
(2021) 05 OHC CK 0012
In the Orissa High Court
Case No : MACA No.504 Of 2020

National Insurance Co. Ltd. APPELLANT
Vs
Nibedita Mohanty @ Das And Others RESPONDENT

Date of Decision : 10-05-2021

Acts Referred:

Citation : (2021) 05 OHC CK 0012

Hon'ble Judges : Dr. S. Muralidhar, CJ

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dr. S. Muralidhar, CJ

I.A. No.973 of 2020

1. This matter is taken up by video conferencing mode, in the Vacation Court.
2. There is a delay of 166 days in the present appeal filed against the impugned judgment dated 17th October, 2019 passed by the 2nd Additional District Judge-cum-3rd MACT, Cuttack in M.A.C. Case No.13 of 2014.
3. Having perused the application, this Court finds that there is no satisfactory explanation for the delay in filing the appeal. The explanation that the delay was account of the matter being under scrutiny in the office of the Appellant is entirely unsatisfactory and unconvincing.
4. The Supreme Court has made it clear in a series of judgments, including the recent decision in The State of Madhya Pradesh v. Bherulal 2020 SCC OnLine SC 849, that there has to be a proper and convincing reason for the delay in state authorities filing appeals. In the said decision the Supreme Court observed as under:

2. We are constrained to pen down a detailed order as it appears that all our counseling to Government and Government authorities have fallen on deaf ears i.e., the

Supreme Court of India cannot be a place for the 2 Governments to walk in when they choose ignoring the period of limitation prescribed. We have raised the issue that if the Government machinery is so inefficient and incapable of filing appeals/petitions in time, the solution may lie in requesting the Legislature to expand the time

period for filing limitation for Government authorities because of their gross incompetence. That is not so. Till the Statute subsists, the appeals/petitions have to be

filed as per the Statutes prescribed.

3. No doubt, some leeway is given for the Government inefficiencies but the sad part is that the authorities keep on relying on judicial pronouncements for a period of

time when technology had not advanced and a greater leeway was given to the Government (Collector, Land Acquisition, Anantnag & Anr vs. Mst. Katiji & Ors.

(1987) 2 SCC 107). This position is more than elucidated by the judgment of this Court in Office of the Chief Post Master General & Ors. v. Living Media India Ltd. & Anr. (2012) 3 SCC 563 where the Court observed as under:

“12) It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking

up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was

possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is

to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter

of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial

justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of

impersonal

machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law

of limitation undoubtedly binds everybody including the Government.

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 4 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.â??

Eight years hence the judgment is still unheeded!

4. A reading of the aforesaid application shows that the reason for such an inordinate delay is stated to be only â??due to unavailability of the documents and the

process of arranging the documentsâ??. In paragraph 4 a reference has been made to â??bureaucratic process works, it is inadvertent that delay occursâ??.

5. A preposterous proposition is sought to be propounded that if there is some merit in the case, the 5 period of delay is to be given a go-by. If a case is good on merits, it will succeed in any case. It is really a bar of limitation which can even shut out good cases. This does not, of course, take away the jurisdiction of the Court

in an appropriate case to condone the delay.

6. We are also of the view that the aforesaid approach is being adopted in what we have categorized earlier as â??certificate casesâ?. The object appears to be to

obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has

dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed. We have on earlier occasions

also strongly deprecated such a practice and process. There seems to be no improvement. The purpose of coming to this Court is not to obtain such certificates and

if the Government suffers losses, it is time when the concerned officer responsible for the same bears the consequences. The irony is that in none of the cases any

action is taken against the officers, who sit on the files and do nothing. It is presumed that this Court will condone the delay and even in making submissions,

straight away counsels appear to address on merits without referring even to the aspect of limitation as happened in this case till we pointed out to the counsel that

he must first address us on the question of limitation.

7. We are thus, constrained to send a signal and we propose to do in all matters today, where there are such inordinate delays that the Government or State

authorities coming before us must pay for wastage of judicial time which has its own value. Such costs can be recovered from the officers responsible.

8. Looking to the period of delay and the casual manner in which the application has been worded, we consider appropriate to impose costs on the petitioner-State of

Rs.25,000/- (Rupees twenty five thousand) to be deposited with the Mediation and Conciliation Project Committee. The amount be deposited in four weeks. The

amount be recovered from the officers responsible for the delay in filing the special leave petition and a certificate of recovery of the said amount be also filed in this

Court within the said period of time.

9. The special leave petition is dismissed as time barred in terms aforesaid.

5. In the light of the above pronouncement of the Supreme Court, this Court finds that the explanation offered by the Appellant for the extraordinary

delay in filing this appeal is wholly unsatisfactory. Accordingly, this Court declines to condone the delay of 166 days in filing the appeal.

6. The I.A. is dismissed.

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7. The appeal is dismissed on the ground of delay. Pending application(s), if any, stand disposed of.

8. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order

available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide

Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021.