

(2021) 05 OHC CK 0008

In the Orissa High Court

Case No : Writ Petition (No)No.10122 Of 2021

State Of Odisha And Others

APPELLANT

Vs

Miss. Sumitra Das And Others

RESPONDENT

Date of Decision : 12-05-2021

Acts Referred:

Citation : (2021) 05 OHC CK 0008

Hon'ble Judges : Dr. S. Muralidhar, CJ;K. R. Mohapatra, J

Bench : Division Bench

Advocate : M.K. Khuntia

Final Decision : Dismissed

Judgement

Â 1. This matter is taken up by video conferencing mode, in the Vacation Court.

2. Against an order of the Odisha Administrative Tribunal, Bhubaneswar Bench dated 1st February 2018 passed in O.A. No.987 of 2016, the present writ petition has been filed.

3. When asked why the present writ petition was filed only more than three years later i.e. on 9th March 2021, learned Additional Government

Advocate for the Petitioners-State draws attention of this Court to paragraph-13 of the writ petition which reads as under:

13. That, it is humbly submitted that the Law Department after considering the gravity of the matter, vide letter dated 24.08.2020 intimated the learned Advocate

General, Odisha to take necessary steps to file a writ petition assailing the impugned order. Consequent thereto, the Cooperation Department was requested to

contact the office of the learned Advocate General for filing of the writ petition

and after necessary discussion in the matter, the State Counsel prepared the writ petition. Under such circumstances, the delay in filing the writ petition is not deliberate, but due to certain official procedures as well as the lockdown declared by the Government in view of COVID-19 which were beyond the control of the petitioners. There are no deliberate laches on the part of the petitioners in filing the writ petition and the delay is unintentional and bonafide.

4. In a whole series of orders, the Supreme Court has deprecated the failure by the Central or the State Governments in offering a reasonable

explanation for the inordinate delay in filing the petitions and appeals challenging the orders that are adverse to them.

5. In *State of Madhya Pradesh v. Bherulal* [decision dated 15th October 2020 in SLP (C) Diary No. 9217/2020], the Supreme Court penned a detailed

order as under:

“2. We are constrained to pen down a detailed order as it appears that all our counseling to Government authorities have fallen on deaf ears i.e., the Supreme Court

of India cannot be a place for the Governments to walk in when they choose ignoring the period of limitation prescribed. We have raised the issue that if the

Government machinery is so inefficient and incapable of filing appeals/petitions in time, the solution may lie in requesting the Legislature to expand the time period

for filing limitation for Government authorities because of their gross incompetence. That is not so. Till the Statute subsists, the appeals/petitions have to be filed as

per the Statutes prescribed.

3. No doubt, some leeway is given for the Government inefficiencies but the sad part is that the authorities keep on relying on judicial pronouncements for a period of

time when technology had not advanced and a greater leeway was given to the Government (*Collector, Land Acquisition, Anantnag & Anr vs. Mst. Katiji & Ors.*

(1987) 2 SCC 107). This position is more than elucidated by the judgment of this Court in *Office of the Chief Post Master General & Ors. v. Living Media India Ltd. &*

Anr. (2012) 3 SCC 563 where the Court observed 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 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.

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.??

Eight years hence the judgment is still unheeded!

4. A reading of the aforesaid application shows that the reason for such an inordinate delay is stated to be only ??due to unavailability of the documents

and the

process of arranging the documentsâ???. In paragraph 4 a reference has been made to â??bureaucratic process works, it is inadvertent that delay occursâ??.

5. A preposterous proposition is sought to be propounded that if there is some merit in the case, the period of delay is to be given a go-by. If a case is good on merits, it will succeed in any case. It is really a bar of limitation which can even shut out good cases. This does not, of course, take away the jurisdiction of the Court

in an appropriate case to condone the delay.

6. We are also of the view that the aforesaid approach is being adopted in what we have categorized earlier as â??certificate casesâ?. The object appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has

dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed. We have on earlier occasions

also strongly deprecated such a practice and process. There seems to be no improvement. The purpose of coming to this Court is not to obtain such certificates and

if the Government suffers losses, it is time when the concerned officer responsible for the same bears the consequences. The irony is that in none of the cases any

action is taken against the officers, who sit on the files and do nothing. It is presumed that this Court will condone the delay and even in making submissions, straight away counsels appear to address on merits without referring even to the aspect of limitation as happened in this case till we pointed out to the counsel that

he must first address us on the question of limitation.

7. We are thus, constrained to send a signal and we propose to do in all matters today, where there are such inordinate delays that the Government or State authorities coming before us must pay for wastage of judicial time which has its own value. Such costs can be recovered from the officers responsible.

8. Looking to the period of delay and the casual manner in which the application has been worded, we consider appropriate to impose costs on the petitioner-State of

Rs.25,000/- (Rupees twenty five thousand) to be deposited with the Mediation

and Conciliation Project Committee. The amount be deposited in four weeks. The amount be recovered from the officers responsible for the delay in filing the special leave petition and a certificate of recovery of the said amount be also filed in this

Court within the said period of time.

9. The special leave petition is dismissed as time barred in terms aforesaid.â??

6. Thereafter the aforementioned decision has been referred to and reiterated in a number of orders of the Supreme Court. A sampling of such orders

is as under:

(i) Order dated 13th January 2021 in SLP No.17559 of 2020 (State of Gujarat v. Tushar Jagdish Chandra Vyas & Anr.)

(ii) Order dated 22nd January 2021 in SLP No.11989 of 2020 (The Commissioner of Public Instruction & Ors. v. Shamsuddin)

(iii) Order dated 22nd January 2021 in SLP No.25743 of 2020 (State of Uttar Pradesh & Ors v. Sabha Narain & Ors.)

(iv) Order dated 4th February 2021 in SLP No.19846 of 2020 (Union of India v. Central Tibetan Schools Admin & Ors)

(v) Order dated 11th January 2021 in SLP No.22605 of 2020 (The State of Odisha & Ors v. Sunanda Mahakuda)

7. It is seen that by the last order dated 11th January 2021 in SLP No.22605 of 2020 (The State of Odisha & Ors v. Sunanda Mahakuda) filed by the

State of Odisha itself, the Supreme Court dismissed the SLP imposing cost of Rs.25,000/- for filing a belated SLP without offering any credible explanation.

8. The present is one such case where the explanation offered for the inordinate delay of three years in filing the writ petition is totally unsatisfactory

and unconvincing. Although there is no statutory period of limitation as such for filing a writ petition, the doctrine of laches is attracted. An inordinate

delay of three years in filing the writ petition without offering a credible explanation for the delay, would attract the doctrine of laches. Consequently,

the writ petition is dismissed on the ground of delay and laches.

9. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order

available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide

Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021.