

(2005) 05 GAU CK 0044

In the Gauhati High Court

Case No : C.M. Application 13 of 2005 in W.A. 3 of 2005

State of Mizoram and Another

APPELLANT

Vs

V.S. Pillai and Another

RESPONDENT

Date of Decision : 18-05-2005

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2006) 2 GLR 640 : (2005) 4 GLT 188

Hon'ble Judges : B.P. Katakey, J;A.H. Saikia, J

Bench : Division Bench

Advocate : N. Sailo, for the Appellant; George Raju, for the Respondent

Final Decision : Dismissed

Judgement

A.H. Saikia, J.—Heard Mr. N. Sailo, learned Government Advocate appearing for the State-applicants and Mr. G. Raju, learned Counsel for the respondents.

2. This is an application u/s 5 of the Limitation Act, 1963 seeking condonation of delay of 103 days in preferring the belated writ appeal being W.A. No. 3/05. The delay has been explained in paragraph 2 of the Misc. application which reads as under:

2. That there is however some delay in filing the writ appeal and the circumstances leading to delay may be explained as below:

(i) That after the Judgment and Order was delivered by the Learned Member, MACT, Aizawl Single Judge on 1.10.2004, a certified copy of the same was applied on 7.10.2004 and it was made available by the Registry of this Hon"ble Court only on 18.11.2004.

(ii) That upon obtaining the certified copy of the Judgment & Order, the Government Advocate forwarded the same to the applicants on 22.11.2004 and the applicants upon receiving the same immediately processed the matter as necessary formalities in the working of the Government would require both for

complying with the Judgment & Order and at the same time looked for avenues or the feasibility to prefer an appeal. The case was placed and examined at different levels of the Departments involved and at the same time the advise of the Law & Judicial Department was sought.

(iii) That ultimately upon careful examination and processing of the matter, it was decided that an appeal should be preferred against the said Judgment and Order and for which, the Government Advocate was communicated on 9.2.2005 by the applicants, requested him to prefer an appeal against the said Judgment and Order. The deponent at this stage would like to state and submit that between 19.11.2004 and 7.2.2005 there were only 50 working days and as many as 31 Gazetted Holidays. That Christmas and New Year Festival/vacation also took place during the said period. Moreover since the Judgment and Order required an in-depth study and consultation at various levels which was invariably a time consuming process, the delay in preferring the connected appeal has occasioned. The Government Advocate upon receipt of the instructions of the applicants took 14 days time on his part to study, draft and prepare the appeal and consequently, there has been a delay of 103 days altogether.

3. Reiving on the aforesaid averments Mr. Sailo, learned Government Advocate has strenuously argued that the delay was not intentional and there was no negligence and laches on the part of the applicants. According to him the delay has been occurred due to the processing of the records by the Department concerned. That apart, there were holidays like Christmas and New Year which fell during those period and in this process such delay has been occurred. It is also contended by Mr. Sailo that in case of Government application/appeal the Court should be liberal in condoning the delay taking into account the facts that delay generally occurs due to the bureaucratic tangle and if the delay in question is not condoned, it would cause irreparable loss and injury to the State-applicant.

4. To bolster up his contention, the learned State counsel has referred to the following decisions of the Apex Court:

1. N. Balakrishnan Vs. M. Krishnamurthy,

2. M.K. Prasad Vs. P. Arumogam,

5. On careful consideration of the explanation so put forward in the aforementioned paragraphs and also having regard to the law laid down in the abovementioned cases, this Court is of the view that the ratio of the cases cited cannot be applicable to the given facts and circumstances of the case.

5. On the other hand, this application has been challenged by Mr. G. Raju, learned Counsel appearing for the respondents contending that the delay in question is not properly and satisfactorily explained. No sufficient cause has been shown by the State-applications for condonation of such delay and as such, this delay may not be condoned.

6. The Apex Court in a case of C.W.T. v. Amateur Riders Club considering the question of condonation of delay in preferring the Government appeal/application, in para 3 held as under:

3. This explanation is incapable of furnishing a judicially acceptable ground for condonation of delay. After the earlier observations of this Court made in several cases in the past, we hoped that the matters might, improve. There seems to be no visible support for this optimism. There is point beyond which even the courts cannot help a litigant even if the litigant is Government which is itself under the shackles of bureaucratic indifference. Having regard to the law of limitation which binds everybody, we cannot find any way of granting relief. It is true that Government should not be treated as any other private litigant as indeed, in the case of the former the decisions to present and prosecute appeals are not individual but are institutional decisions necessarily bogged down by the proverbial red-tape. But there are limits to this also. Even with all this latitude, the explanation offered for delay in this case merely serves to aggravate the attitude of indifference of the Revenue in protecting its common interests. The affidavit is again one of the stereotyped affidavits making it susceptible to the criticism that the Revenue does not seem to attach any importance to the need for promptitude even where it affects its own interests.

8. It is correct that Court should be liberal in condoning the delay in filing the appeal but the delay is implausible unless sufficient cause is shown. One should not be under illusion that when the Government or any other authority seeks condonation of delay by filing application, the court must invariably condone the delay irrespective of whether the delay has been sufficiently explained or not. Refusal of such prayer for condoning the delay may be treated as harsh to the petitioner but in construing the provisions of law relating to limitation any equitable consideration of hardship are out of place.

9. A Division Bench of this Court in a case of Union of India v. Wood Crafts Products Ltd. and Anr. reported in 2001 (1) GLT 34 in paragraph-14 held as under:

14. Under the concept of welfare state, in order to promote social justice, it is the bounden duty of the State to protect and preserve the public interest and public fund. Since public exchequer is incurring heavy expenses on the different departments of the State and its instrumentalities, it is incumbent upon them to be fast and prompt in discharging their duties and in carrying their responsibilities with due diligence. If there is good case on merit and the application for condonation of delay, unintentional or otherwise, filed by the State is not allowed, it is certain that damage will be caused to the public interest and public fund. Unfortunately, the Officers of the State and its instrumentalities carry an impression that with each and every case, the delay caused in filing an appeal is bound to be condoned, taking it for granted on the basis of a few decisions where the delay has been condoned considering the facts of those cases where sufficient causes were shown and proved.

10. Having regard to the above cited cases and also upon hearing the learned Counsel for the parties, this Court is disinclined to accept the explanations so set out in the abovementioned paragraphs as no sufficient cause has been shown therein seeking the condonation and accordingly the prayer for condonation of delay is rejected.

In the result, Misc. Case stands dismissed. No costs.