
(2014) 12 OHC CK 0002

In the Orissa High Court

Case No : Misc. Case No. 795 of 2013 (Arising out of W.A. No. 539 of 2013)

State of Orissa and Others

APPELLANT

Vs

Khirod Chandra Mohapatra

RESPONDENT

Date of Decision : 23-12-2014

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2015) 120 CLT 1077 : (2015) 2 ILR 207

Hon'ble Judges : Amitava Roy, C.J.; Akshaya Kumar Rath, J

Bench : Division Bench

Advocate : S.N. Mohapatra, Standing Counsel, Advocate for the Appellant;

Final Decision : Dismissed

Judgement

Dr. Akshaya Kumar Rath, J.

1. Aggrieved by and dissatisfied with the order dated 18.01.2012 passed by the learned Single Judge in W.P.(C) No. 17840 of 2009, the State of Orissa has preferred the Letters Patent Appeal. Since there was delay of 636 days in filing the appeal, the instant application under Section 5 of the Limitation Act has been filed for condonation of delay. Heard Mr. S.N. Mohapatra, learned Standing Counsel for the School and Mass Education-petitioners.

2. In the application for condonation of delay, the petitioners have assigned the following reasons in paragraph-4, which is quoted hereunder:--

"4. That the delay caused in filing the writ appeal is due to following official procedure which is incidental to the decision making process at the government level and the said delay caused is not due to deliberate inaction of the present appellants."

3. Whether the reasons assigned in the application for condonation of delay can constitute "sufficient cause" so as to condone the delay?

4. While considering the sufficient cause in the light of Section 5 of the Limitation

Act, 1963, the apex Court pointed out various principles for adopting liberal approach in condoning the delay in matters instituted in the Court.

5. In *Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others*, , the apex Court held as follows:--

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day"s delay must be explained" does not mean that a pedantic approach should be made. Why not every hour"s delay, every second"s delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

6. The learned Standing Counsel for the School and Mass Education placed reliance on the aforesaid decision, to buttress his submission that some amount of latitude is permissible when the State is the applicant. Be it noted that in *Mst. Katiji (supra)*, there was only delay of four days. Learned Standing Counsel for the School and Mass Education also placed reliance in the *State of Haryana Vs. Chandra Mani and others*, . The apex Court while condoning the delay of 109 days in filing the LPA before the High Court has observed that certain amount of latitude within reasonable limits is permissible having regard to impersonal bureaucratic setup involving red-tapism.

7. In *Office of The Chief Post Master General and Others Vs. Living Media India Ltd. and Another*, , after survey of the earlier decisions, the apex Court in paragraphs 27, 28, 29 and 30 held as follows:--

"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.

29. 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 bona fide 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.

30. 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."

8. By no stretch of imagination, it can be said that the grounds stated in the application for condonation of delay constitute sufficient cause. Merely stating that the delay was caused due to official procedure and there is no deliberate laches or willful negligence on the part of the petitioners in not filing the Letters Patent Appeal in time is not suffice. The ground does not contain any acceptable or plausible reasons. No cause much less any sufficient cause has been shown in not filing the appeal in time.

9. We are of the view that the ratio of the judgment in *Living Media India Ltd.* (supra) applies with full force in the facts and circumstances of the present case. In view of the same, the Misc. Case merits no consideration. Accordingly, the same is dismissed. Consequently, the Writ Appeal No. 539 of 2013 is dismissed.