

(1991) 12 DEL CK 0009
In the Delhi High Court
Case No : Suit No. 320 of 1991

Narain Dass R. Israni

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-12-1991

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (1992) 1 ARBLR 405 : (1992) 48 DLT 297 : (1992) 22 DRJ 27 :
(1992) 40 ECR 439

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : Naresh Markanda and M.C. Garg, for the Appellant;

Judgement

Usha Mehra, J.

(1) The arbitrator, Shri N.H. Chandwani, respondent No. 2 filed his award and the proceedings. Notice of the filing of the award was issued to MIS. Narain Doss R. Israni, the petitioner as well as to the Union of India, respondent No. 1. Union of India was served with the notice of the filing of the award on 15th February, 1991. The case was taken up by the Deputy Registrar on, 19th March, 1991 but no objections on behalf of the Union of India were filed. So far as the petitioner was concerned, they wanted the award to be made a rule of the Court. Later on, On 16th April, 1991, the Union of India filed the objections along with an application u/s 5, the Limitation Act. It is this application, which has come up for consideration before this Court. Notice of this application was issued to the petitioner, who has contested the same on the ground, that the objections now sought to be filed are barred by time. The following issue was framed to determine this application:

" WHETHER there is sufficient ground for condoning the delay in filing the objections?"

(2) It was decided by the parties that they were not to lead any evidence but

would address the arguments only. I have heard Mr. Naresh Markenday, counsel for the petitioner, and Mr. M.C. Garg. counsel for Union of India. Admittedly, the period for filing the objection expired on or before 14th March, 1991 because the Union of India in this case was served on 15th February, 1991 and the objections could have been filed within the statutory period of thirty days. It is also an admitted fact on record that the objections have been filed along with the condensation application on 16th April, 1991. Reason given for condensation is the procedural delay in working of the Government office. According to respondent the award dated 10th December, 1990, was received in their office on 20th December, 1990. It was not acceptable to the Executive Engineer who, Therefore, forwarded the same to the Superintending Engineer with his comments on 25th January, 1991. After considering the Executive Engineer's observations and suggestions, the Superintending Engineer opined that the same be challenged and forwarded his comments for approval to the Chief Engineer on 18th February, 1991. In the meanwhile, the Department approached the Senior Counsel of the C.P.W.D. for his opinion on the award and the said opinion was received on 13th March, 1991. Again, the Ministry of Urban Development was approached for giving permission to challenge the award 15th March, 1991 and the Ministry communicated the approval to the Chief Engineer on 27th March, 1991. The Chief Engineer in turn informed the Executive Engineer on 1st April, 1991. The Executive Engineer received the approval on 9th April, 1991 and thereafter, the objections were filed. This in nutshell is the reason for seeking the condensation of delay, in fact in this application no reason has been assigned why the officers did not take the file personally particularly when all the offices of the C.P.W.D. are situated in the same building. The deontological graph of the movement of the file shows the "care too hoot" attitude of the respondent. Award was received in the office of the Executive Engineer on 20th December, 1990. He took more than a month to decide to challenge the award. Opinion of the panel lawyer was obtained on 29th January, 1991. The Superintending Engineer took almost 25 days to forward the file to Chief Engineer. The Superintending Engineer, according to respondent own showing recommended for challenging the award and sought the approval of the Chief Engineer on 18th February, 1991 i.e. after the notice of the filing of the award was served on the respondent. Still neither the Executive Engineer nor any other official of the Department bothered to ensure that the objections be filed within 30 days. After having obtained the opinion from the panel lawyer, why the opinion of a Senior Counsel was not obtained instead of waiting till 13th March, 1991. Not only this in para 3 of the application it had been mentioned that the file was forwarded in February, 1991 for approval of Ministry of Urban Development. However, in the same very para, it has been further mentioned that after seeking approval of Senior Counsel on 13th March, 1991, the matter was referred to the Ministry of Urban Development for giving permission to challenge the award on 15th March, 1991. This is a contradiction in itself. If the file had already been referred on 18th February, 1991 as mentioned in para 3 of the application, there could not have been any necessity to again refer the matter to the Ministry of Urban

Development on 15th March, 1991. The Department must have been aware of the fact that by 15th March, 1991, the period of filing the objections had already expired. The Senior Counsel who gave the opinion on 13th March, 1991, must have taken into account the fact that the period of limitation was going to expire the next day. The perusal of annexure-1 falsifies the statement of Shri. R.K. Goel, Executive Engineer, C.P.W.D. that the opinion of the Senior Counsel of the C.P.W.D. was obtained on 15th March, 1991, the letter was signed by the Chief Engineer on 15th March, 1991 but was issued against entry No. 473 on 18th March, 1991.

(3) When there is a delay, each day delay has to be explained, After 14th March, 1991, the respondent has not been able to explain the delay. On the contrary, the respondent/ Union of India has taken it as if the moving of an application for condensation of delay u/s 5 of the Limitation Act, the delay will be condoned as of right. condensation of delay u/s 5 of the Limitation Act cannot be claimed as of right. The applicant has to show sufficient cause and make out a good case for seeking the delay to be condoned. If the courts were to accept the mere procedure of working in Government offices as sufficient cause for the delay, then the delay would have to be condoned, in almost every case and the period of limitation prescribed for filing of the objections or for that matter suits or appeal would become misnomer. The intention of the legislature is not to discriminate between a common man and the Union of India for purposes of furnishing sufficient causes for condensation of delay. For the purposes of moving an application u/s 5 of the Limitation Act and for explaining the delay Uoi cannot take advantage of its own wrongs. Office procedure is no ground to condone the delay. To my mind, the discretion u/s 5 of the Limitation Act cannot be exercised in this case because from the chronological dates mentioned above, it is clear that the respondent/official of the respondent had been taking it very lightly in their own stride least mindful of the fact that the period of filing objections had expired. This is a clear case of negligence and indifference on the part of the respondent. Similar came up before Justice A.B. Sharya in the case of Kanishka Builders Vs. Union of India & Ors. wherein it was held that:

" THERE appears to be no Justification for the notice being sent from Office of the secretary to the Engineer in Chief's Branch and from there to the office the Chief Engineer and then to the CWE. The notice served on the Secretary itself indicated that it concerned the CWE. In addition to this, a copy of the application under Sections 14 and 17 of the Arbitration Act was also forwarded to the Secretary. Para 3 of that application gave full particulars of the contract and the concerned department. In theses circumstances, it cannot be claimed that respondent No. 1 acted diligently, or that the delay occurred beyond the control of respondent No. I, in routing the notice through such a long channel down to the Swe, especially in a court case involving limitation"

(4) The various offices of the Government, who dealt with the notice in the present case, are located in Delhi. Yet, no Explanation at all has been offered for

the time taken after expiry of the prescribed period in movement of the papers from one stage to the other, the application merely mentions the dates when papers were passed on from one to the other office of the Government. This cannot be said to be an Explanation of sufficient cause for the delay. As held in *State of Bihar Vs. Dhajadhara Rai* procedure of the working in Government offices is irrelevant for considering sufficient cause for the purposes of Section 5 of the Limitation Act. I am in complete agreement with the observations made by Saharya, J. Since, I have already observed above that the applicant has not shown sufficient cause for the delay in making the application. I do not find any justification to condon the delay in filing the objections. Mr. Garg, appearing for the respondent/applicant contends that a liberal approach should be adopted to do justice to the parties particularly when the respondent/Union of India is not an individual. If the objections are not allowed to be taken on record, injustice will be done to the Department. There cannot be any quarrel with the fact that to do substantial justice opportunity should be afforded and in the interest of justice liberal view should be taken. At the same time we cannot throw over board the statutory provision of law in order to accommodate the Union of India nor a liberal view can be taken in such a fashion which should make redundant the provision of limitation. Legislature provides that delay be condoned if sufficient cause is shown. But in the instant case as already observed except mentioning of office procedure and shifting of file from one office to another, nothing else has been said. Routing of file from one office to another is not sufficient cause, hence in the absence of sufficient cause having been shown, I find no merits in this application.

(5) Even otherwise, I have perused the award and find no error apparent on the face of the award except claim No. 19 where the arbitrator has granted future interest at the rate of 14% per annum from the date of the award till realisation. The arbitrator has no power to grant the future interest. Therefore, the award against claim No. 19 is set aside. I accordingly modify the award to this extent. Decree in terms of the award except claim No. 19 is hereby passed. Let decree be prepared with interest at the rate of 9% per annum from the date of the award till realisation. December 12th 1991