

(2024) 05 SHI CK 0086

In the High Court Of Himachal Pradesh

Case No : Civil Miscellaneous Petition (Main) No. 310 Of 2024 In Latter Patent Appeals No. 128 Of 2024

State Of Himachal Pradesh & Others

APPELLANT

Vs

Sanjeev Thakur & Others

RESPONDENT

Date of Decision : 20-05-2024

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2024) 05 SHI CK 0086

Hon'ble Judges : M.S. Ramachandra Rao, CJ; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Rakesh Dhaulta, K.D. Shreedhar, Sneha Bhimta

Final Decision : Dismissed

Judgement

M.S. Ramachandra Rao, CJ

Caveat Petition No. 144 of 2024

1. Discharged.

CMP No. 4707 of 2024.

2. This application is filed to condone the delay of 42 days in re-filing the Appeal.

3. Accepting reasons for the said delay mentioned in the Application, this Application is ordered.

CMP(M) No. 310 of 2024

4. CMP(M) No. 310 of 2024 is filed under Section 5 of the Limitation Act, 1963 by the appellants seeking condonation of delay of 335 days in filing this Letters Patent Appeal, challenging the judgment dt. 13.09.2022, passed by the learned Single Judge in CWPOA no. 8310 of 2019

5. In the application seeking condonation of delay of the said period, it is

contended that the certified copy of the judgment of the learned Single Judge was applied by the office of the learned Advocate General on 15.09.2022, that the same was prepared on 12.10.2022, and delivered to the office of the learned Advocate General on 11.11.2022. It is stated that the certified copy of the judgment was sent by the learned Advocate General to the Higher Education Department on 26.11.2022.

6. It is further stated that the copy of the judgment dt.13.09.2022 of the learned Single Judge had also been downloaded and put up on 07.10.2022 for necessary direction/examination. After that the file appears to have been circulated amongst the Higher Education Department, the Law Department, the Finance Department and even referred to the Hon'ble Chief Minister under Rule 58, Chapter-IX, Rule of Business H.P. Govt. issued in 1971. It is stated that the Hon'ble Chief Minister had accorded approval for filing of an appeal to challenge the impugned judgment on 01.03.2023 and thereafter the file moved from Department to Department and from desk to desk. Ultimately, the LPA was filed on 31.08.2023.

7. Learned Counsel for the caveator opposed the condonation of delay and pointed out that the Supreme Court as well as this Court in several cases had not condoned such inordinate delay on the basis of slow movement of the administrative machinery in the Government.

8. We have noted the contentions of the parties.

9. In *Postmaster General and others Versus Living Media India Limited and another* (2012) 3 SCC 563, the Hon'ble Supreme Court held as under:

"26. In spite of affording another opportunity to file better affidavit by placing adequate material, neither the Department nor the peon 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.”

10. The said judgment has been followed by the Supreme Court in several cases such as, Commissioner of Customs Chennai Vs. M/s Volex5Interconnect (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 & another (2022) 9 SCC 263 and State of Uttar Pradesh & others Vs. Sabha Narain & others (2022) 9 SCC 266.

11. Learned Counsel for the applicant relied on the recent judgment of the Supreme Court rendered on 09.10.2023 in Civil Appeal no. 5867 of 2015, titled as Sheo Raj Singh (deceased) through LRs & others Vs. Union of India & another.

12. In Sheo Raj Singh’s case, 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.

13. 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; 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.

14. The said decision therefore cannot help the applicant since in this case, this Court has to consider the question whether sufficient cause has been shown to condone the period of delay.

15 A perusal of the record indicates that though the appellants had pleaded that they had applied for certified copy of the judgment dt. 13.09.2022 of the learned Single judge on 15.09.2022, perusal of the certified copy of the judgment filed alongwith the appeal shows that the application for issuance of certified copy of the judgment was made on 08.06.2023 which was issued on 04.07.2023. The statement in the application seeking condonation of delay therefore appears to be incorrect.

16. In any event, there seems to be inordinate delay in taking steps to challenge the judgment of the learned Single Judge by filing the Letters Patent Appeal on the part of the appellants. We therefore, do not find any sufficient cause for condoning the inordinate period of 335 days in filing this LPA.

17. Accordingly, this application is dismissed.

Consequently, the appeal is also dismissed.