
(1996) 10 RAJ CK 0020
In the Rajasthan High Court

Union of India(UOI)	Vs	APPELLANT
Rajasthan Tribal Areas		RESPONDENT

Date of Decision : 10-10-1996

Acts Referred:

Limitation Act, 1963 — Section 17, 5
Railway Claims Tribunal Act, 1987 — Section 17
Railways Act, 1989 — Section 106

Citation : (1998) 2 ACC 387

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Judgement

Shiv Kumar Sharma, J.—As common question of law is involved in these revision petitions, they are disposed by this single judgment.

2. All these revision petitions, are directed against the orders dated 24.4.1996, passed by the Railway Claims Tribunal, Jaipur Bench, Jaipur, whereby the applications filed by the claimant respondents u/s 17 of the Railway Claims Tribunal Act, 1987 (hereinafter referred to as the Act) delay in filing the claims has been condoned.

3. Brief facts of the case are that the claimant respondent filed a claim petition before the Railway Claims Tribunal, Jaipur with an application u/s 17 of the Act for condoning the delay. In the application for condonation of delay it was pleaded that at the time of delivery of the subject consignment, there was shortage of sugar, therefore, claim u/s 106 of the Indian Railway Act was preferred by the claimants with the CCS (Claims), Western Railway, Jaipur. But inspite of reminders payment was not made. When the compensation was not paid by the Railway to the claimants then as per the instructions of the G.M. vide its letter dated 17.12.1993, all papers regarding the Railway receipts were handed over to Shri Yashwant Singh Arora, Advocate at Udaipur to take legal and necessary action against the Railways alongwith papers of all other claims in the 4th week of December, 1993 but no action was taken by the concerned and

ultimately Advocate was asked to return the papers of the claims cases in the last week of January, 1994 but the files of the claims cases were not readily available with the Advocate and the same were finally returned in the month of March, 1996. It was further pleaded that after receipt of papers, claimants Regional Manager made a contact with another Advocate and all the relevant papers were handed over to new Advocate to file applications before the Tribunal and thus the applications for recovery of compensation were filed by the claimants without any further delay and it was pleaded that delay in filing the applications was due to negligence on the part of the Advocate, which was a bonafide mistake. It was therefore prayed that delay in filing the applications for recovery of compensation be condoned.

4. The applications were treated and registered as separate miscellaneous applications and notices were issued to the appellant to show as to why delay be not condoned. The Railway contested the applications by filing replies.

5. The Railway Claims Tribunal after hearing arguments of the parties allowed the applications vide impugned orders. The said orders have been assailed in these miscellaneous appeals.

6. I have heard Mr. Rafiq, learned Counsel for the appellant and carefully perused the impugned orders. Mr. Rafiq, learned Counsel has contended that the Tribunal has failed to appreciate that the reasons extended by the respondents for not filing the claim petitions within the period of limitation were wholly unfounded and flimsy and there was no valid justification for not filing the claim petition within the period of limitation. Negligent and inaction on the part of the claimant cannot be construed as sufficient cause.

7. Reliance has been placed on Ajit Singh Thakur Singh and Another Vs. State of Gujarat, in which the Apex Court has observed as under:

When a party allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before limitation expired it was not possible to file the appeal within time. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. There may be events or circumstances subsequent to the expiry of limitation which may further delay the filing of the appeal. But that the limitation has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of limitation. In the present case there was no such cause and the High Court erred in condoning the delay.

8. Mr. M. Rafiq has cited before me the judgment of the Karnataka High Court in Sitaram and Anr. v. The Assistant Commissioner, Jamakhandi and Ors. AIR 1996 Karn. 141, in which the Hon"ble Court observed as under:

where in the matter of condonation of delay, objections raised by respondent were not considered, the finding reached as to sufficiency of cause was vitiated

by error of law and so the order allowing condonation and consequential entertainment of appeal was liable to be set aside.

9. In *Government of Andhra Pradesh Vs. Y.S. Parkashrao and Another*, , it has been observed that in absence of any material in support of the explanation for the delay, the SLP must be dismissed as time barred. The question whether the explanation was sufficient to condone the delay, therefore, need not be considered.

10. In *Birla Cement Works Vs. G.M., Western Railways, and another*, the Apex Court has observed as under:

3. Section 17 of the Limitation Act, 1963 would apply only to a suit instituted or an application made in that behalf of the civil suit. The Tribunal is the creature of the statute. Therefore, it is not a Civil Court nor the Limitation Act has application, even though it may be held that the petitioner discovered the mistake committed in paying "overcharges" and the limitation is not saved by operation of Section 17 of the Limitation Act.

4. Section 78-B of the Act provides that a person shall not be entitled to refund of overcharge or excess payment in respect of animals or goods carried by Railway unless his claim to the refund has been preferred in writing by him or on his behalf to the Railway Administration to which the animals or goods for carriage by Railway. The proviso has no application to the facts of this case. An overcharge is also a charge which would fall within the meaning of Section 78B of the Act. Since the claims were admittedly made u/s 78B itself but beyond six months, by operation of that provision in the section itself, the claim becomes barred by limitation. Therefore, the Tribunal and the High Court have rightly concluded that the petitioner is not entitled to the refund of the amount claimed.

11. In *State of Manipur Vs. All Manipur Regular Post Vacancies Substitute Teachers' Association and Others*, , the High Court had an occasion to discuss Section 5 of the Limitation Act and observed that where the applicant was not able to show from records that during prescribed period any action was taken for preferring appeal--story of threats and refusal to accept applicants brief by Counsel put forward long after expiry of period--is not sufficient cause and the delay cannot be condoned.

12. I have perused the ratio of the case laws cited before me. The only point for consideration in these appeals is as to whether the Court below has passed the * impugned orders by reasonable interpreting the provisions of Section 5 of the Limitation Act.

13. The Apex Court had occasion to interpret the provisions of Limitation Act in *Ram Sumiran and Others Vs. D.D.C. and Others*, In that case the application for bringing legal representatives was filed after six years by a person who had no knowledge of the death of the respondent. The Apex Court observed as under:

The ends of justice require that the application for bringing the legal

representatives of the deceased respondent No. 5 should have been granted.

14. The Apex Court has also observed that in a country like ours where there is so much poverty, ignorance and illiteracy, it would not be fair to presume that everyone knows that on death of a respondent, the legal representatives have to be brought on record within a certain time.

15. In the cases before us reasonable explanation has been given and the application u/s 5 of the Limitation Act has been supported by an affidavit. A perusal of Section 17 of the Act, reveals that the applications shall be filed within three years from the date of entrustment of the consignment to the Railway Administration. Section 17 of the Act gives power and discretion to the Tribunal to condone the delay in filing the claim application on the sufficient cause being shown. The Court below has thoroughly considered the reasons given in the applications. While referring to case of *The State of West Bengal Vs. The Administrator, Howrah Municipality and Others*, and *Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd.*, , and *Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others*, the Court below has observed that inaction of the Counsel to file the claim application within limitation is sufficient cause and in such an eventuality, the delay in filing the claim application, therefore, deserves to be condoned. The applicant cannot be made to suffer due to fault of his Counsel in not taking an action of filing claim application within the specified period of limitation and to advance substantial justice. The application for condonation of delay deserves to be allowed.

16. In *Collector, Land Acquisition, Anantnag and Anr. v. Mst. Katiji and Ors.* (supra) the Apex Court held as under:

3....The expression "sufficient cause-" employed by the Legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life purpose for the existence of the institution of Courts. It is common knowledge that the Court has been making justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realised that--

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 malafides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.

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

17. As such the impugned orders of the Courts below are well reasoned orders and the Court below has rightly allowed the applications of the claimant respondent filed u/s 17 of the Act.

18. Consequently, I observe that there is no merit in the appeals and therefore the said appeals are dismissed. There is no order as to costs.