

DAKSHINANCHAL VIDYUT VITRAN NIGAM LTD. v. RAM BETI

DAKSHINANCHAL VIDYUT VITRAN NIGAM LTD.

...Appellant

RAM BETI

...Respondent

Case No: REVISION PETITION NO. 1602 OF 2022

Date of Judgement: 01 November 2023

Judges:

DR. INDER JIT SINGH

PRESIDING MEMBER

For Appellant: MR. BHUWAN CHANDRA,
MR. DALEEP DHAYANI, ADVOCATES

For Respondent: MR. NIKHIL JAIN, ADVOCATE

Facts:

Revision Petition No. 1602 of 2022 has been filed against the order dated 11.04.2022 of the State Commission U.P. in Appeal No. 1930/2009. The present case was being dealt by the Electricity Distribution Division-III, Fatehabad of the Petitioner. Later it was transferred to the Electricity Distribution Division, Bah due to formation of new division. The case was being dealt by the Petitioner's earlier counsel Shri Mahendra Nath Mishra who died on 05.01.2021. His office did not inform the Petitioner about his death. Due to the above reasons, the Petitioner was unaware about the order dated 11.04.2022 passed by the State Commission in Appeal No. 1930/2009. The Revision Petition has been filed with a delay of 142 days. An application has been filed seeking condonation of delay citing above reasons.

Court's Opinion:

For condoning delay, the Petitioner must satisfy the Court that there was sufficient cause for preferring the Revision Petition beyond the stipulated period of limitation. The term "sufficient cause" means an adequate and reasonable cause which prevented the Petitioner from approaching the Court within the period of limitation. If the party is found negligent or lacking bona fide, delay cannot be condoned. Law of limitation binds everybody including the government. Condonation of delay is an exception and should not be allowed as an anticipated benefit. The reasons cited do not seem sufficient to explain/justify the huge delay of 142 days in filing the Revision Petition.

Arguments by Parties:

Petitioner:

Delay occurred because the case documents were transferred to the new electricity distribution division formed and so copy of the order was not received. Their counsel died on 05.01.2021 but his office did not inform the Petitioner about it. So they were unaware of proceedings in the State Commission. These reasons constitute 'sufficient cause' to condone the delay.

Respondent:

The delay has not been properly explained and justified. There has been negligence on Petitioner's part as even after their counsel's death, the State Commission gave opportunity to appear which they did not avail. The law of limitation equally applies to government bodies and delay cannot be condoned mechanically.

Sections:

Order does not refer to any specific sections. Reference is made to case laws on condonation of delay and interpretation of 'sufficient cause'.

Cases Cited:

Basawaraj and Another v. Special Land Acquisition Officer (2013) 14 SCC 81

Esha Bhattacharjee v. Raghunathpur Nafar Academy [(2013) 12 SCC 649]

Office of the Chief Post Master General & Ors vs. Living Media India Ltd. & Anr. [(2012) 3 SCC 563]

Laws Referred:

No specific laws have been referred. Interpretations regarding 'sufficient cause' for condoning delay have been discussed with reference to multiple case laws of the Supreme Court.

In summary, the Revision Petition has been dismissed on grounds of limitation as sufficient cause was not made out for the delay of 142 days in filing it. The Court analyzed the case laws on condoning delays and held that the Petitioner had not provided adequate and reasonable justification. Mere citing of administrative issues and lack of information does not constitute sufficient cause when the party has otherwise been negligent. The law of limitation applies equally to government bodies and delays cannot be condoned lightly. As sufficient grounds were not disclosed, the Court refused to condone the delay and consequently dismissed the Revision Petition.

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Court

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Full Text of Judgment:

1. Heard Counsel for both sides on Condonation of Delay Application. RP has been filed with delay of 142 days (143 days as per the calculations made by the Registry).

2. The present Revision Petition has been filed by the Petitioner against the order dated 11.04.2022 of the State Commission U.P. in FA No. 1930/2009. An IA No. 12246 of 2022 dated 28.11.2022 has been filed seeking condonation of delay. In the said IA, following reasons for delay / grounds for condonation have been mentioned :

(a) That the State Commission dismissed the Appeal in default due to non-appearance of the State Commission sent the copy of the impugned order dated 25.05.2022 but as the division was not changed, hence the said copy was not received by the Petitioner. Initially the present case was being dealt by the Electricity Distribution Division-III, Fatehabad of the Revisionist and later on due to formation of new division i.e. Electricity Distribution Division, Bah, the case was

transferred to that division.

(b) That besides this instant case was being dealt by the earlier Counsel, Shri Mahendra Nath Mishra who died on 05.01.2021 and information regarding his death was not given by his office to the Revisionist.

(c) That this was the reason for non-appearance of the Revisionist and the Revisionist was not aware about the impugned order dated 11.04.2022.

3. In order to condone the delay of 142 days, the Petitioner has to satisfy this Commission that there was sufficient cause for preferring the Revision Petition after the stipulated limitation period. The term 'sufficient cause' has been explained by the Hon'ble Supreme Court in Basawaraj and Another. Vs. Special Land Acquisition Officer (2013) 14 SCC81. Hon'ble Supreme Court in this case observed as follows :

9. Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", in as much as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose.

10. In Arjun Singh v. Mohindra Kumar [AIR 1964 SC 993] this Court

explained the difference between a "good cause" and a "sufficient cause" and observed that every "sufficient cause" is a good cause and vice versa. However, if any difference exists it can only be that the requirement of good cause is complied with on a lesser degree of proof than that of "sufficient cause".

11. The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, in action or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible.

12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.

13. The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale.....

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches.

15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which

means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

4. Hon’ble Supreme Court in Esha Bhattcharjee v. Raghunathpur Nafar Academy[(2013) 12 SCC 649], while dealing with the issue of condonation of delay, after taking note of various authorities/earlier judgments of the Hon’ble Supreme Court, culled out broad principles for considering the condonation of delay applications and also added few more guidelines taking note of the present day scenario. Relevant paras of these are reproduced below:-

“15. From the aforesaid authorities the principles that can broadly be culled out are:

x x x x

ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.

x x x x

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is insignificant and relevant fact.

x x x x

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free

play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

x x x x

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”

5. In Office of the Chief Post Master General & Ors. vs. Living Media India Ltd. &Anr. [(2012) 3 SCC 563], Hon’ble Supreme Court while

dealing with the issue of condoning the delay on the part of office of the Chief Post Master General, observed :

“12) It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

13) In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.”

6. In *Sridevi Datla vs. Union of India & Ors.* [(2021) 5 SCC 321],

Hon'ble Supreme Court observed :

25. Much later, in Esha Bhattacharjee v. Raghunathpur Nafar Academy this court referred to a large number of previous judgments, and observed that adoption of a strict standard of proof sometimes fails to protect public justice and it may result in public mischief. Other decisions have highlighted that there cannot be a universal formula to judge whether sufficient cause has, or has not been shown and the exercise is necessarily fact specific; in Improvement Trust v. Ujagar Singh, the court held:

"16. While considering [an] application for condonation of delay no strait jacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not."

26. The court also emphasized that each case has to be balanced on the basis of its facts and the surrounding circumstances in which the parties act and behave."

7. We have carefully gone through the reasons for delay/ground for Condonation stated in the IA/12246/2022 and do not find the same convincing. As regards the reason for the death of their earlier Counsel Shri Mahendra Nath Mishra, who died on 05.01.2021, it is to be seen that even as per the details given in the RP, when the case was listed before the State Commission on 10.03.2021, the State Commission taking note of the fact of the death of the Counsel for the Appellant directed that Notice be issued to Appellant to appear on 26.04.2021. Thereafter, Petitioner had enough opportunity to appear before the State Commission. Appeal filed by the Petitioner before the State Commission has been dismissed on 11.04.2022 on account of absence of the Appellant. As the Petitioner has not been successful in adducing sufficient and good reasons in delay in filing the RP IA/12446/2022 is rejected. Consequently, RP/1602/2022 is dismissed on account of limitation.

8. In view of the foregoing, we find that sufficient and good grounds have not been made out by the Petitioner in the instant case for condonation of delay of 142 days. Accordingly, IA No. 12246 of 2022 is dismissed. Consequently, Revision Petition is also dismissed being barred by limitation.