

(2024) 12 JH CK 0078

Jharkhand High Court

Case No: L.P.A. No. 279 Of 2024

Secretary cum Commissioner,
Commercial Taxes Department

APPELLANT

Vs

Ramesh Chandra Singh

RESPONDENT

Date of Decision: Dec. 17, 2024

Hon'ble Judges: M. S. Ramachandra Rao, CJ; Deepak Roshan, J

Bench: Division Bench

Advocate: Sahbaj Akhtar, Krishna Murari

Final Decision: Dismissed

Judgement

Deepak Roshan, J

1. This application has been filed by the applicant seeking condonation of delay of 404 days in filing the appeal against the judgment dated 27.02.2023

passed by the learned Single Judge in W.P. (S) No.5725 of 2017.

2. It is stated in the application for condonation of said period of delay that the respondent came to know about the order dated 27.02.2023 passed in

W.P.(S) No.5725 of 2017 on 16.03.2023 and no reason has been assigned for this delay. Thereafter, on 03.04.2023, it has been forwarded to the

office of Deputy Secretary. Thereafter, on 25.04.2023 the same has been forwarded to Joint Secretary, Commercial Taxes Department, who in turn

forwarded the same to the Secretary of the Department on 27.04.2023 for instruction.

3. It has been further stated that on 28.04.2023, the Secretary has directed to get instruction regarding filing appeal against the order passed by the

learned Single Judge. It has been further stated in the application that the Law Department, Government of Jharkhand returned the file to the Department on 15.06.2023 and opined that "No useful purpose will be served in preferring an appeal". Thereafter, the file was again forwarded to Deputy Secretary on 26.06.2023, who in turn placed it before the Joint Secretary on 03.07.2023 and the same was put up before the Secretary of the Department on 04.07.2023.

4. Subsequently, on 07.07.2023, the Secretary of Department directed to take opinion from the Advocate General. Thereafter, seeking opinion from Advocate General the same was put up before the Deputy Secretary on 12.10.2023. This huge delay of three months has not been explained by the appellant-State.

5. It has been further stated in the application for condonation of delay that the Deputy Secretary further forwarded it to the Joint Secretary on 16.10.2023. The Department decided to take opinion from Finance Department on 02.11.2023 and accordingly, the file was forwarded to the accounts section on 04.12.2023 for calculation of amount and LPC of the petitioner. After getting the same from the Account Section, it was forwarded to Nodal Officer, (law) of the Law Department.

6. Thereafter, on 27.12.2023, the dismissal order of the petitioner got approval from the Departmental Minister and it was decided on 09.01.2024 to place it before the Chief Secretary and Hon^{ble} Chief Minister for their approval since the service is related with the First Class Officer. On 11.01.2024, the file was further put up before the Principal Secretary of the Hon^{ble} Chief Minister and on 16.01.2024, he returned the same for taking opinion from the department of Personnel Administrative Reforms and Rajbhasha.

After a gap of two months, the Department of Personnel Administrative Reforms and Rajbhasha, Government of Jharkhand returned the file on 11.03.2024 and suggested that since the matter concerned related with huge revenue loss and therefore, opinion of Finance Department is required.

7. Thereafter, the concerned department placed it before the Chief Secretary on 19.03.2024 who directed the Department to get opinion from the

Finance Department and again the file was sent to the Finance Department 21.03.2024. and the Finance Department opined that an appeal against order dated 27.02.2023 passed in W.P.(S) No.5725 of 2017 can be filed and sent the file on 04.04.2024 to the appellant-Department. Thereafter, on 08.04.2024 the file was put up before Deputy Commissioner, Commercial Taxes Department who forwarded the same to the Secretary of the Department and again it was decided to obtain opinion of the learned Advocate General and on 12.04.2004, the file was again sent to the office of the Advocate General for filing the appeal.

Thereafter, the concerned file was given for preparation and the statement of fact was approved by 30.04.2024 and finally, the appeal was filed on 06.05.2024 after a delay of 404 days.

8. From the facts narrated above, it is clear that though the judgment of the learned Single Judge was pronounced on 27.02.2023, but the file kept on moving from 03.04.2023 till 30.04.2024 from table to table and from officer to officer. It is not as if the applicant was not aware about the period for filing the Letters Patent Appeal, yet a delay of 404 days occurred in filing the appeal from the date of the order and receiving of certified copy of the Judgment.

9. It thus appears that the applicant has adopted a very lethargic attitude in the matter of filing the Letters Patent Appeal and has been negligent in that regard.

10. In *Postmaster General and others Vs. Living Media India Limited* and another reported in (2012) 3 SCC 563, the Hon^{ble} Supreme

Court held:

“25. We have already extracted the reasons as mentioned in the better affidavit sworn by Mr Aparajeet Pattanayak, SSRM, Air Mail Sorting Division, New Delhi. It is relevant to note that in the said affidavit, the Department has itself mentioned and is aware of the date of the judgment of the Division Bench of the High Court in *Office of the Chief Postmaster v. Living Media India Ltd.* as 11-9-2009. Even according to the deponent, their counsel had applied for the certified copy of the said judgment only on 8-1-2010 and the same was received by the Department on the very same day. There is no explanation for not applying for the

certified copy of the impugned judgment on 11-9-2009 or at least within a reasonable time. The fact remains that the certified copy was applied for only on 8-1-

2010 i.e. after a period of nearly four months.

26. In spite of affording another opportunity to file better affidavit by placing adequate material, neither the Department nor the person-incharge has filed any explanation for not applying the certified copy within the prescribed period. The other dates mentioned in the affidavit which we have already extracted, clearly show that

there was delay at every stage and except mentioning the dates of receipt of the file and the decision taken, there is no explanation as to why such delay had occasioned. Though it was

stated by the Department that the delay was due to unavoidable circumstances and genuine difficulties, the fact remains that from day one the Department or the person/persons

concerned have not evinced diligence in prosecuting the matter to this Court by taking appropriate steps.

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 bona fides,

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.â€

Emphasis Supplied

11. These observations equally apply to the instant case where the applicant has acted in a similar manner as in the said case.

12. The aforesaid judgment has been followed by the Honâ€™ble Apex Court in catena of judgments, and looking to the overall facts and

circumstances of the case and the stand/explanation given by the appellant, we are of the considered view that sufficient cause has not been shown to

condone the huge period of delay in filing the appeal; accordingly, this application is dismissed.

13. Consequently, the instant L.P.A. is also dismissed. Pending I.A., if any, shall also stand closed.