

(2007) 03 GAU CK 0030
In the Gauhati High Court

State of Manipur and Others

APPELLANT

Vs

Khumanlambam Nilaroton Singh

RESPONDENT

Date of Decision : 15-03-2007

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2007) 3 GLT 650

Hon'ble Judges : U.B. Saha, J;K. Meruno, J

Bench : Division Bench

Judgement

U.B. Saha, J.—By this application u/s 5 of the Limitation Act, 1963 read with Rule 2(2) of Chapter V-A of the Rules of Gauhati High Court, the petitioner prays for condonation of delay of 554 days in preferring the appeal against the judgment and order dated 07.01.05 passed by the learned single Judge in W.P. (C) No. 761 of 2004 wherein and whereunder the learned single Judge directed the petitioner-appellant to promote the respondent-writ petitioner in the next higher scale of pay w.e.f. the date of his completion of 12 years regular service as Inspector (Sericulture). The respondent-writ petitioner, as against the prayer for condonation of delay, filed objection by way of affidavit.

2. Heard Mr. N. Ibotombi, learned Counsel for the petitioner appellant as well as Mr. Kh. Binoy Kumar, learned Counsel appearing on behalf of the respondent-writ petitioner.

3. In support of the contention, as stated in the petition for condonation of delay, Mr. N. Ibotombi submits that the delay caused is bonafide and not intentional as the Government is a machinery impersonal and nobody is looking the interest of the Government properly though some of the employees/officers are entrusted specific responsibilities, but those employees/officers try to shift their responsibility to other officers. In this way the decision for preferring the appeal could not be taken in time, and as a result of which even the application for obtaining the certified copy was also filed at belated stage. He, further, submits that the appellant No. 1 called for comments from the appellant No. 3 in the first

week of April, 2005, but the appellant No. 3 could not properly function since the month of March, 2005 to May, 2005, because of the strike called by the All Manipur Sericulture Department Muster Roll Employees and workers Union, i.e. the Union of employees of department in which the respondent-writ petitioner, is working. Even sit in protest was also done by the workers' Union and employees as a result the appellant No. 3 failed to discharge his day today work. Again, on 02.04.2005, the Joint Administrative Council (JAC) of Manipur Trade Unions Council (AMTUC) and All Manipur Govt. Employees Organization (AMGEO) gave an ultimatum of fulfilling their charter of demands on or before 19.4.05 and in case of failure to fulfill the charter of demands, indefinite cease work strike would be declared within the month of April, 2005. In due course of time, the Chief Minister of the State, after taking stock of the situation, requested the aforesaid organizations to give at least 3 weeks' time to work out the detailed requirements of fund in respect of the JAC demand. As and when 12 Finance Commission award officially intimated to the Govt. of Manipur, the JAC extended the date to fulfill the charter of demand upto 11.5.2005. As the charter of demands of the JAC has not been fulfilled by the State Government, an indefinite cease work strike started from the 3rd week of May, 2005 and it continued for about 3 months and during the said period, no process could be made, as all the State Govt. employees including the Employees of the Sericulture Department joined the said strike. After processing the file at various levels of the Department for taking decision whether an appeal should be preferred against the aforesaid judgment and order dated 07.01.05, the respondent writ petitioner again filed another writ petition, being W.P.(C) No. 921 of 2005 praying for implementation of the order dated 07.01.05 against which the authority decided to prefer appeal but after getting notice of the subsequent writ petition, the authority waited for the copy of the subsequent writ petition and accordingly the appropriate authority of the Govt. examined the subsequent order of the Court in writ petition and asked the Department to prepare parawise comments regarding subsequent writ petition filed by the respondent-writ petitioner and also asked for preferring appeal against the judgment and order impugned in the instant appeal.

4. While the process was going on for furnishing parawise comments, the Deputy Director (Seri) by a letter dated 10.11.2005 pointed out the difficulties to be faced by the Department to implement the order dated 07.01.05 passed by the learned single Judge. On 10.01.06 the learned Counsel for the petitioner informed the Department that the respondent-writ petitioner also filed W.P.(C) No. 421 of 2005 to implement the earlier order dated 07.01.05 passed in WP(C) No. 761 of 2004, which was disposed of by this Court on 21.11.05 with direction to implement the earlier order within three months from the date of receipt of the order. After receipt of the aforesaid letter, matter was discussed at various levels whether appeal will be preferred against the subsequent order dated 21.11.05 passed in WP(C) No. 921. of 2005 also, the matter was placed before the learned Advocate General of the State for his opinion. Finally a decision was

taken to file appeal in the second week of August, 2006, and accordingly, the connected appeal has been preferred along with the instant application for condonation of delay.

5. Mr. N. Ibotombi, learned Counsel appearing for the petitioner-appellant, further, submits that if appeal brought by the Government is lost for the default of its employees, then those employees may not suffer, but the people at large will suffer as the Government is the people's Govt. The decision of the Government are being taken collectively and do not share the characteristic of decision of private individual like the writ petitioner and Govt. is entitled to some sort of latitude which are riot entitled to any individual like the petitioner. The expression, "sufficient cause" is to be interpreted by the Court in a liberal manner so as to render proper justice to the party not to dismiss the petition only on technical ground, i.e. for inordinate delay. He finally submits that whatever may be the delay, Court has to see whether the cause for such delay is a reasonable one or not. In support of his submission he placed reliance to the case of Special Tehsildar, Land Acquisition, Kerala Vs. K.V. Ayisumma, , wherein the Apex Court stated that it is now settled law that when the delay was occasioned at the behest of the Government, it would be very difficult to explain the day today delay as the transaction of the business of the Government being done leisurely by officers who had not evince or personal interest at different levels. No one takes personal responsibility in processing the maters expeditiously. As a fact at several stages, they take their own time to reach a decision. Even in spite of pointing at the delay, they do not take expeditious action for ultimate decision in filing the appeal. He also placed reliance in the case of State of Haryana Vs. Chandra Mani and others, , wherein the Supreme Court again observed:

In litigations to which the Government is a party, there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Govt. are lost for such default, no person is individually affected; but what, in the ultimate analysis suffers is public interest. The decision of Govt. are collective and institutional decision and do not share the characteristics of decision of private individual. The law of limitation is, no doubt; the same for a private citizen as for Governmental authorities. Government, like any other litigant, must take responsibility for the acts or omissions of its officers. But a somewhat different complexion is imparted to the matter where Govt. makes out a case where public interest was shown to have suffered owing to acts of fraud or bad fate on the part of its officers or agents and where the officers were clearly at cross-purposes with it. It was, there-fore, held that in assailing what constitutes sufficient cause for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from consideration that go into the judicial verdict. These factors which are peculiar to and characteristics of the functioning of the Government. Govt. decisions are proverbially slow encumbered as they are, by a considerable degree of procedural redtape in the process of their making. A certain amount of latitude is therefore, not impermissible. It is right said that those who bears responsibility

of Govt. must have a little play at the joints. Due recognition of this limitation on Governmental functioning of course, within reasonable limit is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put Govt. and private parties on the same footing in all respects in such matters. Implicit in the very nature of Governmental functioning is procedural delay incidental decision making process. The delay of over one year was accordingly condoned.

He also placed reliance on the subsequent decision of the Apex Court in the State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, and in the case of State of Nagaland Vs. Lipok AO and Others, . In the light of what has been observed by the Apex Court in the aforesaid cases, delay of 554 days in preferring the appeal may be condoned for the interest of justice, Mr. Ibotombi submits.

6. Mr. Kh. Binoykumar, learned Counsel appearing for the respondent-writ petitioner has seriously objected the contention of the petitioner/appellant. He also tries to distinguish the aforesaid decisions of the Apex Court relied by the learned Counsel for the petitioner appellants and relied on a decision of the Apex Court in the case of P.K. Ramachandran v. State of Kerala reported in AIR 1998 SC 22 wherein the Apex Court said thus:

law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribed and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained." With the aforesaid Finding, in the aforesaid case the Apex Court set aside the order of the High Court by which the application for condonation filed by the State respondents therein allowed. Relying the decision of P.K. Ramachandran (supra) Mr. Binoykumar submits that the reasons stated in the condonation petition by the petitioner appellants are totally vague and unexplained and liable to be dismissed.

7. We have gone through the aforesaid decisions and also given an anxious thought to the submissions of the learned Counsel for the parties. It appears from the judgment of the Apex Court in the case of P.K. Ramachandran (supra) particularly paragraph 3 and 4 of the said judgment that the Apex Court set aside the order of High Court on the ground that the High Court did not record in its order any satisfaction that the explanation for the delay was either reasonable or satisfactory, which is essential prerequisite to condonation of delay and the Apex Court was also not satisfied with the explanation given by State respondents after 12.5.1995 in their application for condonation of delay. For proper adjudication of the instant application, we want to refer here in under paragraph 3 and 4 of P.K. Ramachandran (supra):

3. It would be noticed from a perusal of the impugned order (supra) that the Court has not recorded any satisfaction that the explanation for the delay was

either reasonable or satisfactory, which is essential (the present respondent No. 1) requisite to condonation of delay.

4. That apart, we find that in the application filed by the respondent seeking condonation of delay, the thrust in explaining the delay after 12.5.95 is:

at that time the Advocate General's office was fed up with so many arbitration matters equally important to this case were pending for consideration as per the directions of the Advocate General on 2.9.1995.

8. Considering the aforesaid facts, the Apex Court came to the conclusion that the High Court does not appear to have examined the reply filed by the appellant as reference to the same is conspicuous by its absence from the order and the Apex Court was not satisfied that in the facts and circumstances of the case, any explanation given there as because the explanation was not reasonable and satisfactory one in the facts and circumstances involved in that case. But, in the present case, the situation was otherwise as there were strikes and "dharnas" launched by various employees organizations including the employees working in the Sericulture Department as a result of which the departmental authorities also could not function properly and took decision on their day-to-day matters including the decision relating to filing of the appeal against the judgment of the learned Single Judge in question. As the reasons stated for condonation of delay by respondent State in the case of P.K. Ramachandran (supra) are totally different from the reasons stated in this instant petition by the State, we are unable to agree with the submission of Mr. Binoykumar, learned Counsel of the respondent. However, We are satisfied with the submission made by Mr. N. Ibotombi on the basis of the Apex Court decision in Chandra Mani (supra) and Special Tehsildar, Land Acquisition Kerala (supra) which is subsequently followed by the Apex Court in the case of State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, wherein the Supreme Court, looking into the facts and circumstances of that case held:

We are of the opinion that sufficient cause has been made out by the petitioner which has persuaded us for condoning the delay in preferring the appeal, as we are of the opinion that dismissing the appeal on technical ground of limitation would not, in any way, advance the interest of justice but admittedly, result in failure of justice as the impugned judgments are likely to affect not only the parties before us, but 100 of other persons who are stated to be senior to the respondents.

9. In the instant case also, according to us, if the petition for condonation of delay is dismissed on the mere ground of technicality, then those employees/officers who are actually responsible for the delay caused will not suffer but the people at large will suffer as the Govt. is run by the people elected and machinery impersonal and finally the public interest will be affected though there are some latches on the part of the petitioner-appellant. It is correct that the Government is not in a better position than a private individual, but then also it

would not be proper to defeat justice to the people at large for the wrong action of the people employed, i.e., the officers who were entrusted to take decision for preferring the appeal and file the same. It would be proper for the Court to consider itself at the time of rendering justice, as if the Court is the justice seeker then only the Court can do proper justice to the justice seeker. What we are trying to do in the instant case is that the petitioner being a citizen of the country and for whose benefit the Govt. is there, who is entitled justice from a court of law, cannot be denied justice without assigning any reason. But in some cases like the case in hand for protecting the interest of many more, the interest of an individual like the respondent-writ petitioner, has to be hampered till the substantial justice is done as the Apex Court said that State cannot be put on the same footing as an individual like the respondent writ petitioner. In the instant case also, as we noticed from the memo of appeal as well as from the judgment and order of the learned single judge, that a prima facie case is made out for preferring appeal and as such the judgment is to be examined. Therefore, we are of the considered opinion that the door of justice should not be closed for the justice seeker, whether the said seeker is the machinery impersonal or private individual, hence, we think it proper for the interest of justice to condone the delay of 554 days, though normally the Court do not condone such type of delay except in an exceptional case. As cause for the delay explained in this case, according to us, said explanation is satisfactory and the explanations are exceptional and different from the cases of P.K. Ramachandran (supra) relied by Mr. Binoy kumar, learned Counsel for the respondent-writ petitioner and other cases where the Apex Court do not deal with the facts involved like in the case at hand.

10. It also appears from the grounds taken in the application for condonation of delay by the applicant-appellants that the memo of appeal as well as the judgment impugned under appeal are required to be examined by this Court. In this situation, keeping in mind the law laid down by the Apex Court in its various decisions, particularly in LIPOK AO (supra) to the effect that:

In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants. (Emphasis supplied)

In view of the discussions made in the aforementioned paragraphs of this order, we deem it fit and proper to exercise our discretionary power for the interest of justice to condone the delay of 554 days caused in preferring the present appeal by the petitioner-appellant.

Accordingly, the delay of 554 days in preferring the appeal is condoned and this MC (WA) No. 49 of 2006 is disposed of.