

(1997) 09 GAU CK 0043

In the Gauhati High Court

Case No : Misc. (Condone) Case No. 462 of 1997

State of Tripura and Others

APPELLANT

Vs

Naresh Chandra Paul

RESPONDENT

Date of Decision : 08-09-1997

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (1997) 3 GLR 266

Hon'ble Judges : M. Ramakrishna, C.J;N.G. Das, J

Bench : Division Bench

Advocate : A. Ghosh, G.A, for the Appellant; B. Das, S. Chakrabesh and A. Bhattacharjee, for the Respondent

Final Decision : Dismissed

Judgement

M. Ramakrishna, C.J.—This is an application u/s 5 of the Limitation Act seeking to condone the delay of 329 days in presenting this Writ Appeal.

2. We have perused the cause shown in the application. It is an admitted fact that the judgment and order made by the learned Single Judge in the writ petition was delivered on 11th July, 1996, whereas the appeal was presented on 25.7.97. At the outset, the calculation made to show in the application that there is a delay of ten months and twenty days, is erroneous because according to proper calculation, as required by law u/s 5 of the Limitation Act, the number of days delayed would be 379 days. The time taken to obtain the certified copy is fifty days. So, if we deduct the time taken from the total number of days delayed, the accurate number of days delayed would be 329 days.

3. The cause shown in the application u/s 5 of the Limitation Act is that after obtaining the certified copy of the order appealed from, there has been some delay in getting the opinion of the Law Department to enable the Appellant to present this appeal.

4. We have heard the learned Govt. Advocate, who having taken us through the

cause shown in the application, argued:

That in a matter of this type, it is inevitable for the State Government to obtain the opinion as to the feasibility of filing an appeal. That for that purpose, the State machinery is manned by a number of departments including the Department of Law, and, therefore, it is inevitable that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the-buck ethos, thereby there would be delay without any deliberation as such. Therefore, he argues, that the Court must take all these into consideration and that there is no intentional delay on the part of the State but the delay in obtaining the opinion of the Law Department has rendered the delay in presenting the appeal inevitable. To condone the delay, the learned Govt. Advocate has placed strong reliance on a ruling of the Supreme Court in the case of State of Haryana Vs. Chandra Mani and others,

5. The learned Counsel for the Respondent has, however opposed this submission. His submission is that there is no sufficient cause shown by the Appellants in the application to enable this Court to take a liberal view and to condone the delay.

6. It is true in Chandra Mani's (supra) case, a Bench of three Judges of the Hon'ble Supreme Court has taken a specific view that in so far as matters concerning the State who is an applicant praying for condoning the delay, the Court is supposed to take a liberal view to condone the delay particularly in the face of the fact that:

On account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing and the passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay intentional or otherwise is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature.

(emphasis supplied)

Their Lordships have also observed:

The Court should decide the matters on merits unless the case is hopelessly without merit. No separate standard to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause.

7. By a careful consideration of the ruling of the Supreme Court in Chandra Mani's (supra) case, it is seen that though their Lordships have referred to the law laid down by the Supreme Court in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, their Lordships in Chandra

Mani's (supra) case, did not over-rule the decision therefore, the law declared by the Supreme Court in the case of Collector, Land Acquisition, Anantnag (supra) still holds the field as on today, which means we can apply the law declared by the Supreme Court in that case to the facts of this present case. In other words, the Supreme Court in Chandra Mani's (supra) case only explained certain principles required to be followed in matters where the State is the Appellant/applicant. It is true that the Courts should not decide the questioned condonation of delay on pedantic views, but must take a pragmatic view, regard being had to the facts and circumstances of each case. Indeed, it must also take into consideration the merits and demerits of the case appealed from.

8. Referring to the merits and demerits in the instant case, it is seen that the over-drawn amount relates to salary for the period from 6.7.97 to 31.10.92 which was sought to be recovered by virtue of the impugned order in the writ Court, The writ Court referring to the argument advanced on both the sides, held that the order of recovery shall stand quashed. The Petitioner shall be given the benefits for the period for which he served. In other words, the benefits referred to payment of the amount of money in regard to the period for which the labourer is said to have worked. Therefore, we do not see any force in the submission of the learned Govt. Advocate that a question of public importance is involved in this matter. Chandra Mani's (supra) was a case where a delay of 109 days was sought to be condoned in a matter arising before the Supreme Court by way of an SLP in which an important legal question of public interest had been raised.

9. We are of the view that since the principles laid down by the Supreme Court in the case of Collector, Land Acquisition, Anantnag (supra) still holds the field for the purpose of enabling this Court to condone the delay u/s 5 of the Limitation Act and since the State Government has not been able to produce any acceptable material comprising sufficient cause to condone the inordinate delay of 329 days, we are clearly of the view that the State Government failed to make out a case to enable this Court to condone the delay in presenting the appeal.

10. In the result, this application is rejected. Consequently, the appeal also stands rejected.

We need not consider the application for stay as we have rejected the appeal.