunal was a receipt of a sum of Rs. 75/- which the respondent No. 2 claims to have paid for getting documents from the office of the Director, Mines and Geology. Further, the respondent No. 2, at the time of filing its application seeking condonation of delay, had placed on the record of the Mines Tribunal a copy of the letters dated 8.2.2008 and 29.9.2008. These letters were reminders sent to the Public Information Officer for complying with the request made by the petitioner vide its RTI application dated 7.1.2008. Viewing these circumstances in totality, it is incomprehensible as to how the date of 16.1.2008 could be the date on which the respondent No. 2 received a copy of the notification 27.9.2007.

iii. Given that both the petitioner as well the respondent No. 2 were rival contenders for re-grant of the mining lease by the Karnataka Government, and further, that the respondent No. 2 had filed a writ petition bearing W.P. (C) No. 1110/2006 in the Karnataka High Court assailing the orders dated 6.8.2004 and 18.7.2006 approving the case of the petitioner for re-grant of the mining lease, it is but obvious that the respondent No. 2 was sitting on the fence and waiting for the notification dated 27.9.2007 to come into public domain. In these circumstances, it is unfathomable to believe the defense taken by the respondent No. 2 that it came to know about the notification dated 27.9.2007 only in the first week of the January of 2008 and that it could procure a copy of the said notification not earlier than 16.1.2008.

iv. There is no explanation forthcoming from the respondent No. 2 as to why its revision application, at the time of filing, was not accompanied by an application seeking condonation of delay. It is only after the deficiency was pointed out by

the petitioner that the respondent No. 2 filed an application seeking condonation delay in filing the Revision Application.

v. In view thereof, the respondent No. 2, in order to make good his plea for condonation of delay in filing the revision application, has failed to show any cause, much less sufficient cause; nor does the application made by the respondent No. 2 seeking condonation of delay appears to have been made in a bona fide manner.

4. Mr. Krishan Venugopal, learned Counsel for the respondent No. 2, has stoutly resisted the submissions made on behalf of the petitioner by filing a counter-affidavit.

5. Learned Counsel for the respondent No. 2, at the outset of his arguments, has submitted that this Court, in exercise of its writ jurisdiction under Articles 226 and 227 of the Constitution of India, should in the ordinary course refrain from re-appreciating the findings in the impugned order dated 22.4.2008, unless such findings are patently erroneous or illegal.

6. It is adduced by learned Counsel for the respondent No. 2 that the sole reason which delayed the respondent No. 2 in filing its revision application was that the respondent No. 2 had received the notification dated 27.9.2007 only on 16.1.2008, and thus, could not file its revision soon after the publication of the said notification on 18.10.2007. To make good his point, learned Counsel for the petitioner has drawn the attention of this Court to the RTI applications dated 7.1.2008 and 8.1.2008 filed by the respondent No. 2 in order to procure the notification dated 27.9.2007.

7. Statutorily, learned Counsel for the respondent No. 2 has drawn support from Rule 54(1) of the MC Rules, whereunder, the period of limitation prescribed for filing a revision is three months from the date of communication of the order of the State Government. In view thereof, it is accordingly contended by learned Counsel that considering that a copy of the notification was made available to the respondent No. 2 only on 16.1.2008, the limitation period to file revision was to expire on 15.4.2008, and thus, the respondent No. 2 by filing its revision application on 11.2.2008 was well within the limitation period.

8. Learned Counsel for the respondent No. 2 has relied upon the findings of the Apex Court in its decisions in State of Nagaland Vs. Lipok AO and Others, wherein, while condoning a delay of 57 days in filing an appeal u/s 378(3) of the Code of Criminal Code, 1973, the Apex Court succinctly opined:

15. It is axiomatic that decisions are taken by officers/agencies proverbially at a slow pace and encumbered process of pushing the files from table to table and keeping it on the table for considerable time causing delay - international or otherwise - is a routine. Considerable delay of procedural red tape in the process of their making decision is a common features. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for

such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-?-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the Courts or whether cases require adjustment and should authorize the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal, needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while the State is an impersonal machinery working through its officers or servants.

9. In similar vein, the decision in *Mohammad Shafeeq v. Mirza Mohammad Husain and Ors.*, (2002) 9 SCC 460 has been relied upon by learned Counsel to bring home the point that technicality and rigidity should be avoided by the Courts of law whilst deciding an application seeking condonation of delay. In the said case, the appellant's application under Rule 97, Order XXI of the Code of Civil Procedure, 1908, raising objections to the execution of decree had been rejected by the executing Court. Although the District Judge allowed the appellant's appeal against dismissal of his objections by the executing Court, the High Court quashed the order of the District Judge on the ground that the appellant should have preferred a revision and not an appeal. Submitting to the order of the High Court, the appellant thereafter preferred a civil revision against the order of the executing Court, seeking thereunder condonation of delay in filing the revision. The learned Additional District Judge, who heard the revision, condoned the delay in filing the revision and set it down for hearing on merits. The order of the learned Additional Sessions Judge condoning the delay was, however, subsequently set aside by the High Court. Apparently, the principle reason which persuaded the High Court in setting aside the condonation of delay was that the appellant had prayed for conversion of his appeal before the District Judge into revision, and that prayer, though made before the High Court, was refused. Taking a strong exception to the stance of the High Court, the Apex Court unequivocally observed that inasmuch as the bona fides of the appellant had already been taken into account by the learned Additional Sessions Judge, the High Court ought not to have interfered with the order condoning delay on

the basis of too technical a view.

10. I have heard learned Counsel for the parties at length and perused the documents filed on record.

11. While deciding an application seeking condonation of delay, the Court must satisfy itself that the application is bona fide and that the applicant seeking condonation had sufficient cause for not initiating action within the prescribed period of limitation. There are a plethora of judicial pronouncements wherein rules of limitation pertaining to condonation of delay and the semantics of the expression "sufficient cause" have been formulated, reiterated and applied by the Courts of law. For the sake of prolixity, I shall not advert to these cases. Suffice for me to recall the case of N. Balakrishnan Vs. M. Krishnamurthy, wherein, while condoning a delay of 883 days, the Apex Court premised its decision not on the length of the delay but on the grounds of delay. The said case is also relevant because the Apex Court therein has elegantly laid down the principles which the Courts must observe while deciding whether or not delay should be condoned. For felicity of reference, these principles are culled out below:

(a) ...condonation of delay is a matter of discretion of the Court id at para 9.

(b) Length of delay is not matter, acceptability of the explanation is the only criterion.... Once the Court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse id at para 9.

(c) Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly id at para 11.

(d) There is no presumption that delay is approaching the court is always deliberate. This Court has held that the words "sufficient cause" u/s 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice id at para 12.

(e) If the explanation does not smack of mala fides or it is not put-forth as part of a dilatory strategy the Court must show utmost consideration to the suitor.... While condoning delay the Court should not forget the opposite party altogether.... It would be a salutary guideline that when Courts condone the delay due to laches on the part of the applicant the Court shall compensate the opposite party for his loss id at para 13.

12. With the aforementioned principles in perspective, I shall now embark upon deciding the present petition.

13. The relevant portions of the impugned dated 23.4.2008, condoning a delay of twenty-four days on the part of respondent No. 2 in filing a revision application against re-grant of a mining lease to the petitioner, may first be noticed:

10. I have carefully gone through the case record and submissions made by the revision applicant, the impleaded M/s. Kumar Enterprises and Sh. K.V. Mahanteshwarappa. The moot point before me at the moment is regarding the admissibility of the revision application. The impugned notification has been issued on 27.9.2007 which was admittedly published in the Gazette on 18.10.2007. The applicant has filed the condonation of delay on 1.4.2008, giving reasons for delay and pleadings for condonation of delay. I find the contention raised by the revision applicant that he has got the impugned notification by virtue of RTIA mode on 16.1.2008 and they have filed the instant Revision Application within the stipulated period, whereas the notification came into public domain on 18.10.2007 when it was published in the gazette. Therefore, it could be a delay of 24 days in filing of the revision application. To buttress the viewpoint, the revision applicant has submitted the copy of the notification received by them under the Right to Information Act, which is clearly stamped by the Department showing that the said document has been issued under the provisions of RTI Act, 2005.

11. I have also seen the original receipt No. 118054 dated 16.1.2008, in which the Department had issued receipt of Rs. 75/- to supply 19 pages under the RTIA, 2005. I have also personally seen the original copy through the mode of Right to Information Act. Though it is a fact that the said notification has been published on the gazette on 18.10.2007 and came on the public domain the bona fides of the revision applicant are evident from the applications made by them under the RTIA, following due process of law, therefore, I am inclined to agree with the contention of the revision applicant that though the notification has been gazette on 18.10.2007, they had got the copy of this notification only on 16.1.2008, which they have filed along with the revision application. Though (sic.) the State Government gazette notification of 18.10.2007, I am inclined that the revision applicant in bona fide belief had applied for obtaining this notification through the RTI mode, which he got on 16.1.2008.

12. Therefore, there could be a delay of about 24 days, which has been vehemently contested by the Sr. Advocate for the impleaded party. But it is not such a delay to deprive the revision applicant of its right to strike a claim and seek justice before the Central Government u/s 30 of the Mines and Minerals (Development and Regulation) Act, 1957. Moreover the impleaded party Shri K.V. Mahanteshwarappa, in pursuance to whose W.P., the said notification has been quashed, had also pleaded for admission of revision application and notifying them as impleaded party. In the interest of justice, I hold that the delay of about 24 days in filing of the revision application by the revision applicant is liable to be condoned and the revision application filed by the revision applicant is liable to be admitted. Shri K.V. Mahateshwarappa (sic.) is liable to be considered as an impleaded party.

14. It is not in dispute that the notification for re-grant of the mining lease was issued by the Karnataka Government on 27.9.2007 and was subsequently

published in the State Gazette on 18.10.2007. It is also not in dispute that the revision application challenging the notification dated 27.9.2004 was filed on 11.2.2008 and that the application seeking condonation of delay in filing the said revision application was filed on 1.4.2008. The singular plea taken by the respondent No. 2 in its application for condonation of delay before the Mines Tribunal was that the respondent No. 2 had received the notification dated 27.9.2007 only on 16.1.2008, and thus, could not file its revision soon after the publication of the said notification on 18.10.2007. Perusal of the impugned order dated 22.3.2008 reveals that the Mines Tribunal has ascertained the bona fides of the application of respondent No. 2 for condonation of delay by relying upon the original receipt No. 118054, dated 16.1.2008, issued by the Department of Mines & Geology for supplying 19 pages under the Right to Information Act, 2005 against a sum of Rs. 75/-. Both the receipt dated 16.1.2008 as well as a copy of the notification dated 27.9.2007 form part of the Court record. The notification dated 27.9.2007, filed at page of 28 of the present petition, bears stamps of the RTI, which, prima facie corroborates the plea taken by the respondent No. 2 that the said notification was issued to the respondent No. 2 pursuant to the applications filed under the RTI. Perusal of the RTI applications dated 7.1.2008 and 8.1.2008, filed at pages 79 and 75 respectively of the present petition, further fortify the plea that the notification dated 27.9.2007, despite stated to have been published on 18.10.2007, was not made available to the respondent No. 2 until the beginning of the year 2008 and that the latter had to procure a copy thereof through the RTI mode. The receipt dated 16.1.2008, the copy of the notification dated 27.9.2007 as well the RTI applications dated 7.1.2008 and 8.1.2008, originals whereof have been produced in the Court today, fairly justify the bona fides of the application of respondent No. 2 for condonation of delay, and relying on the said documents, the Mines Tribunal has correctly come to the finding that the revision application of the respondent No. 2 could not be filed within the stipulated limitation period inasmuch as the notification dated 27.9.2007 was made available to the respondent No. 2 only on 16.1.2008.

15. I also find sufficient force in the submissions made by learned Counsel for the respondent No. 2 that the respondent No. 2 stood nothing to gain in not filing its revision application within the prescribed limitation period, more so when the respondent No. 2 was also an interested party in the re-grant of the mining lease and had even assailed the re-grant of the said lease to the petitioner in writ proceedings before the Karnataka High Court. Thus, given that the respondent No. 2 admittedly had a vested interest in the notification dated 29.7.2007, there is, at least prima facie, no reason to believe that the respondent No. 2 did not act with diligence in obtaining a copy of the said notification.

16. It is also noteworthy that the Mines Tribunal, in its concluding remarks in the impugned order dated 29.7.2007, has observed that the delay in the instant case is not such "to deprive the revision applicant of its right to strike a claim and seek justice before the Central Government u/s 30 of the Mines and Minerals

(Development and Regulation) Act, 1957". By making such an observation, and consequently, by condoning the delay on the part of the respondent No. 2, the Mines Tribunal obviously, and rightly so, in its pursuit to subserve the larger interests of justice, exercised its discretion to eschew the technical and pedantic considerations that could have possibly occasioned the delay.

17. For the reasons outlined in the foregoing paragraphs, I find no infirmity in the impugned order passed by the Mines Tribunal, dated 23.4.2008, condoning a delay of twenty-four days on the part of respondent No. 2 in filing its revision application against re-grant of a mining lease to the petitioner. Consequently, the present petition is dismissed.