
Uma Sharma Vs State Of Himachal Pradesh

Civil Miscellaneous Petition Main (Original) No. 45 Of 2022

Court: High Court Of Himachal Pradesh

Date of Decision: Sept. 16, 2022

Acts Referred:

Limitation Act, 1963 & Section 5#Himachal Pradesh Tenancy And Land Reforms Act, 1972
& Section 62, 64, 118

Hon'ble Judges: Satyen Vaidya, J

Bench: Single Bench

Advocate: Neeraj Gupta, Ajeet Jaswal, Desh Raj Thakur, Narender Thakur, Manoj Bagga

Final Decision: Disposed Of

Judgement

Satyen Vaidya, J

1. By way of instant petition, petitioner has prayed for following relief:-

“It is, therefore, prayed that the petition may be accepted and impugned orders Annexure P-4 and Annexure P -6 may be ordered to be

quashed and set aside, resultantly application filed by respondent under Section 5 of Limitation Act seeking condonation of delay in filing

appeal before the Divisional Commission, Shimla Divisional in Case No. 202/2020 may be ordered to be dismissed with costs upon

respondent throughout. Any other order or direction that this Hon'ble Court may deem fit in the facts and circumstances of the case may

also be passed in favour of the petitioner in the interest of justice.”

2. Brief facts necessary for adjudication of the petition are that proceedings under Section 118 of the Himachal Pradesh Tenancy and Land Reforms

Act, 1972, were initiated against the petitioner by District Collector, Solan, which were decided in favour of the petitioner on 11.07.2014. An appeal

was filed before Divisional Commissioner, Shimla by respondent against order dated 11.07.2014, passed by District Collector, Solan, registered as

Revenue Appeal No. 202/2020. Since, the appeal was filed beyond the prescribed period of limitation, an application under Section 5 of the Indian

Limitation Act, read with Section 64 of the H.P. Tenancy and Land Reforms, Act, was also filed seeking condonation of delay in filing the appeal. The

Divisional Commissioner allowed the application under Section 5 of the Limitation Act filed by respondent, vide order dated 21.10.2021. Petitioner

herein, assailed the said order in Revision Petition before Financial Commissioner (Appeals) Himachal Pradesh. The prayer of the petitioner was

rejected by Financial Commissioner (Appeals), vide impugned order dated 26.11.2021.

3. Petitioner has challenged the order dated 21. 10.2021, passed by Divisional Commissioner, Shimla, Annexure P-4 in Revenue Appeal No. 202/2020

and order dated 26. 11.2021, passed by Financial Commissioner (Appeals) Himachal Pradesh in Appeal No. 02/2021. The contention of the petitioner

is that the impugned orders are against all canons of law. There was no justification for condonation of delay, still the Divisional Commissioner allowed

the application by a non speaking and cryptic order. The Financial Commissioner (Appeals) Himachal Pradesh also failed to pass the order within the

fourwalls of law. The impugned order passed by Financial Commissioner (Appeals) Himachal Pradesh, is the result of surmises and conjectures. It

has not been appreciated that no credible reason, whatsoever, was assigned for huge delay that had occurred in filing the appeal, still the undue benefit

was allowed in favour of the respondent by way of impugned orders.

4. In reply, respondent has submitted that orders passed by Divisional Commissioner and Financial Commissioner (Appeals), are in accordance with

law. In such view of the matter, a prayer has been made to uphold the impugned orders Annexures P-4 and P-6.

5. I have heard learned counsel for the parties and have also gone through the records of the case carefully.

6. The order assailed by respondent before Divisional Commissioner, Shimla in Review Appeal No. 202/2020 was passed by the District Collector,

Solan on 11.07.2014. The appeal was filed in 2020. In the application under Section 5 of the Limitation Act, it was averred that order dated 11.07.2014

came to the notice of respondent only on 20.09.2019, when the petitioner herein made a request for recommending her case to the Government. It

was further averred that thereafter it was noticed that legal opinion had not been supplied by the Standing Counsel for the State. Inquiry was made

from Shri Vijay Kumar Sultanpuri, the then Standing Counsel for the State, vide letter dated 21.10.2019. The Standing Counsel on 06.11.2019

explained that the legal opinion could not be furnished as the original record of the case was with District Revenue Officer, Solan. The legal opinion

was stated to have been received by respondent on 06.11.2019, which was sent to the office of Principal Secretary (Revenue) for examination on

21.10.2019. The Principal Secretary-cum-F.C(Revenue) conveyed the decision to file appeal on 17.02.2020, which was received in the office of

respondent on 24.02.2020, whereafter, the appeal alongwith application for condonation of delay was preferred.

7. Noticeably, the application under Section 5 of the Limitation Act for condonation of delay preferred by the respondent before Divisional

Commissioner has been signed by none else than District Collector, Solan himself. The order dated 11.07.2014 was also passed by the same authority

i.e. District Collector, Solan. When order dated 11.07.2014 was passed by District Collector, Solan, it is not understandable, as to how, he was not

aware about the order till 2019, when it was allegedly noticed on the representation of the petitioner.

8. A perusal of the contents of the application under Section 5 of the Limitation Act filed by respondent before Divisional Commissioner reveal that

there was absolutely no reason assigned for delay in filing the appeal. The application is totally silent on the aspect, as to whom, the representation had

been addressed by the petitioner on 20.09.2019. Further, there is nothing on record to suggest that legal opinion was ever solicited from the Standing

Counsel after passing of order dated 11.07.2014. In absence of such material, it cannot be presumed that the Standing Counsel was under obligation to

render the opinion of his own. This fact gains significance in the background where the order was passed by District Collector, Solan and it is not

clear, as to whom, the legal opinion was to be rendered by Standing Counsel. Thus, the averments in the application for condonation of delay were

clear concoction. Not only this, even after receipt of legal opinion on 06.11.2019, the matter was not attended to with required promptitude. The

permission to file appeal was received in the office of respondent on 24.02.2020. Meaning thereby that even after 06.11.2019, the period of limitation

prescribed for filing the appeal in Section 62 of H.P. Tenancy and Land Reforms Act, was allowed to elapse. This is a case of sheer inaction on the

part of the authorities.

9. As per Section 62 of the H.P. Tenancy and Land Reforms Act, the period of limitation for filing the appeal before Divisional Commissioner is sixty

days. Section 64 of the Act ibid provides for computation of the period for an appeal as per the Limitation Act, 1963. Thus, the period of limitation for

filing of appeal commenced from the date of order i.e. 11.07.2014. The appeal was to be filed within sixty days. The Limitation Act equally applies to

all including the Government. For condonation of delay, there has to be sufficient cause. The sufficiency of a cause can be assessed keeping in view

the facts and circumstances of the case. As noticed above, what to talk of sufficient cause, respondent had not been able to assign any reason for

delay in filing the appeal. Undue laxity of government officials cannot be provided with any credit. The law has equal balance for all. Though, some

leeway is permissible in the case of government but that cannot be construed as an absolute license to flout the law at whims. In State of Madhya

Pradesh Vs. Bherulal (2020) 10 SCC 654, Hon'ble Supreme Court observed as under:-

"2. We are constrained to pen down a detailed order as it appears that all our counseling to Government and government authorities

have fallen on deaf ears i.e., the Supreme Court of India cannot be a place for the Governments to walk in when they choose ignoring the

period of limitation prescribed. We have raised the issue that if the Government machinery is so inefficient and incapable of filing appeals/petitions in time, the solution may lie in requesting the Legislature to expand the time period for filing limitation for Government

authorities because of their gross incompetence. That is not so. Till the Statute subsists, the appeals/petitions have to be filed as per the

Statutes prescribed.

3. No doubt, some leeway is given for the Government inefficiencies but the sad part is that the authorities keep on relying on judicial

pronouncements for a period of time when technology had not advanced and a greater leeway was given to the Government (LAO V. Katiji

). This position is more than elucidated by the judgment of this Court in Post Master General V. Living Media (India) Ltd. (2012) 3 SCC 563

where the Court observed as under:(Post master General case, SCC pp. 573-74, paras 27-30)

“27) 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.

28) 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.

29) 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.

30. 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. ¶

Eight years hence the judgment is still unheeded!

4. A reading of the aforesaid application shows that the reason for such an inordinate delay is stated to be only ¶ "due to unavailability of

the documents and the process of arranging the documents ¶. In paragraph 4 a reference has been made to ¶ "bureaucratic process

works, it is inadvertent that delay occurs. ¶

The same reiteration is again found in State of Odisha and ors. Vs. Sunanda Mahakude (2021) 11 SCC 560, in which it has been observed as under:-

¶ "3. A reading of the aforesaid shows that there is no reason much less sufficient and cogent reason assigned to explain the delay and the

application has also been preferred in a very casual manner. We may notice that there are number of orders of this State Government alone

which we have come across where repeatedly matters are being filed beyond the period of limitation prescribed. We have been repeatedly

discouraging such endeavours where the Governments seem to think that they can walk in to the Supreme Court any time they feel without

any reference to the period of limitation, as if the statutory Law of Limitation does not exist for them.

4. There is no doubt that these are cases including the present one where the Government machinery has acted in a inefficient manner or it

is a deliberate endeavour. In either of the two situations, this court ought not to come to the rescue of the petitioner. No doubt, some leeway

is given for Government inefficiency but with the technological advancement now the judicial view prevalent earlier when such facilities

were not available has been over taken by the elucidation of the legal principles in the judgment of this Court in the Office of the Chief Post

Master General & Ors. v. Living Media India Ltd. & Anr. ¶ " (2012) 3 SCC 563. We have discussed these aspects in SLP [C] Diary

No.9217/2020, State of Madhya Pradesh v. Bheru Lal decided on 15.10.2020 and thus, see no reason to repeat the same again.

5. In the present case, the State Government has not even taken the trouble of citing any reason or excuse nor any dates given in respect of

the period for which condonation is sought. The objective of such an exercise has also been elucidated by us in the aforesaid judgment

where we have categorized such cases as ¶ "certificate cases ¶.

10. The impugned order dated 21.10.2021, Annexure P-4, passed by Divisional Commissioner is non speaking and cryptic. No reason whatsoever, has

been assigned for allowing the application of respondent for condonation of delay. Similarly, order dated 26.11.2021, Annexure P-6, passed by

Financial Commissioner (Appeals) Himachal Pradesh, is against the settled principles of law. It was incumbent upon both the authorities to have

assessed the merits of the application at the touch stone of settled legal principles. The application could only be allowed if authorities could arrive at

the conclusion that delay was on account of sufficient cause shown by the applicant. The impugned orders reveal that no such exercise was

undertaken. Without holding existence of sufficient cause for delay, the application under Section 5 of the Limitation Act, could not have been allowed.

11. In view of above discussion, the petition is allowed. Order dated 21.10.2021, passed by Divisional Commissioner, Shimla, Annexure P-4 in

Revenue Appeal No. 202/2020 and order dated 26.11.2021, passed by Financial Commissioner (Appeals) Himachal Pradesh, Annexure P-6, in Appeal

No. 02/2021, are set aside. Application of respondent under Section 5 of the Limitation Act, seeking condonation of delay in filing the Appeal No.

202/2020 before the Divisional Commissioner, Shimla, is ordered to be dismissed.

12. Petition is disposed of accordingly, with no order as to costs. Pending miscellaneous application(s) if any, also stands disposed of.