
(2013) 03 DEL CK 0084

In the Delhi High Court

Case No : LPA 96/2012

New Okhla Industrial Development Authority

APPELLANT

Vs

Po Labour Court and Others

RESPONDENT

Date of Decision : 04-03-2013

Acts Referred:

Citation : (2013) 4 SCT 63

Hon'ble Judges : D. Murugesan, C.J;V.K. Jain, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

V.K. Jain, J.

LPA 96/2012 and CM No. 2345/2012 (for condonation of delay in filing the appeal)

1. A writ petition being WP(C) No. 3914/1999 was filed by the appellant against an Award dated 11.08.1998 passed by the Labour Court. The said writ petition was dismissed on 07.02.2007 as no one appeared for the appellant/petitioner even on the second call. CM No. 14710/2010 was then filed by the appellant in the said writ petition for restoration of the appeal. The application for restoration of the appeal was accompanied by CM No. 14711/2010 for condonation of 1347 days in filing the application for restoration of the writ petition. When CM Nos. 14710/2010 and 14711/2010 were taken up for hearing on 02.11.2010, no one appeared for the petitioner/appellant, as a result of which, the said applications were dismissed in default. A fresh application being CM No. 20703/2010 was then filed by the appellant/petitioner for restoration of CM Nos. 14710/2010 and 14711/2010 which had been dismissed in default on 02.11.2010. The said application was allowed on 30.11.2010 and consequently CM Nos. 14710/2010 and 14711/2010 were restored.

Vide order dated 29.07.2011, the learned Single Judge dismissed CM Nos. 14710/2010 and 14711/2010, holding that no satisfactory explanation had been

given by the appellant/petitioner for the inordinate delay of 1347 days in seeking restoration of the writ petition. Being aggrieved, the appellant is before us by way of LPA No. 96/2012. Since there was delay even in filing the appeal, CM No. 2345/2012 has been filed seeking condonation of delay of 93 days in filing LPA.

We have heard the learned counsel for the parties. It is not in dispute that the writ petition was dismissed in default on 07.02.2010 and CM No. 14710/2010 seeking restoration of the writ petition was filed after delay of 1347 days. The first question, which comes up for consideration, is as to whether the appellant/petitioner has given satisfactory explanation for the inordinate delay of 1347 days in seeking restoration of the writ petition. It was stated in CM No. 14711 of 2010 seeking condonation of delay of 1347 days in seeking restoration of the writ petition that the dismissal of the writ petition in default on 20.02.2007 came to the knowledge of the appellant/petitioner only when its lawyer appeared before the Implementation Officer on 15.03.2010 and the papers supplied by the counsel for the respondent were examined. It was also stated in the application that the file of the Court was inspected on 08.04.2010 and thereafter the petitioner was informed by the counsel regarding dismissal of the writ petition. It was further stated that on 06.09.2010, the petitioner/appellant informed the present counsel that the file had been traced, thereafter, the application was prepared and came to be filed on 27.10.2010.

2. A perusal of the short affidavit by respondent No. 3 would show that after dismissal of the writ petition on 20.02.2007, he approached the appellant at its office in Sector 6, Noida on 20.11.2007 and delivered an application for implementation of the award of the Labour Court. On receipt of the said application, the appellant/petitioner issued acknowledgment of a sealed envelope from respondent No. 3 on 20.11.2007 itself. A copy of the acknowledgment dated 20.11.2007 has been filed by respondent No. 3. This is also the case of respondent No. 3 that on 21.11.2007, he met the Personnel Officer of the appellant Shri R.P. Kalra along with a copy of his application seeking implementation of the award and that application contained not only the Delhi address of respondent No. 3, but also the address of his Advocate for any further enquiry. According to respondent No. 3, in the application which he delivered personally to the personnel officer, he had informed the appellant that the writ petition filed by it had been dismissed in default and non-prosecution on 20.11.2007 and the appellant/petitioner was requested to reinstate him in service with back wages in terms of the award of the Labour Court. The respondent No. 3 has placed on record a copy of the entry pass issued to him on 21.01.2007, for entering the office of the appellant/petitioner in Sector 6, Noida. The entry pass bears not only the name and photograph of respondent No. 3, but also the name of the officer whom he had met on that day.

3. In view of the documents filed by respondent No. 3, it can hardly be disputed that the fact of dismissal of the writ petition on 20.02.2007 had been brought to the knowledge of the appellant firstly on 20.01.2007 and then on 21.11.2007.

There is absolutely no explanation from the appellant as to why no step was taken by it to seek restoration of the writ petition, despite coming to know that the same had been dismissed in default on 20.02.2007. The appellant/petitioner, instead of giving an explanation for not seeking restoration of the writ petition, despite having come to know of its dismissal, chose to claim that dismissal of the writ petition came to its knowledge only on 15.03.2010.

4. Assuming that the appellant/petitioner came to know of the dismissal of the writ petition only on 15.03.2010 in the office of Deputy Labour Commissioner, New Delhi, there is no convincing explanation for the delay which occurred thereafter in seeking restoration of the writ petition. According to the appellant/petitioner, the file of the Court case was inspected on 08.04.2010. There is no explanation for not inspecting the Court file immediately after 15.03.2010. Since the appellant/petitioner was represented by a counsel in the writ petition, there could be no difficulty in inspecting the record immediately after 15.03.2010. The case of the appellant/petitioner is that on 06.09.2010, the present counsel was informed that the file had been traced. Again, there is no explanation for the delay from 09.04.2010 to 05.09.2010. We fail to appreciate why the application seeking restoration of the writ petition was not filed immediately after inspection of the Court file on 08.04.2010. Even the time taken for preparing and filing the application, in our opinion, was unreasonably long. The appellant certainly did not require more than 1 ? months to file such a simple application.

5. Coming to the delay in filing this appeal, the explanation is given in para 2 of the application which reads as under:-

That the petitioner is an authority and prior permission was required for preferring any petition in the cases pending disposal, which may take a considerable long time, which cause about 93 days in filing the present LPA before this Hon"ble Court.

In our opinion, the application seeking condonation of delay in filing the appeal also does not give any satisfactory explanation for the delay. Despite being an "Authority", the appellant/petitioner is governed by the provisions contained in Limitation Act and, therefore, is duty bound to explain the delay in approaching the Court. The explanation needs to be more convincing and plausible in case the delay is inordinate. Considering the fact that not only the writ petition was dismissed in default, even its application seeking restoration of the writ petition had been dismissed, the appellant was expected to be vigilant at least in filing the appeal against the impugned order. Unfortunately, the application under consideration contains no convincing explanation for the delay in filing the appeal. To say that "prior permission was required for preferring any petition in the cases pending dismissal which may take a considerable long time", in our opinion, is not an explanation at all. The appellant ought to have explained what prevented it from filing the appeal within the period of limitation prescribed for the purpose. In the absence of any such explanation, the delay in filing the appeal cannot be condoned.

6. The learned counsel for the appellant has referred to the decision of this Court in *Union of India Vs. R.P. Builders*, , where the Court, after considering various decisions of Supreme Court on the issue held as under:-

(8) The above decisions of the Supreme Court clearly lay down that while the State cannot be treated differently from any other litigant, the Court is "bound" to take into consideration the following factors d) red-tapism in government, (ii) delays in correspondence, (iii) habitual indifference of government officials or government pleaders as distinct from the usual diligence of ordinary litigants or lawyers for private parties; (iv) collusion or negligence by government officials or Government pleaders or fraud, (v) damage to public interest or to public funds or interests of the State, (vi) institutional or bureaucratic procedures as well as delays arising thereon, and (vii) need to render substantial justice on merits. It is not as if, fraud on the part of the government officials or pleaders has necessarily to be proved by the government in every case.

In the above referred case, the judgment was delivered by the learned Single Judge on 10.02.1992, certified copy was applied on 14.02.1992 and delivered on 30.04.1992, though the date for delivery given by the Registry was 03.03.1992. The Registry did not deliver the certified copy on the date which it had given and further dates were given. The case file was sent to the Department on 15.05.1992, opinion by Government counsel was given on 03.06.1992, the file was finally cleared on 16.07.1992 and the case brief was received by Government counsel on 20.08.1992. It was on these facts that the Court found the delay to be bona fide being a result of procedural complexities. However, in the case before us, there is no such explanation and the plea taken by the appellant/petitioner that it came to know of the dismissal of the writ petition only on 15.03.2010 stands falsified from the documents file by respondent No. 3. Moreover, there is no explanation for not seeking restoration of the writ petition, soon after 15.03.2010. Similarly, there is no worthwhile explanation given for the delay in filing the appeal. In these circumstances, the reliance upon the above-referred decision is wholly misplaced.

In *Balwant Singh (Dead) Vs. Jagdish Singh and Others*, , Supreme Court, *inter alia*, held as under:-

The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. (sic a lis). These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right, as accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law

as a result of his acting vigilantly.

In *Maniben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai*, , considering the expression "sufficient cause" used in Section 5 of Limitation Act in the context of Municipal Corporation of Brihan, Mumbai, Supreme Court, inter alia, observed as under:-

24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.

25. In cases involving the State and its agencies/instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and/or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest.

In *Office of The Chief Post Master General and Others Vs. Living Media India Ltd. and Another*, , after reviewing its earlier decisions on the subject, inter alia, held 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 SLP 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 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.

Applying the legal proposition enunciated in these cases and the facts and circumstances discussed hereinabove, we find no merit either in CM No. 3909/2012, seeking condonation of delay in filing the appeal or in the appeal on merits. The appeal as well as the CM are therefore, dismissed. There shall be no order as to costs.