(2013) 03 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

National Dairy Research Institute (Deemed University) APPELLANT

Vs

Sheldon Manufacturing Inc. And Ors. RESPONDENT

Date of Decision : 18-03-2013

Acts Referred:

Citation : 2013 2 CPJ 275

Hon'ble Judges : J.M.MALIK J.

Final Decision : Petition dismissed

Judgement

1. THERE is delay of 211 days in filing this revision petition. The gist of the explanation given by the petitioner is this. The petitioner received the order dated 1.3.2012 passed by the State Commission, Haryana, Panchkula on 7.5.2012. The said order was put up before the Director of Petitioner Institute in the middle of May, 2012, after lapse of two months and one week. The Director of the petitioner requisitioned for the office case file. Legal opinion was sought by the petitioner Institute vide letter dated 31.5.2012 from the Advocate who conducted the case. The legal opinion was received on 10.7.2012 sent by Law Expert dated, 15.6.2012. Consequently, another two months were lost in obtaining legal opinion. Such like steps should have been taken promptly and within the time of limitation. The petitioner Institute opined that the order passed by the District Forum was correct and that of the State Commission should be challenged. The opinion from another Lawyer from Supreme Court, whose name was not disclosed, was sought. After receipt of the second legal opinion, it was sent to the Law Section at Indian Council of Agricultural Research (ICAR) Head Quarters vide letter dated 6.8.2012 which was received in the H.Q. on 8.8.2012. The record was called from Law Section of ICAR. New file was opened and the case was called from the petitioner Institute. In the months of September and October, 2012, requested the Panel Advocate who conducted the cases at District Forum and State Commission to send the complete files. The files were received in the month of November, 2012. Due to inadvertence, the complete order passed by the State Commission was not sent to the Law Section of ICAR and accordingly a letter dated 6.12.2012 to that effect was also received by the

ICAR. The said impugned order passed by the State Commission was received in the Law Section on 11.12.2012. All the files were put before the Assistant Legal Advisor in the middle of December, 2012, who, thereafter recommended that appeal be filed in this matter. The Assistant Legal Advisor after going through the records and opinion of the Advocate, submitted the file for approval for filing the revision petition to the competent authority, i.e., Director General, ICAR, through proper channel on 28.12.2012. The file was received after approval for filing re vision petition on 31.12.2012 and was received by the present Counsel on 9.1.2013. Thereafter, the revision petition was prepared and got signed by the concerned Director and the same was received by the Advocate on 26.2.2013 and, thereafter, the same was filed before this Commission on 1.3.2013.

2. IT was averred that under these circumstances, the delay should be condoned. First of all, the delay explained by the petitioner is merely a lame excuse. Secondly the said application is vague, evasive and leads the Commission, nowhere. Dr. A.K. Srivastava, Director of Petitioner Institute did not mention the name of the Advocate, the Director, names of Legal Expert, the name of the Supreme Court Advocate. Such like stories can be created at any time. There was no prompt action on behalf of the petitioner. The matter was being corresponded through post, etc. No particular person was appointed to get the work done to reach the office then and there. Consumer Protection Act, 1986 provides summary procedure and there are fixed periods of limitation for deciding the cases. The case is hopelessly barred by time. This view finds force from the following authorities: (i) In Anshul Aggarwal v. New Okhla Industrial Development Authority, IV, (2011) CPJ 63 (SC), the Hon''ble Apex Court has held that it is also apposite to observe that while deciding an application filed in such cases for condonation of delay, the Court has to keep in mind that the special period of limitation has been prescribed under the Consumer Protection Act, 1986 for filing appeals and revisions in consumer matters and the object of expeditious adjudication of the consumer disputes will get defeated if this Court was to entertain highly belated petitions filed against the orders of the Consumer Foras.

(ii) In Chief Post Master General & Ors. v. Living Media India Ltd. & Anr., II : (2012) SLT 312 : I : (2012) CLT 338 (SC) decided on 24.2.2012, by the Apex Court, in Civil Appeal Nos. 2474 -2475 of 2012 arising out of SLP (C) No. 7595 -96 of 2011, it was held that:

13. In our view, it is the right time to inform all the Government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/ years due to considerable degree of procedural red -tape in the process. The Government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for Government

departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.

(iii) In Bikram Dass v. Financial Commissioner and Others, : AIR 1977 SC 1221, the Hon''ble Apex Court has held that:

Section 5 of the Limitation Act is a hard task -master and judicial interpretation has encased it within a narrow compass. A large measure of case -law has grown around Section 5, its highlights being that one ought not easily to take away a right which has accrued to a party by lapse of time and that therefore a litigant who is not vigilant about his rights must explain every day''s delay.

(iv) In Balwant Singh v. Jagdish Singh & Ors., V : (2010) SLT 790 : III : (2010) CLT 20 (SC) : Civil Appeal No. 1166 of 2006, decided on 8.10.2010, the Hon''ble Apex Court has held:

The party should show that besides acting bona fide, it had taken all possible steps within its power and control and had approached the Court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention.

[Advanced Law Lexicon, P. Ramanatha Aiyar, 3rd Edition, 2005].

The case is clearly barred by time. Moreover, on merits also, the case is very weak. The requisite machine was purchased for commercial purposes only. Purchase of a machine by an Institute cannot come within the term "services" availed by the petitioner, i.e. Institute, exclusively, for the purpose of earning its livelihood, by means of self -employment. On both counts, the petition merits dismissal. The case is barred by time, as well as, has no ground to interfere in the merits. The revision, therefore, is dismissed on both the above said counts, with no order as to costs.

