

(2021) 11 J&K CK 0040

In the Jammu And Kashmir High Court

Case No : Civil Miscellaneous No. 233, 234 Of 2020, Letters Patent Appeal (LPA)
No. 05 Of 2020

UT Of J&K & Others

APPELLANT

Vs

Ghulam Mohi Ud Din Ahangar & Ors.

RESPONDENT

Date of Decision : 17-11-2021

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2021) 11 J&K CK 0040

Hon'ble Judges : Ali Mohammad Magrey, J;Sanjay Dhar, J

Bench : Division Bench

Advocate : M. I. Qadiri, Mir Naveed Gul

Final Decision : Allowed

Judgement

Sanjay Dhar, J

1. Appellants/petitioners, Government of Union Territory of Jammu and Kashmir and others, have challenged the judgment and order dated 20.03.2018 passed by the Writ Court in a writ petition filed by the respondents herein bearing OWP No.152/2012. There is a delay of 590 days in filing the appeal and, as such, the appellants/petitioners have moved the instant application seeking condonation of delay.

2. In the application for condonation of delay, appellants/petitioners have submitted that after receiving the copy of the impugned judgment, the matter was placed before the High-Level Committee . It came up for consideration before the Committee on 03.05.2018, 14.05.2018 and 07.07.2018 and a decision was taken on 07.07.2018 that the impugned judgment is required to be challenged. Thereafter the record was collected from the subordinate offices and Department of Law, Justice and Parliamentary Affairs was approached for legal advice. Sanction to file the against the impugned judgment was accorded by the Law Department on 20.09.2018 and the sanction order was forwarded by the

said Department in terms of its letter dated 17.05.2019. It is further averred in the application that on 02.07.2019, a request was made to the Collector Land Acquisition to depute his official along with relevant record to the office of the counsel for drafting and filing the appeal. Accordingly, the appeal was prepared by the counsel and it came to be filed on 1st January, 2020. According to appellants/petitioners, there is sufficient explanation for delayed filing of the appeal and the delay deserves to be condoned.

3. The respondents have resisted the application by filing a reply thereto. In their reply respondents have submitted that immediately after passing of the impugned judgment, they had delivered a copy of the same to the offices of Divisional Commissioner, Kashmir, Deputy Commissioner, Srinagar, and the Collector as also in the office of Chief Engineer, PWD. It is averred that there has been gross negligence on the part of appellants in dealing with the instant case, inasmuch as the officials of the appellants moved the files from one table to another without actually doing anything substantial. It is further averred that inaction of the appellants compelled the respondents to approach Chief Minister's secretariat and thereafter grievance cell of the Governor when the State was placed under Governor's rule. Instructions were issued to the Divisional Commissioner, Kashmir, to look into the matter way back in July, 2018 but even after deciding to challenge the impugned judgment of the Writ Court, the appellants did not take any steps in this regard with reasonable dispatch. Respondents have given details with regard to the steps which they took for seeking implementation of the impugned judgment and have placed on record copies of representations and communications to substantiate their contentions. In short, respondents have vehemently contended in their reply that there has been deliberate, intentional and unexplained delay in filing the appeal which cannot be condoned in any circumstances.

4. We have heard learned counsel for the parties and perused the record.

5. While advancing arguments, learned counsel for the appellants/petitioners has contended that the matter regarding implementation of the impugned judgment and filing of appeal against the said judgment has remained under active consideration of appellant/petitioners throughout this period and at no stage there has been any intentional delay on the part of the officials of the appellant/petitioners. It is contended that on account of peculiar characteristics of functioning of the Government offices, a lenient view is required to be taken while considering the present application, particularly keeping in view merits of the case. Learned Senior AAG has contended that the respondents despite having received compensation in terms of the final award passed by the Collector chose to file the writ petition challenging the final award which is impermissible in law. According to learned Senior AAG, in view of the fact that appellant/petitioners have a very strong case on merits and the issues involved in the appeal are of vital importance, it would be in the interests of justice to decide the case on its merits after condoning the delay in filing the appeal.

6. Learned senior counsel appearing for the respondents has vehemently argued that the mere fact that the appellant/petitioners happen to be the Government functionaries does not give them a license to sit over the files and challenge the impugned judgment after a delay of 590 days. It is contended that the explanation offered by the appellants/petitioners is not reasonable and the same cannot be accepted.

It is further urged that the law of limitation binds everybody including the Government functionaries. He has relied upon various judgments of the Supreme Court as well as of this Court to support his contentions, the details whereof are given as under:

(I) The State of Madhya Pradesh & Ors. V. Bherulal (Special Leave Petition (C) Diary No.9217 of 2020 decided on October 15, 2020);

(II) State of Uttar Pradesh & Ors. V. Sabha Narain & Ors. (Special Leave Petition (Civil) Diary No.25743/2020 decided on 22.01.2021);

(III) Union of India v. Central Tibetan Schools Admin & Ors. (Special Leave Petition (Civil) Diary No.19846/2020 decided on 04.02.2021);

(IV) State of J&K & Ors. V. Roshal Lal Bhat, 2011 (1) JKJ[HC] 513;

(V) State of J&K and others v. Kulsooma Ara, 2020(1) JKLT 552(J&K);

(VI) Office of the Chief Post Master General & Ors. V. Living Media India Ltd. & anr. AIR 2012 SC 1506;

7. Section 5 of the Limitation Act provides for extension of prescribed period in certain cases. As per this provision, an appeal may be admitted after the prescribed period of limitation if the appellant satisfies the Court that he had a sufficient cause for not preferring the appeal within such period. The expression "sufficient cause" has been the subject matter of interpretation in several judgments and by now it is well settled that the aforesaid expression must receive a liberal construction so as to advance substantial justice and unless there is gross negligence or deliberate inaction or lack of bonafides attributable to the parties seeking condonation of delay, such a prayer should not be declined.

8. In the instant case, the parties seeking condonation of delay in filing the appeal are Government functionaries. It is correct that law of limitation binds everybody including the Government but certain amount of leniency and leeway has been given by the Courts in the matter of condoning of delay when the party seeking condonation happens to be a Government Department. This is so, because of the peculiar functioning of Government departments where files move from one table to another and the decision making by very nature of the functioning of the bureaucracy takes a long time. The Supreme Court in the case of Special Tehsildar Land Acquisition, Keral v. K. V. Ayisumma, (1996) 10 SCC 634, while dealing with a case where condonation of delay in filing of appeal was sought by Government, discussed the manner in which Government business is

transacted and advocated liberal approach in the matter of condonation of delay in such cases. The observations of the Court which are relevant to the context are reproduced as under:

"It is now settled law that when the delay was occasioned at the behest of the Government, it would be very difficult to explain the day to day delay. The transaction of the business of the Government being done leisurely by officers who had no or evince no personal interest at different levels. No one takes personal responsibility in processing the matters expeditiously. As a fact at several stages, they take their own time to reach a decision. Even in spite of pointing at the delay, they do not take expeditious action for ultimate decision in filing the appeal. This case is one of such instances. It is true that Section 5 of the Limitation Act envisages explanation of the delay to the satisfaction of the Court and in matters of Limitation Act made no distinction between the State and the citizen. Nonetheless adoption of strict standard of proof leads to grave miscarriage of public justice, it would result in public mischief by skillful management of delay in the process of filing the appeal. The approach of the Court would be pragmatic but not pedantic. Under those circumstances, the Subordinate Judge has rightly adopted correct approach and had condoned the delay without insisting upon explaining every day's delay in filing the review application in the light of the law laid down by this Court. The High Court was not right in setting aside the order. Delay was rightly condoned."

9. In *G. Ramegowda Major and ors. Vs. Special Land Acquisition officer, Bangalore*, AIR 1988 SC 897, the Supreme Court, while noting that Government and private individual cannot be equated in matters relating to condonation of delay, observed as under: no general principle saving the party from all mistakes of its counsel could be laid. The expression "sufficient cause" must receive a liberal construction so as to advance substantial justice and generally delays in preferring the appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of delay. In litigations to which Government is a party, there is yet another aspect which, perhaps, cannot be ignored. 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 decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals. The law of limitation is, no doubt, the same for a private citizen as for governmental authorities. Government, like any other litigant must take responsibility for the acts, omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it. It was, therefore, held that in assessing what constitutes sufficient cause for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the consideration that go into the judicial verdict, these factors which are

peculiar to and characteristic of the functioning of the Government. Government decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red-tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have "a little play at the joints". Due recognition of these limitations on governmental functioning - of course, within reasonable limits - is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. Implicit in the very nature of Governmental functioning is procedural delay incidental to the decision-making process. The delay of over one year was accordingly condoned.

10. Again, in *State of Nagaland v. Lipok AO and others*, AIR 2005 SC 2191, the Supreme Court after noticing the manner in which the Government offices function, advocated a justice oriented approach in dealing with matters pertaining to condonation of delay. Para 15 of the judgment is relevant to the context and the same is reproduced as under:

"15. Experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on- the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. The State which represents collective cause of the community, does not deserve a litigant-non-grate status. The courts, therefore, have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression of sufficient cause. Merit is preferred to scuttle a decision on merits in turning down the case on technicalities of delay in presenting the appeal. Delay as accordingly condoned, the order was set aside and the matter was remitted to the High Court for disposal on merits after affording opportunity of hearing to the parties. In *Smt. Prabha v. Ram Parkash Kalra* (1987 Supp SCC 339), this Court had held that the court should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. The appeal was allowed, the delay was condoned and the matter was remitted for expeditious disposal in accordance with law."

11. Recently, the Supreme Court, in the case of *State of Jammu and Kashmir & Ors. v. Mohammad Rafiq Batt & ors.* (Civil Appeal No.2489/2021 decided on July 13, 2021), while finding that there was, prima facie, merit in the appeal filed by the State of Jammu and Kashmir, condoned the delay of 640 days and the matter was remanded to Division Bench of this Court to be decided on merits.

12. From the foregoing analysis of the law on the subject, it becomes manifest that expression "sufficient cause" has to be given liberal construction and the Courts while considering the delay in filing appeal have to avoid technicalities so that merit is preferred and scuttling of decision on merits is avoided. The Courts have to adopt a justice-oriented approach, particularly while dealing with the

cases where delay is sought to be condoned at the instance of Government functionaries. The Courts have to be guided by spirit and philosophy that State represents collective cause of the community and cannot be equated with an ordinary litigant. Unless there is gross negligent approach of the Government functionaries in dealing with a matter, the Courts would lean in favour of condoning the delay without insisting upon explanation of each day's delay.

13. Coming to the facts of the instant case, it appears from the record that the appellants/petitioners immediately after the impugned judgment was delivered by the Writ Court, placed the matter before the High-Level Committee in terms of directions of the Writ Court. The matter was discussed by the High-Level Committee in a number of its meetings and ultimately it was decided that the judgment deserves to be challenged before a higher forum. Thereafter the matter was taken up with the Law Department for according sanction for filing of appeal and the sanction was conveyed to the concerned Department on 17.05.2019. As it generally happens in Government departments, it takes time to gather the records relating to a case from various officials and in the instant case, same thing has happened, as a result whereof the engaged counsel could file the appeal only on 1st of January, 2020.

14. The aforesaid events do exhibit that there have been procedural delays in making the decision for filing of appeal as also in actually filing the appeal before this Court. Such delays are inherent in the Government offices/agencies which function at a slow pace. However, there is nothing on record in the instant case that would even remotely suggest that there has been intentional or deliberate inaction or lack of bonafides attributable to the appellants/petitioners.

15. Apart from the above, the appeal raises important questions of law and as such, interests of justice demand that these questions are gone into and determined on merits. The judgments referred to and relied upon by respondents are distinguishable on facts and the ratio laid down in those judgments cannot be made applicable to the peculiar facts of the instant case. Therefore, the delay that has occasioned in filing the instant appeal deserves to be condoned.

16. For the foregoing reasons, we allow the application for condonation of delay and, accordingly, the delay in filing the appeal is condoned subject to payment of costs of Rs.10,000 (rupees ten thousand) to be deposited by the appellants in the Advocates' Welfare Fund within a period of two weeks from today. The main appeal be listed for consideration on 1st of December, 2021.