

State of Assam and ors. Vs. Muss. Mariam Nessa and anr.

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Court : Guwahati

Decided On : Aug-30-2001

Judge : A.H. Saikia, J.

Appeal No. : Misc. Case No. 173 of 1997

Appellant : State of Assam and ors.

Respondent : Muss. Mariam Nessa and anr.

Advocate for Def. : B.K. Goswami and T. Goswami, Advs.

Advocate for Pet/Ap. : B.M. Sarma, Adv.

Disposition : Misc. case dismissed

Judgement :

A.H. Saikia, J.

1. Heard Mr. B.M. Sarma, learned Govt, counsel appearing for the State of Assam. Also heard Mr. B.K. Goswami. learned Sr. counsel assisted by Ms. T Goswami, learned counsel appearing for the respondents.

2. This is an application for condonation of delay of 119 days in preferring the Second Appeal No. 87/97 by the State of Assam. Filing this application on 13.5.1997 the State-Petitioner has narrated the explanation of such delay in

paragraphs 6 and 8 of the Petition which runs as follows:

'6. That the appeal ought to have been filed on or before 4.11.1996 for it to be within time, but for reasons beyond the control of the petitioners, the same could be filed only on 5.5.1997 and as such, there is a delay of 180 days in preferring the appeal.

8. That the petitioners submit that because of the inherited bureaucratic nature of functioning of the Government, the petitioners are entitled to certain amount of latitude and pray that this Hon'ble Court may be pleased to condone the delay in filing the appeal.'

3. When the matter came up for consideration earlier, this court, not being satisfied with the said application for condonation on 18.6.2001 directed Mr. Sarma, learned Govt. Counsel to file an appropriate application in this regard granting two weeks time. In compliance of the said order the State-Petitioner has filed an additional affidavit explaining the delay of 119 days as mentioned above on 6.8.2001. In the said affidavit the petitioner has made statements in paragraphs 2 to 6 explaining for condonation of delay. The respondents has filed objection against the earlier application as well as the additional affidavit countering the statements made therein not to be sufficient cause of condoning such delay. I have perused the pleadings filed on behalf of the parties more particularly averments made in paragraph 2 & 3 of the additional affidavit filed on behalf of the State-Petitioner claiming those to be the sufficient cause explaining the delay. For better appreciation to decide the issue

it will be appropriate to quote the said paragraphs 2 and 3 which reads as follows:

'2. That the judgment and decree in T.A. No. 8/95 was passed on 8.7.1996. The learned lawyer, who conducted the case for and on behalf of the appellants, intimated about the Judgment and decree of the learned District Judge by his letter dated 10.7.1996. Upon receipt of the said letter of the learned lawyer, the then Assistant Registrar of Co-operative Societies, Goalpara immediately wrote to the Registrar of Co-operative Societies, Assam, vide his letter No.CGE-9/95/26 dated Goalpara the 10th of July 96, requesting to take necessary steps for filing an

appeal before the Hon'ble High Court.

'A copy of the said letter dated 10.7.1996 is annexed hereto and marked as ANNEXURE-1.

3. That thereafter a number of correspondences took place between the Registrar of Co-operative Societies, Assam and the Assistant Registrar of Co-operative Societies, Goalpara. And ultimately, the Registrar of Co-operative Societies, Assam wrote to the Commissioner and Secy, to the Govt. of Assam, Co-operative Department by his letter No. CE.268/70/pt. 1/122 dated Guwahati the 2nd/4th April'97, requesting to prefer an appeal against the judgment dated 8.7.1996 passed by the learned District Judge. Goalpara in TA No.8/95.

A copy of letter dated 2.4.1997 (4.4.1997) is annexed hereto and marked as ANNEXURE-2'.

4. A bare perusal of the statements made in those paragraphs clearly shows that after the judgment and decree passed on 8.7.1996 the learned counsel appearing on behalf of the appellants by letter dated 10.7.1996 intimated the appellants about the said position and then Assistant Registrar Co-operative Societies, Goalpara, by his letter dated 10.7.1996 wrote to Registrar Co-operative Societies, Assam. Thereafter a number of correspondences took place between Registrar, Co-operative Societies, Assam and Assistant Registrar, Cooperative Societies, Goalpara. And ultimately, the Registrar, Cooperative Societies, Assam by his letter dated 2/4 April, 1997 wrote to the Commissioner & Secretary to the Govt. of Assam, Co-operative Department requesting him to prefer an appeal against the said judgment dated 8.7.1996. Shockingly save and except those statements no other explanation has been put forward by those officers explaining the situation between 10.7.1996 and 2/4 April, 97. The said averments made in paragraph-3 itself are. In my opinion, exclusively not the ground for consideration for condonation

of such delay. It seems that the authority has taken the entire matter very leisurely and in a casual manner.

5. Mr. Sarma, the learned Govt. counsel strenuously argues that since this application has been filed by the Govt. and Govt. being the impersonal machinery, the decision of the Govt. are taken at very slow pace, certain amount of leniency may be permitted and considering that aspect of the matter this delay, though not intentional or wilful, may be considered in the public interest. He further submits that if this delay is not condoned the entire public interest, involved in the main suit, will be jeopardised. In support of his submission, strong reliance has been placed on various decisions of the Apex Court. He refers to the case of State of Harayana v. Chandra Mani and Ors. reported in AIR 1996 SC 1623, wherein it was held that when the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the state represents collective cause of the community. And, therefore certain latitude is not impermissible in favour of the Government. It was further held that if the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The other case which is referred herein is the case of G Ramegowda, Major etc., v. the Special Land Acquisition Officer, Bangalore, reported in AIR 1988 SC 897. In this case the Apex Court, discussing the 'sufficient cause,' in para 8 held as follows:

Therefore, in assessing what, in a particular case, constitutes 'sufficient cause' for purposes of Section 5 it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the Government. Governmental 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 a reasonable limit is necessary if the judicial approach is not 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.'

6. Applying the ratio of those Apex Court's enunciations, Mr. Sarma, learned counsel, contends that the delay in filing this appeal may be condoned.

7. Countering the submissions so made on behalf of the State-petitioner, Mr. Goswami, learned Sr. counsel vehemently argues that the petition for condonation, on the face of it itself, is liable to be rejected outrightly only on the count that no proper and plausible explanation has been put forward by the State-petitioner in both the application as well as subsequent additional affidavit. He contends that subsequent additional affidavit cannot be accepted in the eye of law on the very fact that the same has not come from the competent authority due to the fact that notwithstanding the seriousness and gravity of the matter the said affidavit has been filed by an officer who is completely a stranger to the officer involved in this application or the appeal. Drawing my attention into the name of the deponent Mr. Goswami, learned Sr. counsel submits that said additional affidavit was sworn by one Jagadish Sarma who was shown as a Sr. inspector-cum-Auditor of Co-operative Societies in the office of the Assistant Registrar, Co-operative Societies, Goalpara without making any whisper of his authorisation to swear such affidavit. On perusal of the said affidavit I am surprised and shocked to note how casually Govt. has taken this matter in praying for condonation of delay.

8. Learned Sr. counsel Mr. Goswami, objecting the contentions made on behalf of the petitioner, has relied on the decision of the Apex Court in *P.K. Ranachanran v. State of Kerala* reported in AIR 1998 SC 2276 and the decision of the Division Bench of this Court in *Union of India and Ors. v. Wood Crafts Products Ltd and Anr.* reported in 2001 (1) GLT 34. Referring paragraphs 11, 12, 13 and 24 of the said decision he contends that it is not a case wherein the State should get lenient treatment in the hands of this Court and this Petition be dismissed at the very threshold. In a decision of the Supreme Court in *Commissioner of Wealth tax, Bombay v. Amateur Riders Club, Bombay* reported in 1994 supp (2) SCC 603 their Lordships rejected the application outrightly filed on behalf of the Govt. holding as follows:

'3. This explanation is Incapable of furnishing a judicially acceptable ground for condonation of delay. After the earlier observations of this Court made in several

cases in the past, we hoped that the matters might improve. There seems to be no visible support for this optimism. There is a point beyond which even the courts cannot help a litigant even if the litigant is Government which is itself under the shackles of bureaucratic indifference. Having regard to the law of limitation which binds everybody, we cannot find any way of granting relief. It is true that Government

should not be treated as any other private litigant as, indeed, in the case of the former the decisions to present and prosecute appeals are not individual but are institutional decisions necessarily bogged down by the proverbial red-tape. But there are limits to this also. Even with all this latitude, the explanation offered for the delay in this case merely serves to aggravate the attitude of indifference of the Revenue in protecting its common interests. The affidavit is again one of the stereotyped affidavits making it susceptible to the criticism that the Revenue does not seem to attach any importance to the need for promptitude even where it affects its own interest.

9. Applying the ratio of the aforesaid cases i.e. Commissioner of Wealth Tax, Bombay (supra). Wood Crafts Products Ltd, (supra) as well as R.K. Ramachandran (supra) in the case in hand, it can be safely held it is correct that the Court should be liberal in condoning the delay in filing appeal but the delay is implausible unless sufficient cause is shown. One should not be under illusion that when the Government or any other authority seek condonation of delay by filing application, the court must invariably condone the delay irrespective of whether the delay has been sufficiently explained or not. Refusal of such prayer for condoning the delay may be treated as harsh and unjust to the State-petitioner, but in construing the provisions of law relating to limitation, any equitable considerations of hardship are out of place.

10. Upon hearing the learned counsel of the parties and on perusal of the explanation shown in the application for condonation of delay and additional affidavit, I am of the view that the State-petitioner in the instant case has taken the condonation matter in very casual manner. Because it is found that the delay has not been satisfactorily and sufficiently explained by the State petitioner. In my

view, the explanation so put forward cannot be accepted as 'sufficient cause' for condonation of delay and due to insufficiently explained delay the application must fail. Accordingly the petition is hereby dismissed.

11. Before parting with the case, I would like to put it on record that on the face of the application as well as the additional affidavit it shows that the officers connected in this case, have acted in a very casual and careless manner in dealing with such serious matter involving public coffers. Since this Court is not satisfied with such actions of those officers who have been dealing with this present appeal as well as this application for condonation and subsequent additional affidavit, the court considers it to be fit and proper to direct that the Govt. may take appropriate actions against those officers responsible for filing these application and affidavit, by conducting

proper enquiry in this regard, if so advised.

12 .Inthe result, the Misc. case stands dismissed. I direct the parties to bear their own costs.

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