

(2004) 05 NCDRC CK 0023

In the National Consumer Disputes Redressal Commission

U.P.C.L.

APPELLANT

Vs

Krishan Lal

RESPONDENT

Date of Decision : 25-05-2004

Acts Referred:

Citation : 2004 3 CLT 407 : 2004 4 CPJ 91 : 2005 1 CPR 226

Hon'ble Judges : K.D.Shahi , Surendra Kumar J.

Final Decision : Appeal dismissed

Judgement

1. THE case was decided by the learned Forum on 25.3.2003. THE appeal has been filed on 8.12.2003 after about 8-9 months. THE copy of the judgment filed along with the appeal shows that the copy was delivered on 29.4.2003. It cannot be said that the appellant was not aware about the judgment. THE judgment was on merits. It cannot be even said that the proceedings were ex parte and were not in the knowledge of the appellant.

2. THE ground as given by the appellant in its affidavit is that more time was consumed in obtaining the permission of the higher authorities of the department for filing an appeal. THE Legislature was fully aware that in filing appeal, permission, etc. are to be taken and granted and it is why it provided one month's time, otherwise the appeal could be filed next or third day after taking the copy. In para 5 of the affidavit, it is alleged that the officials of the department were more busy in collecting the revenue, maintaining the electric supply lines, installation and erection of supply lines, sub-stations and in performing their duties concerning public essential utility services. If it is so, there is no provision under the Limitation Act or any other law that the litigation should be given a secondary consideration and if the officials are free from other works, they should file the appeal and if they are not free for years together, the delay should be condoned because they were not free. No other ground has been given in the affidavit. It was argued that there is no mala fide or no deliberate delay on the part of the appellant. What is deliberate delay is not known to us? When the judgment was informed to the appellant, when they had already taken

copy, it was their duty to file appeal within time and if did not file knowingly, it is nothing else but deliberate.

The learned Counsel for the complainant referred the ruling reported in IV (2003) CPJ 70 (NC), *Bharat Overseas v. Air Link*, in which Bharat Overseas had to file an appeal. It alleged that the officers had gone to Panipat and other places, therefore, the delay was due to reasons beyond their control. The Hon'ble National Commission held that this is not sufficient ground to condone the delay. In the present case, if the officers of the appellant ignored the litigation and were busy in other cases that is not sufficient ground for condonation of delay.

3. IN the ruling reported in IV (2003) CPJ 96 (NC), *Overseas Employment Service v. DHL Worldwide Express*, the office of the petitioner had shifted. It took time to collect relevant documents. It was held that it was not sufficient ground to condone the delay. Likewise in this particular case, if the officials of the Electricity Department were busy elsewhere that is not sufficient ground to condone the delay. In the ruling reported in III (2003) CPJ 62, *Rajan Varghese & Ors. v. Suraj Abraham George*, the Principal of the institution took the plea that there was nobody to look after or give instructions to the Counsel to file appeal. It was held that it was not sufficient ground, if they were busy otherwise.

4. IN the ruling reported in III (2003) CPJ 383, *Arora Enterprises and Anr. v. Superintendent of Police*, the office was very much dependent on clerk and typist. It was held that this is not sufficient ground for condonation of delay. In the ruling reported in I (2004) CPJ 268, *Industrial Development Bank of India v. Mrs. Ravi Kanta Goyal & Anr.*, where the appellant was a financial institution and the case was dealt by Head Office. They delayed the matter. It was held that this was not sufficient ground for condonation of delay. In the ruling reported in I (2004) CPJ 246, *Principal, IITT College of Engineering & Ors. v. Miss Purnima*, the Principal of the college had gone away. Therefore, the appeal could not be filed. It was held that the second person in command could have filed the appeal and there was no ground for condonation of delay. In this case merely because some officials were busy in collection and installation of new electric lines, etc., it cannot be said that even the Office Superintendent, Clerks, Legal Department, Lawyers of the appellant everybody was busy in that work. The appellant is a huge department having its legal section and it is not the duty of the legal section to instal electric lines or transformer or to collect revenue. They are only to see the legal matters. No justification whatsoever has been given what the legal department was doing?

5. THE learned Counsel for the appellant referred the ruling reported in II (2002) SLT 240=AIR 2002 Supreme Court 1201, *Ram Nath Sao @ Ram Nath Sahu and Others v. Gobardhan Sao and Others*. That was a case of substitution but here the question is of filing the appeal on merits.

6. IN the ruling reported in AIR 1996 Supreme Court 2750, *Special Tehsildar, Land Acquisition, Kerala v. K.V. Ayisumma*, it was held that in Government

matters each day's delay should not be asked to be explained. We have not asked for each day's delay but the appellant is not free to claim ad hoc condonation for about 8-9 months altogether by writing one stroke of pen that they were busy in other works. In the ruling reported in AIR 1987 Supreme Court 1353, Collector, Land Acquisition, Anantnag and Another v. Mst. Katiji and Others, it was held that Courts should adopt liberal approach. Step-motherly treatment should not be given to the State Government We fully agree with this ruling. No private individual can be allowed to say that he was busy in his office, agriculture, workshop or factory and when he became free after 8-9 months, he filed the appeal. In this way every body would extend himself his period of filing the appeal.

Similar is the position with the ruling reported in AIR 1996 Supreme Court 1984, State of Madhya Pradesh v. S.S. Akolkar. Here too the matter was regarding substitution and abatement and the appellant did not know about the actual date of death and when he knew on 16th March, 1983, he filed the substitution application on 8.4.1983. The facts of this case are quite different from the facts of the present case.

7. WE do not find any sufficient ground to condone the delay in this case. The appellant has slept over the matter for about 8-9 months alleging itself that it was busy in other works and when it arose from his sleep, it filed the appeal. If these grounds for condonation of delay are entertained, every Government department will take 2, 3, 4 or 5 years in filing the appeal alleging that it was busy in other works and when it became free, it filed the appeal. There is no sufficient ground for condonation of delay and the application for condonation of delay is liable to be dismissed. Accordingly the appeal is also liable to be dismissed. ORDER The application for condonation of delay is hereby dismissed. The appeal is also dismissed. Cost of this appeal shall be easy. Appeal dismissed.