

The Assistant Commissioner Vs. Jyoteppa

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Court : Karnataka

Decided On : Jul-31-1997

Reported in : ILR1998KAR809

Judge : G.C. Bharuka and ;V. Gopala Gowda, JJ.

Acts : Limitation Act, 1908 - Sections 5

Appeal No. : M.F.A. No. 877/96

Appellant : The Assistant Commissioner

Respondent : Jyoteppa

Advocate for Def. : C.S. Kothavale, Adv.

Advocate for Pet/Ap. : Government Adv.

Disposition : Appeal allowed

Judgement :

ORDER

G.C. Bharuka and V. Gopala Gowda, JJ.

1. This belated appeal has been filed by the Assistant Commissioner, Bailhongal, representing the State of Karnataka under Section 54(1) of the Land Acquisition Act, 1894. The delay in filing the appeal is of 148 days. Now, an application has

been filed for condonation of the said delay.

2. The affidavit has been sworn by the Section Officer, Law Department, (Lit-II), Vidhana Soudha, Bangalore, stating therein that the date of judgment and award passed by the learned Civil Judge, Gokak was on 12.6.1995 and though certified copy of the judgment and award was received by the Additional Government Pleader well within the period of limitation and claimed to have been forwarded to the Law Department, under his letter dated 13.7.1995, the same is claimed to have been received by the department only on 29.9.1995 i.e. almost after a lapse of more than two months. Then, on 4.10.1995 it was given to the concerned case worker, who got intermingled the same with other files and lost track of the same, thus, taking a plea of misplacement of the file. Subsequently, the Divisional Commissioner requested the department to look into the matter. The letter of the Divisional Commissioner was submitted to the deponent-Section Officer only on 26.12.1995. Then, he directed the concerned case worker to put up the file before him, which was accordingly resubmitted along with some remarks on 28.12.1995. Then it was submitted to the Under Secretary on the very same day. The Under Secretary then returned the file with an order to trace the main file in the land acquisition case concerned. Thereafter, efforts were made to trace the same. On 3.2.1996, the Law Secretary, keeping in view the letter dated 30.1.1996 of the Divisional Commissioner, directed to take steps for filing the appeal. Accordingly, written instructions were issued by the Under Secretary on 6.2.1996. Ultimately, the main file was traced by the concerned case worker Sri H.Y. Bheemaraju on 7.2.1996 at 4.45 p.m. Then it was made available to the Secretary. Finally, after movement of the file from table to table, the present appeal was filed on 20.2.1996.

3. Learned Counsel appearing for the respondent, by referring to the said facts, has stated that the affidavit clearly discloses gross negligence on the part of government employees in not taking steps for filing the appeal in time and for such negligence the right accrued to a citizen should not be allowed to be defeated by exercise of judicial discretion by the Courts by condoning the delay, that too when even ex facie, the facts stated in the affidavit filed in support of the application for condonation of delay does not constitute 'sufficient cause' for being condoned.

4. We appreciate the grievance raised on behalf of the respondents, but we are bound by the law laid down by the Supreme Court with regard to condonation of delay, in appeals filed by the Governments in its instrumentation.

5. Section 5 of the Limitation Act, which provides for extension of prescribed period in certain cases, reads thus:

5. Extension of prescribed period in certain cases. Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908(5 of 1908), may be admitted after the prescribe period, if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation. The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining of computing the prescribed period may be sufficient cause within the meaning of this Section.

6. In terms of Section 5 of the Limitation Act, Rule 3A of Order 41 of C.P.C. has laid down the mode and manner of filing the application for seeking condonation of delay. Rule 3A of Order 41 of C.P.C. reads thus:

3A(1) Application for condonation of delay:- When an appeal is presented after the expiry of the period of limitation specified therefor, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring appeal within such period.

(2) xxx xxx xxx xxx

(3) xxx xxx xxx xxx

7. From the above provisions it is clear that for seeking condonation of delay in preferring appeal, an application is required to be filed by the appellant with affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had 'sufficient cause' for not preferring the appeal within such period.

8. In the present case, it is the State of Karnataka through one of its officers who is appellant before us. We have already set out the facts which have been disclosed on affidavit along with the application filed for condonation of delay. What has been stated on facts is that the delay had primarily occasioned for two dominant reasons, viz., firstly, the late receipt of certified copy of the judgment and award from the government pleader and secondly, negligent act of the case worker, who mingled up the papers with some other files leading misplacement of relevant papers which were required for preferring the present appeal. Therefore, the cause shown on behalf of the State was based on negligent act of its own agent and employees. The question is whether in the present administrative and bureaucratic set up of the Country, lethargy, unexplained inactions, deliberate negligence and/or red tape on the part of officers and agents can provide 'sufficient cause' to the State to seek condonation of delay in preferring appeals. This aspect has been attended to by the Supreme Court of India at least in five cases which notice hereunder.

9. In the case of COLLECTOR, LAND ACQUISITION, ANANTNAG AND ANR. v. Mst. KATIJI AND ORS : (1987)ILLJ500SC . the Apex Court has observed thus:

'...The fact that it was the 'State' which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step motherly treatment when the 'State' is the applicant praying for condonation of delay. In fact 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. In any event, the State which represents the collective cause of the community, does not deserve a litigant non grata status. The Courts therefore have to inform with the spirit and philosophy of the provision in the course of the Interpretation of the expression 'sufficient cause'.

10. Thereafter, following the said decision, in the case of G. RAMEGOWDA v. SPECIAL LAND ACQUISITION OFFICER : [1988]3SCR198 the Supreme Court, has held thus:

'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 in 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 or 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.

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. Implicit in the very nature of Governmental functioning is procedural delay incidental to the decision making process. In the opinion of the High Court, the conduct of the law officers of the Government placed the Government in a predicament and that it was one of those cases where the mala

fides of the officers would not be imputed to Government.

11. The Apex Court, while condoning the delay in the case of STATE OF HARYANA v. CHANDRA MANI AND ORS : 2002(143)ELT249(SC) . has held thus:-

'The factors which are peculiar to and characteristic of the functioning of the Governmental conditions would be cognizant to and require adoption of pragmatic approach in justice oriented process. The Court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the Courts or whether cases require adjustment and should authorise the officers take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants. Considered from the perspective, it must be held that the delay of 109 days in this case has been explained and that is a fit case for condonation of the delay.

On the facts and circumstances of the case, we are of the opinion that it is a fit case for condoning the delay. The delay is accordingly condoned. The High Court is requested to dispose of the appeal as expeditiously as possible.

12. In quick succession, again in the case of SPECIAL TEHSILDAR, LAND ACQUISITION, KERALA v. K.V. AYISUMMA : AIR 1996 SC2750 the Supreme Court held thus:-

'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 skilful 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 had 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.

13. In consistency with its earlier judgments, once again, the Apex Court, in the case of *STATE OF BIHAR AND ORS. v. SUBHASH SINGH* : [1997]1SCR850 has observed thus:-

'....Take for instance, delay in filing of an appeal or revision. It is known fact that in transaction of the Government business, none would own personal responsibility and decisions are leisurely taken at various levels. It is not uncommon that delay would be deliberately caused to confer advantage to the opposite litigant; more so when stakes involved are high or persons are well connected/influential or due to obvious considerations. The Courts, therefore, do not adopt strict standard of proof of every day's delay.'

14. From the law so laid down by the Supreme Court in the above noted cases, it is clear that for the faults or negligence on the part of Officers of the State in not preferring the appeals within the time prescribed, the delay caused cannot be refused to be condoned. But, in all such cases, it will be desirable to identify the person, who had been primarily responsible for causing the delay and apart from

subjecting him to appropriate disciplinary proceedings, he should also be saddled with exemplary costs to ensure that atleast in future such Government Servants act with all promptness to safeguard the interest of the State with due compliance of law.

15. For the reasons aforesaid, we condone the delay of 148 days caused in preferring the present appeal, but with a direction to the Law Secretary to hold an appropriate enquiry within a month and fix the responsibility on the erring official. Anyhow, the condonation of delay in preferring the above appeal is subject to costs of Rs. 1,000/- to be deposited in the Court of Civil Judge at Gokak within a month from today with a further direction to recover the same from the salary of the person who is found to be primarily responsible in causing the delay in filing the appeal.

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