
(2003) 01 AHC CK 0041
In the Allahabad High Court
Case No : F.A.F.O. No. 319 of 1999

State of U.P. and Another	Vs	APPELLANT
Prabha Chandra and Others		RESPONDENT

Date of Decision : 31-01-2003

Acts Referred:

Limitation Act, 1963 — Section 5
Motor Vehicles Act, 1988 — Section 173

Citation : (2003) 2 ACC 580 : (2005) ACJ 670

Hon'ble Judges : Ghanshyam Dass, J;A.K. Yog, J

Bench : Division Bench

Advocate : C.S. Singh and Abhinav Upadhyay, S.C, for the Appellant;

Final Decision : Dismissed

Judgement

A.K. Yog, J.—Heard learned Standing Counsel, Mr. Abhinav Upadhyay on behalf of the appellants and perused the record.

The present first appeal from Order u/s 173 of the Motor Vehicles Act (for short "the Act") is before us with a report of the Stamp Reporter indicating that the appeal has been filed beyond 1 year and 108 days of the prescribed period of limitation.

2. Correctness of the said report is not disputed by the appellant.

3. The appellants, along with F.A.F.O. also filed an application u/s 5 of the Limitation Act praying for condoning aforementioned delay of 1 year and 108 days in filing the appeal, on the facts enumerated in the said application and the affidavit filed in support thereof.

4. To appreciate the prayer for condoning the delay in filing the appeal made by the appellants (State of U.P. through the District Magistrate, Siddharthnagar and Inspector General of Police, Police Head Quarter, Allahabad), a few facts in brevity are hereunder.

5. A claim petition was filed by one Prabha Chandra, wife of Indra Pal Chandra who was employed as Circle Officer and posted at District Siddharthnagar in the Department of Police, Government of U.P. The said Indra Pal Chandra, on 3.8.1991 at about 10.45 a.m., was going from Thewsua to Etawah (in the police vehicle) which collided with bus No. USB 9318 and Indra Pal Chandra died. He was aged about 57 years at the time of his death. Before his death, he was earning as salary Rs. 6,055 per month.

6. Prabha Chandra (claimant No. 1) and the son of the deceased (claimant No. 2) filed claim petition before the Motor Accidents Claims Tribunal, Siddharthnagar registered as M.A.C. Case No. 3 of 1991.

7. The Claims Tribunal after six years approximately vide impugned judgment and Order dated 22.10.1997 awarded as compensation a sum of Rs. 1,36,000 only with certain conditions along with 15 per cent interest from the date of filing of the claim petition (matter of challenge in the appeal before us) in favour of both the claimants. The aforesaid judgment is the subject-matter of challenge in the appeal filed 1 year and 108 days beyond the prescribed period of limitation in law.

8. The folio annexed with the certified copy of the judgment (annexed with the memorandum of appeal) shows that an application for obtaining its certified copy was moved on 23.10.1997 (i.e., the next date of the judgment) and it was notified to be ready on 3.11.1997. The appellant obtained, after 26 days of its being ready, on 29.11.1997. The concerned District Government Counsel did not take its delivery immediately on its being ready.

9. We wish not to believe, that State Government appoints counsel to represent it in cases in courts, who are not aware of the law of limitation. That being so, we shall either not like to presume that merit is not the consideration in the selection of Government Advocates as a consequence of which they are ignorant about the sanctity of law of limitation. The concerned D.G.C. (Civil) must have informed (as the general practice is) the concerned authorities regarding limitation for filing appeal, expenses, etc.

10. Coming to the facts mentioned in the affidavit filed in support of the application u/s 5 of Limitation Act, we may reproduce, from the said affidavit, certain relevant paras for convenience:

"(2) That the certified copy of the Order dated 22.10.97/25.10.97 was received along with the letter dated 1.12.1997 of D.G.C. (Civil), Siddharthnagar. Immediately after getting the certified copy of the award and Order along with the legal opinion of the D.G.C. (Civil), the matter was forwarded to the Special Secretary, Department of Home, U.P. Shashan, Lucknow along with the letter dated 20.1.1998.

(3) That in June, 1998 the office of the deponent received the letter of the Under Secretary of U.P. Government dated 23.5.1998 granting sanction to file the

appeal.

(4) That thereafter on 14.7.1998, the office of the C.S.C. was contacted for completing the formalities so that the appeal may be filed. The office of the C.S.C. informed that prior to filing of the F.A.F.O. as per law a bank draft amounting to Rs. 25,000 is necessary.

(5) That since an amount of Rs. 25,000 was immediately required for depositing the bank draft as such, the necessary communication was sent to the Government for sanctioning of the aforesaid amount. However, the necessary sanctions were not received promptly and a reminder was sent by the office of Police Headquarters, Allahabad in September, 1998 and ultimately vide letter dated 17.9.1998, necessary sanctions have been accorded.

(6) That thereafter, the bank draft for a sum of Rs. 25,000 was got prepared on 24.10.1998.

(7) That thereafter, the said bank draft along with the letter dated 21.1.1999 was forwarded to the High Court so that the appeals may be filed and the bank draft was filed in accordance with the procedure and request was made for the C.S.C., High Court for drafting of the first appeal further since the original file of the appellants in which the pleadings and necessary correspondence were there are not available as such, appeal could not be provided immediately and the Standing Counsel advised immediately to have the file and complete pleadings first so that the evidences and the pleadings can be perused.

(8) That thereafter the efforts have been made and prepared the complete records and after having the necessary documents again the Standing Counsel has been approached and the matter has been dictated."

11. We will refer to each of the above quoted paras separately.

12. According to para 2 of the affidavit, the District Government Counsel sent a letter dated 1.12.1997 along with certified copy of the judgment and his opinion to the concerned authority. It is not disclosed as to who received the said letter and when it was received. Copy of the said letter and opinion of the D.G.C. (Civil) have not been annexed with the affidavit for perusal, it is not clear that how promptly the said letter was attended to in spite of D.G.C. referring to limitation aspect. It has also not been disclosed that who forwarded the matter to the Special Secretary, Home, U.P. Shashan and what were the contents of the letter dated 20.1.1998.

13. Para 3 of the affidavit is also vague. It does not disclose the exact date as to when in the month of June, 1998 letter was received. There is no explanation on record to show as to what had happened between 20.1.1998 (i.e., when the letter sent to the Special Secretary, Department of Home, U.P. Shashan, Lucknow) and June, 1998 (i.e., when the office of D.S.P., Siddharthnagar received letter from Under Secretary, U.P. Government dated 23.5.1998). As indicated above, the period of limitation expired on 3.2.1998; whereas the letter

of the Government was received in the office of D.S.P., Siddharthnagar on 23.5.1998, i.e., after about three and half months of the prescribed period of limitation.

14. Coming to para 4, we find that the office of the D.S.P., Siddharthnagar took care of the matter for the first time as on 14.7.1998, i.e., after more than one and half months of the receipt of the letter in question, it is to contact the office of the Chief Standing Counsel in the High Court.

15. Again referring to the contents of para 5, we find no explanation why steps were not taken to get Rs. 25,000 sanctioned when steps were taken to seek permission for filing appeal in the High Court. Excuse for seeking exemption of time consumed in obtaining the sanction to get Rs. 25,000 is not only unreasonable but also an eye-wash to hoodwink the law of limitation. Once limitation had expired, the officials concerned were required to take requisite action immediately and not to show lethargy in the matter. The department, as alleged, sent reminders without disclosing exact details of the mode and the manner of such reminders.

16. In para 6 of the affidavit, appellants admit that bank draft for Rs. 25,000 was prepared on 24.10.1998. When this bank draft was received in the office of D.S.P., Siddharthnagar or the concerned authority has been conspicuously not disclosed. We find no justification for filing the appeal on 21.5.1999, i.e., after more than 61/2 months, after the requisite formalities were over and there was no impediment in filing the appeal.

17. The averments contained in para 8 of the affidavit clearly show that, the law of limitation had no sanctity or concern whatsoever as far as the State officers/authorities are concerned. These authorities, it appears somehow started believing--probably because of courts decisions to continue the condonation--explanation, liberally, started labouring under misconception that there is no law of limitation for them and court must condone their negligence by habit.

18. In our opinion, the law of limitation is sacrosanct. It has distinct purpose, it cannot be treated casually so as to render its vigour altogether in existent or negatory. The other side, normally, must know when litigation is over. The Damocles' sword of litigation cannot be allowed to hang in the realm of unreasonable uncertainty.

19. Looking to the experience in the past in the matter of limitation in the cases filed on behalf of the State Government, we are convinced that the courts by requiring adoption of liberal attitude and asking for construing of provisions of Limitation Act, have misinterpreted.

20. According to us State is not above law of limitation. We are not ready to accept the preposition that "delay must be condoned" even if authorities are grossly guilty of apathy towards their duties (for whatever reasons) and/or guilty of carelessness only because the Government machinery is not individually

oriented. The Government has all the means and resources and, thus, it also has an edge over an individual. Dereliction in "duty" cannot and should not be tolerated, as otherwise the Government functioning becomes a mockery. In the matter of compensation in lieu of loss of human life, it is not only the person who has died, but also the dependant minors, widow of the deceased, old parents also do depend upon receiving compensation. If compensation is denied at the proper time, it will be denying entire object conceived in law of compensation.

21. The learned Standing Counsel has relied upon the following decisions:

State of Haryana Vs. Chandra Mani and others, , the Supreme Court referring to the case of O.P. Kathpalia Vs. Lakhmir Singh (Dead) and Others, , decided by the Bench of three-Judge held that if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay.

22. In the instant case, we find that by not condoning delay there shall be no miscarriage of justice. Rather in our opinion, by condoning inordinate delay which has not been explained at all as required in law, court shall be helping appellant to cause grave miscarriage of justice.

23. Referring to the decision Concord of India Ins. Co. Ltd. v. Nirmala Devi 1980 ACJ 55, Apex Court noted that it was a case of negligence of the counsel.

24. That is not the situation here.

25. While dealing with the case in New India Assurance Co, Ltd. v. Shanti Misra 1976 ACJ 128, the Supreme Court observed that discretion given by Section 5 of Limitation Act, should not be defined or crystallized so as to convert a discretionary matter into a rigid Rule of the law. The expression "sufficient cause" should receive a liberal construction and in this context referring to the case of Brij Inder Singh v. Kanshi Ram AIR 1917 PC 156, observed that the true guide for a court to exercise the discretion u/s 5 is whether the appellant acted with reasonable diligence in prosecuting the appeal.

26. Again referring to the judgment in Shakuntala Devi Jain Vs. Kuntal Kumari and Others, , the Supreme Court held that unless want of bona fides of such inaction or negligence as would deprive a party of the protection of Section 5 is proved, the application must not be thrown out or any delay cannot be refused to be condoned.

27. In para 11 of the judgment in the case of State of Haryana Vs. Chandra Mani and others, , the Apex Court held:

"That in case of State, the court shall take into account the factor of its being impersonal machinery and inherited bureaucratic methodology imbued with the notice making, file-pushing and the passing-on-the-buck "ethos". The Apex Court rightly took note of the fact that persons involved in the State machinery have created "for themselves a non-working culture wherein lethargy, gross irresponsibility, complete lack of dedication to duty and service to the society, are

all pervading. People in it are more loyal to individuals in power and the politicians instead to the people who have formed the Government and for whom Government is formed under the garb of State-sovereignty, immunity conceived on the ""bona fide action" is being claimed--towards dereliction of duty which is nothing short of rank dishonesty--as these officers do enjoy and claim appropriate and attractive salaries, privileges, benefits--without being accountable for due discharge of their official obligations and duties being completely unmindful to the plight and miseries of the people who are to be served, and instead to remembering that State machinery is there to represent the collective cause of community whose constituent unit is "an individual". Cause of community, therefore, normally cannot be bereft of individuals. The problem lies in not viewing the things in correct perspective."

28. Their Lordships further observed:

"...if appeals brought by Government are lost for such defaults, no person is individually affected but what in the ultimate analysis suffers is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. Factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The court should decide the matter on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove the strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. 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..."

29. The aforequoted passage clearly shows that Apex Court had laid down the guideline to strike a "mean" between too strict or too liberal approach in the matter of condonation of delay in the State cases. Their Lordships nowhere held that for State law of limitation should be ignored or hoodwinked by accepting even a ipse dixit explanation or even in a case where there is no explanation worth the expressions. In other words court has nowhere provided for diluting the rigour of "law of limitation", it has only highlighted certain aspects--peculiar to State sponsored suits and hence reminded that whenever there is an exercise to search for "ground of condonation"--in the cases of State due margin should

be given for its composition, work-style, etc. as compared to an individual. The Apex Court thus cautioned not to adopt too rigorous criterion like day-to-day explanation of the delay.

30. In State case some extra margin is permissible to find out whether the delay is properly explained vis-a-vis a case by an individual. The above Supreme Court judgment does not require to show that complete apathy, carelessness and negligence on the part of the State officers (as is evident in the instant case) should be ignored.

31. In our opinion, it is now overdue that Government should find out modalities to fix personal accountability--and provision for damages--if the court finds that certain official was grossly guilty of failing to discharge his official duties.

32. Learned Standing Counsel referred to the decision in *Special Tehsildar, Land Acquisition, Kerala Vs. K.V. Ayisumma*, .

33. This judgment contains no facts to appreciate pleadings of the parties and the circumstances in which the Apex Court condoned the delay. We do agree that each and every day's delay is not required to be explained mathematically, nonetheless the entire period of limitation has to be explained at least reasonably and satisfactorily so as to inspire confidence in the court that officers were not negligent and/ or the delay was not deliberately caused in an arbitrary manner to harass an individual by putting lame excuse of pendency of the matter in higher court and thus obstruct execution of the decree/judgment in the favour of other side.

34. We also cannot persuade us to read in the case of *State of Haryana Vs. Chandra Mani and others*, , in such manner as if the Hon"ble Apex Court had given licence to the State officers to spend extra money on litigation by moving application for condonation of delay as and when it pleases and to save their skin by finding lame excuses and being completely unmindful that money which is spent also comes through State exchequer--and thus enjoy a privilege as a premium of their inefficiency or lethargy and carelessness.

35. Learned counsel for the appellants further places reliance upon the decision in the case of *State of U. P. and others Vs. Harish Chandra and others*, . Reference be made to para 7 of the judgment which reads:

"...It is undoubtedly true that the applicant seeking condonation of delay is duty-bound to explain the reasons for the delay but as has been held by this court in several cases, the very manner in which bureaucratic process moves, if the case deserves merit the court should consider the question of condonation from that perspective. That apart the respondents themselves approached the High Court..."

36. In view of the aforesaid decision, we find no illegality in the judgment of the Tribunal, considering quantum of compensation awarded to the police officer of the rank of Circle Officer, which is just and reasonable and by no stretch of

imagination can be termed either as excessive or unproportionate.

37. In the case of Ram Nath Sao alias Ram Nath Sahu v. Gobardhan Sao 3 (2002) CLT 95 (SC), relied upon by the learned Standing Counsel, we find that this judgment also follows the same line as adopted by the Apex Court in other case referred to above.

38. The pith and substance of the matter in nutshell remains that the court has to bear in mind while examining facts of a case, that it has to find out whether a party praying for the condonation of delay has been sleeping over, grossly careless, aptnegligent and/or trying to abuse the process of law and real attempt is to harass its opposite party while praying for condonation u/s 5, Limitation Act.

39. We would like to close by putting on record that let it be made clear to the State and its officers that "law of limitation" is the creation of legislature and it is enshrined in a "statute", which cannot be ignored has to be given effect to and that there is no sacrosanct immunity to the State and its officers from the provisions of the Limitation Act.

40. In the result, an application u/s 5 for condoning the delay, has no merit and it is hereby rejected.

41. First appeal from Order is reported to be beyond time by 1 year and 108 days; it is, therefore, time-barred. Application u/s 5, Limitation Act is rejected and delay cannot be condoned in absence of plausible explanation. First appeal from Order is consequently dismissed as time-barred.

42. Rs. 25,000 deposited in this court shall be remitted to the concerned Motor Accidents Claims Tribunal within four weeks from today.

43. No Order as to costs.