
(1983) 04 KAR CK 0007
In the Karnataka High Court

Union of India and Another	Vs	APPELLANT
Suresh N. Shetty		RESPONDENT

Date of Decision : 18-04-1983

Acts Referred:

Citation : (1990) 68 CompCas 264

Hon'ble Judges : M.N. Venkatachaliah, J;D.R. Vithal Rao, J

Bench : Division Bench

Judgement

Venkatachalaiah, J.—This appeal by the Union of India and the Deputy Director, Enforcement Directorate, is directed against the order dated August 13, 1984, made in Appeal No. 187 of 1983 on the file of the Foreign Exchange Regulation Appellate Board, setting aside the order dated April 18, 1983, made by the Deputy Director, against the respondent, confiscating 2,200 U. S. Dollars seized from the respondent and imposing penalties aggregating to Rs. 2,500 for alleged contravention of the provisions of the Foreign Exchange Regulation Act, 1973.

2. There having been a delay of 77 days in filing this appeal, appellant has filled I.A.I. to have that delay excused. That application is hotly contested.

3. The last date for the lodgment of the appeal before this court was, it is no disputed, November 20, 1984. But the appeal was actually filed on January 22, 1985.

4. Two affidavits dated January 21, 1985, and August 7, 1985, respectively, are filed in support of I.A.I. What emerges therefrom is that the decision to prefer an appeal was taken an appeal was taken by the appropriate functionaries at Delhi on November 15, 1984, and was communicated to the Madras office on November 28, 1984. Pursuantly, the standing counsel for the Department at Bangalore drafted the memorandum of appeal on December 6, 1984. The acceptability of the explanation for the delay up to December 6, 1984, was not seriously debated, though, however, Sri P. Vishwanatha Shetty, learned counsel appearing for the respondent, suggested that the decision to file the appeal

having been taken on November 15, 1984, there was no reason why the appeal could not be filed well in time before the period of limitation ran out.

5. In the explanation for the delay between December 6, 1984, and January 22, 1985, on which latter date the appeal was actually lodged the Assistant Director of Enforcement, the deponent, in his affidavit dated August 7, 1985, says :

"The files and instructions to prepare and file the appeal were received at the Bangalore office on December 1, 1984. The officials at Bangalore got in touch with the standing counsel to get the appeal drafted. The appeal was drafted by December 6, 1984. The draft appeal was collected from the counsel on December 7, 1984. The papers were being processed at the Bangalore office to get the appeal ready for filing.

In the meanwhile it was felt that the assistant legal adviser should have a discussion with the counsel and the assistant legal adviser who is stationed at Madras could meet the counsel at Bangalore only on December 21, 1984. In the light of the discussion, a further clarification was sought for from the Delhi office as per letter dated December 26, 1984, despatched on December 27, 1984.

On January 10, 1985, a cable was received at the Madras office from the Delhi office, issuing clarification and instructing to file the appeal. It is respectfully submitted that for the to and fro communication of the papers from Madras to Delhi and vice versa it takes about 7 days, and for procession the papers at Delhi office it takes 7-10 days".

6. The affidavit does not say what the discussion the assistant legal adviser had with the counsel was about and what the further clarification sought from Delhi office pertained to. But the contents of the letter dated December 26, 1984, referred to in para 6 of the said affidavit makes this clear. Copy of the letter was made available to us at the hearing. It would appear that by the letter dated December 26, 1984, from the assistant legal adviser addressed to the Special Director at New Delhi, approval was sought for the decision not to lodge the appeal. This proposal of the assistant legal adviser was not approved and the Special Director by telegram dated January 10, 1985, directed the filing of the appeal. Thereafter, the official procedures were set in motion and the appeal lodged on February 21, 1985.

7. Sri Vishwanatha Shetty urged that these adventitious circumstances do not constitute sufficient cause and that if the authorities at Madras, despite a clear mandate from the Delhi office, took a decision not to file the appeal, it was a case of negligence on the part of the former and the court cannot be asked to condone the delay occasioned thereby. Counsel contended that the time taken from December 8, 1984, to December 26, 1984, by the assistant legal adviser and, thereafter, between December 26, 1984, and January 10, 1985, by the authorities at Delhi, cannot be said to be reasonable and the appellant cannot be said to have acted with reasonable diligence.

8. But the point to note is that appellants' decisions are collective and institutional decisions as distinct from individual decisions. Though the law of limitation is the same for a private citizen as for Governmental authorities, yet in assessing what constitutes sufficient cause, court cannot exclude from consideration the circumstances which are peculiar to an characteristic of the functioning of Government. The words "sufficient cause" must generally, receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fides is imputable to the appellant. Some degree of latitude is not impermissible in assessing "sufficient cause" in the case of Governmental decisions which involved considerable procedural red-tape. Government machinery is proverbially slow and those who bear the responsibility of Government must have a little play at the joints. Some recognition, of course, within reasonable limits, of the difficulties peculiar to Governmental functioning is necessary if judicial approach to the matter is not to be rendered unrealistic. In such matters it would, perhaps, be unjust to put a private citizen and the Government on the same footing in all respects. The very nature of Governmental functioning necessarily involves some procedural delays incidental to collective decision making.

9. The words of the Kerala High Court*, said in a different context, are worth recalling :

"If an ordinary litigant is negligent the penalty of dismissal inflicts only individual harm; but if the State is guilty of laches and consequently suffers dismissal of its petitions, the impact on public revenue is immense and the community suffers. In such a case, the present series of petitions may seem to verge perilously on negligence on the part of the State Government - a critical Legislature and a vigilant public opinion must censure the impersonal callousness of the Government".

"A private person can take instant decision while a bureaucratic or democratic organ hesitates and debates, consults and considers, speaks through paper, moves horizontally and vertically till at last it gravitates towards a conclusion, - unmindful of time and impersonally".

10. In this case, the somewhat strong criticism of Sri Vishwanatha Shetty that the conduct of the authorities was perilously close to negligence is, perhaps, not wholly without force. The authorities could have acted with greater despatch; but having regard to the circumstances of the case, we think that the appellant should be enabled to agitate the questions arising on the appeal on the merits.

11. I. A. I is accordingly allowed and the delay condoned.