

(2024) 05 SHI CK 0118

In the High Court Of Himachal Pradesh

Case No : Civil Miscellaneous Petition (Main) No. 475 Of 2024

State Of Himachal Pradesh & Others

APPELLANT

Vs

Kusum & Others

RESPONDENT

Date of Decision : 28-05-2024

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2024) 05 SHI CK 0118

Hon'ble Judges : M.S. Ramachandra Rao, CJ; Satyen Vaidya, J

Bench : Single Bench

Advocate : Pranay Pratap Singh, Arsh Rattan

Final Decision : Dismissed

Judgement

M.S. Ramachandra Rao, CJ

1. This application is filed by the applicants under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 256 days in filing the Letters Patent Appeal challenging the judgment dt. 04.07.2023 in CWP no.5048 of 2022 of the learned Single Judge.

2. It is contended that the judgment of the learned Single Judge in CWP no.5048 of 2022 was passed on 04.07.2023; that intimation of the same was received in the office of the applicants through a letter written by the Advocate General on 01.09.2023; prior thereto, the Pr. Secretary (PW) to the Government of Himachal Pradesh, through a letter dt. 13.07.2023, had directed the Engineer-in-Chief, HPPWD, to take further necessary action in respect of the said judgment of the learned Single Judge; thereafter, the Engineer-in-Chief examined and forwarded it to the Law Department on 04.08.2023; in the meantime, the copy of the judgment was also downloaded from the website of the High Court; advise was given by the Law Department through a letter dt. 01.09.2023 to the Engineer-in-Chief, HPPWD, Shimla, and a decision was taken to file the LPA in this Court; and the LPA came to be filed on 22.03.2024.

3. A perusal of the above explanation shows that though the High Court disposed of the Writ petition on 04.07.2023, the judgment was admittedly downloaded from the High Court website and the Advocate General also informed on 01.09.2023 about disposal of the same.

4. However, the certified copy of the judgment of the learned Single Judge filed alongwith the LPA shows that the application form was filed for getting the certified copy in the High Court Registry only on 11.03.2024 and it was issued on 19.03.2024.

5. Therefore, the averments contained in the application for condonation of delay, are factually incorrect and seems to have been cooked up in support the plea for condonation of delay in filing the appeal.

6. Even, assuming that the pleadings contained in the application are correct, we fail to see why when the judgment was delivered by the learned Single Judge on 04.07.2023, it took two months for the office of the Advocate General to write a letter on 01.09.2023 informing the applicants of the same; and if the copy of judgment was already downloaded and the Law Department had given advise to file LPA on 01.09.2023, why the applicants had to wait till 22.03.2024 to file the appeal.

7. In *Postmaster General and others vs. Living Media India Limited and another* (2012) 3 SCC 563, the Supreme Court held: -

"25. We have already extracted the reasons as mentioned in the "better affidavit" sworn by Mr. Aparajeet Pattanayak, SSRM, Air Mail Sorting Division, New Delhi. It is relevant to note that in the said affidavit, the Department has itself mentioned and is aware of the date of the judgment of the Division Bench of the High Court in *Office of the Chief Postmaster v. Living Media India Ltd.* as 11.09.2009. Even according to the deponent, their counsel had applied for the certified copy of the said judgment only on 08.01.2010 and the same was received by the Department on the very same day. There is no explanation for not applying for certified copy of the impugned judgment on 11.09.2009 or at least within a reasonable time. The fact remains that the certified copy was applied only on 08.01.2010, i.e. after a period of nearly four months.

26. In spite of affording another opportunity to file better affidavit by placing adequate material, neither the Department nor the person in-charge has filed any explanation for not applying the certified copy within the prescribed period. The other dates mentioned in the affidavit which we have already extracted, clearly show that there was delay at every stage and except mentioning the dates of receipt of the file and the decision taken, there is no explanation as to why such delay had occasioned. Though it was stated by the Department that the delay was due to unavoidable circumstances and genuine difficulties, the fact remains that from day one the Department or the person/persons concerned have not evinced diligence in prosecuting the matter to this Court by taking appropriate steps.

27. 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.

28. 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 bona fides, 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.”

8. The said judgment has been followed by the Supreme Court in several cases such as Commissioner of Customs Chennai vs. M/s Volex Interconnect (India) Pvt. Ltd. (2022) 3 SCC 159 , Pr. Commissioner Central Excise Delhi-1 vs. Design Dialogues India Pvt. Ltd. (2022) 2 SCC 327 ; Union of India vs. Central Tibetan Schools Administration & others (2021) 11 SCC 557 ; Union of India & others vs. Vishnu Aroma Pouching Private Limited and another (2022) 9 SCC 263 ; and State of Uttar Pradesh & others vs. Sabha Narain & others (2022) 9 SCC 266.

9. Learned Additional Advocate General relied on the judgment of the Supreme Court in Sheo Raj Singh (deceased) through LRs & others Vs. Union of India & another, Civil Appeal no. 5867 of 2015 dt. 09.10.2023. In Sheo Raj Singh, the High Court had condoned the delay of 479 days in filing a Land Acquisition Appeal in the High Court and the explanation offered found favour with the Supreme Court.

In that case, the Supreme Court observed that it was not hearing an application for condonation of delay, but was sitting in appeal over discretionary exercise of the High Court granting the prayer for condonation of delay; that in the case of the former, whether to condone or not, would be the only question, whereas in the latter, whether there has been proper exercise of discretion in favour of grant of prayer for condonation, would be the question; and the law was well settled that a Court of Appeal should not ordinarily interfere with the discretionary exercise by the Courts below; and that the appellate power should be exercised only when the order of appeal is clearly wrong and not when it is merely not right.

10. The said decision, therefore, cannot help the applicants since in the instant application, this Court has to consider the question whether sufficient cause has been shown to condone the said period of delay in filing the Letters Patent

Appeal. It is not considering whether a Tribunal/Court subordinate to it was right in condoning or refusing to condone the delay.

11. Learned Additional Advocate General also relied on the judgment of the Supreme Court in the State of Manipur and Ors. vs. Koting Lamkang (2019) 10 SCC 408.

That was a case where the State had preferred an RFA against an order of a Single Judge of the High Court, declining to condone delay of 312 days in filing a Regular First Appeal. The State had contended that being under a bonafide mistake, it had wrongly filed an appeal before the District Judge instead of the High Court and the said Court had dismissed the appeal on the ground that it had no pecuniary jurisdiction to entertain the appeal.

The Supreme Court set aside the order of the High Court observing that regard should be had to the impersonal nature of the Government's functioning where individual officers may fail to act responsibly, resulting in injustice to institutional interest of the State.

This case is distinguishable in the sense that there was an appeal filed within limitation but in a wrong forum . It was not a case like the instant case where no appeal at all was filed within limitation.

Also in this judgment, the attention of the Court was not drawn to the judgment in Post Master General (supra-1) and other cases following it, referred to in Para 7 above.

12. We are, therefore, of the opinion that the applicants/appellants have been negligent in taking steps to file the appeal within time and there is no sufficient cause shown for condoning inordinate delay of 256 days in filing the appeal.

13. According, this application is dismissed. Consequently, the unregistered LPA is dismissed.

14. Pending miscellaneous application(s), if any, shall also stand disposed of.