

(1983) 09 AHC CK 0072

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5209 of 1983

State of U.P.

APPELLANT

Vs

The District Judge and Another

RESPONDENT

Date of Decision : 23-09-1983

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1984 All 98

Hon'ble Judges : M.P. Mehrotra, J

Bench : Single Bench

Advocate : B.P. Srivastava, S.C, for the Appellant;

Final Decision : Dismissed

Judgement

M.P. Mehrotra, J.—This petition under Article 226 of the Constitution of India has been reported by the office to be 180 days beyond the usual period of 90 days of the passing of the impugned order.

My learned brother K.N. Singh, J. passed the following order on 28-4-1983:--

"This petition has been filed with delay of 180 days. Learned Standing Counsel prays for and is granted three weeks time to file supplementary affidavit explaining the delay. List thereafter."

In compliance with the said order, a supplementary affidavit of Janardan Prasad has been filed to explain the delay.

2. The learned Standing Counsel contended that in view of the latest pronouncement of the Supreme Court, the office report deserves to be quashed and the petition could not be dismissed on the ground of being highly belated. He placed reliance on State of U.P. Vs. Bahadur Singh and Others, and Smt. Sudama Devi Vs. Commissioner and Others, .

3. In State of U. P. v. Bahadur Singh (supra) two learned Judges of the Supreme Court laid down as follows (at p. 846).-

"In a proceeding under land ceiling law, the departmental authority has to be apprised, of adverse decision, and further decision has to be taken whether the case is one required to be taken to higher court. Not that the departmental authorities charged with a duty to implement the law should not be vigilant; but one aspect cannot be overlooked that a departmental authority may delay the moving of higher Court for oblique motives and the public interest may suffer if such cause is thrown out merely on the ground of some delay which is also explainable. There are relevant considerations which must enter judicial verdict before rejecting such cause on the ground of delay."

4. In *Smt. Sudama Devi Vs. Commissioner and Others*, , two learned Judges of the Supreme Court laid down as follows:--

"In any event, one thing is clear and beyond doubt, that no such period of limitation can be laid down either under rules made by the High Court or by practice. In every case it would have to be decided on the facts and circumstances, whether the petitioner is guilty of laches and that would have to be done without taking into account any specific period as a period of limitation."

5. I have considered the aforesaid pronouncements and the ratio laid down in the same. In this connection, a reference may be made to the five-Judge pronouncement of the Supreme Court made in *Chandra Bhushan and Another Vs. Deputy Director of Consolidation (Regional), U.P. and Others*, . It was laid down as follows (at p. 1273):--

"The High Court of Allahabad has not framed any rule prescribing a period of limitation for filing petition for writs of certiorari under Art. 226 of the Constitution. Ordinarily in the absence of a specific statutory rule, the High Court may be justified in rejecting a petition for a writ of certiorari against the judgment of a subordinate Court or tribunal, if on a consideration of all the circumstances, it appears that there is undue delay. But the aggrieved party should have a reasonable time within which to move the High Court for certiorari. Sometimes it has been suggested that the remedy by certiorari is in the nature of that afforded by writ of error, it will not be issued, or if issued will be quashed or superseded, where, in the absence of special facts or circumstances excusing the delay, the application is not made until after the time within which a writ of error must be prosecuted has elapsed: see *Ferris and Ferries*--"Extraordinary Legal Remedies" p. 202. The Allahabad High Court in *Mongey Vs. Board of Revenue and Others*, , has consistently with that view laid down the practice that "writ petitions under Article 226 of the Constitution should be filed as quickly, after the delivery of judgment of the inferior tribunal, as possible. A period of 90 days, which is the period fixed for appeals to the High Court from the judgments of Courts below, should be taken as the period for application for the issue of a writ of certiorari, and that time can be extended only when circumstances of a special nature, which are sufficient in the opinion of the Court, are shown to exist." But in the absence of a statutory rule the period prescribed for preferring an appeal to the High Court is a rough measure : in each case the primary

question is whether the applicant has been guilty of laches or undue delay. A rule of practice cannot prescribe a binding rule of limitation; it may only indicate how discretion will be exercised by the Court in determining whether having regard to the circumstances of the case, the applicant has been guilty of laches or undue delay."

6. In the facts of the said case, according to the aforesaid practice of this Court, the petition should have been moved on Nov. 7, 1961 but it was moved on Nov. 13, 1961. The petition was rejected by D.S. Mathur, J. as he then was, observing ;

"that the period of limitation expired on 7th Nov. 1961 and no explanation had been furnished why the writ petition could not be filed on Nov. 7, 1961."

The Supreme Court allowed the appeal holding that there were circumstances which should have been considered by the High Court before rejecting the petition under Article 226 of the Constitution. It was laid down as follows :

"The rule which has been laid down in *Mongey Vs. Board of Revenue and Others*, , is at best a rule of practice, and not a rule of limitation. It is true that normally the question whether a petition under Article 226 of the Constitution for the issue of a writ of certiorari had been presented without undue delay or laches is a question for the High Court to decide and this Court would not interfere with the exercise of the discretion of the High Court. But in the present case, there are special circumstances, which justify departure from the Rules (i) that Mathur, J., regarded the rule of practice as a rule of limitation; (ii) that the office of the High Court were ordered to be closed at 1.00 p.m. On Nov. 7, 1961, even though originally Nov. 7, 1961 was declared a working day; and (iii) the appellants had completed all preliminary steps for filing the petition before November 7, 1961. These circumstances have not been considered by Mathur, J., nor have they been considered by the High Court. They appear to have exalted a rule of practice into a rule of limitation, and rejected the petition of the appellants without considering whether the appellants could be said to be guilty of laches or undue delay."

7. In the light of the aforesaid law laid down by the Supreme Court, I shall now consider whether this petition should be dismissed on the ground of being highly belated and there being no sufficient cause to explain the delay. The appellate court's order was pronounced on 31-7-1982, the writ petition was moved in this Court on 27-4-1983.

8. In the supplementary affidavit filed by Janardan Prasad (who is the Surveyor, in the office of the Competent Authority, Urban Land Ceiling, Allahabad), he has stated as follows in para 3 of his affidavit :

"That the judgment of the District Judge is dated 31-7-1982. The file of the case was received in the office of the Urban Land Ceiling from the Court of the District Judge on 1-9-1982. The narrative of the case was sent to the Law Department

for obtaining instructions for filing the writ petition. The G. O. dated 11-11-1982 was received in the office of the Competent Authority on 22-11-1982. On 23-11-1982 the file of the case was given to Sri Afzal Ahmad, Surveyor, without certified copy of the judgment. An application for obtaining the certified copy of the judgment was given by Sri R.B. Vidyarathi, Special Counsel for the Urban Ceiling Department, Allahabad, on 28-2-1983 which was made ready on 7-3-1983 and it was received in the office of the Urban Land Ceiling special counsel Sri R.B. Vidyarathi on 10-3-1983 and on 15-3-1983 the certified copy of the judgment was given to Sri Afzal Ahmad, the pairokar of the department. Thereafter the writ petition was dictated on 19-4-1983 by the Standing Counsel. After reporting etc. it was filed on 26-4-1983. It is expedient in the interest of justice that the delay in filing the writ petition may kindly be condoned"

9. In my view, the explanation given in the said para, does not sufficiently and adequately explain the delay in the filing of the writ petition. I may make it clear that I am not considering the period of 90 days and am not deciding the controversy on the said basis. In my view, when the District Judge had delivered the appellate judgment on 31st July, 1982, there was no justification for the certified copy of the said appellate judgment being applied for as late as on 28-2-1983. It has been stated by Janardan Prasad that the file of the case was given to Afzal Ahmad Surveyor, without certified copy of the judgment on 23-11-1982. It has not been stated as to why even then a certified copy was not immediately applied for and why all concerned waited till 21-2-1983 to apply for the certified copy of the appellate order. Further, it has not been explained as to why after the certified copy of the appellate order was given to Afzal Ahmad on 15-3-1983, he waited to get the writ petition prepared on 19-4-83. In the supplementary affidavit nothing has been alleged against any departmental authority or against the counsel of the department and, therefore, it is not a situation where the caution given by the Supreme Court in *State of U.P. Vs. Bahadur Singh and Others*, may be said to be applicable. It will not be correct on my part to proceed on the basis of mere surmises and distant possibilities.

10. Accordingly, this petition is dismissed in limine as it discloses extreme laches, on the part of the State and delay which has not been sufficiently or adequately explained.