

(2011) 03 GAU CK 0008

Gauhati High Court (Agartala Bench)

Case No: C.M. Application No. 67 of 2011 in L.A. Appeal No. 15 of 2011

The State of Tripura

APPELLANT

Vs

Shri Koushik Roy

RESPONDENT

Date of Decision: March 31, 2011

Acts Referred:

- Limitation Act, 1963 - Section 2, 5

Citation: (2011) 3 GLR 738

Hon'ble Judges: U.B. Saha, J

Bench: Single Bench

Advocate: N. Majumder, for the Appellant; A.K. Saraf A. Sarma and A. Goyal, for the Respondent

Final Decision: Allowed

Judgement

U.B. Saha, J.

The instant application u/s 5 of the Limitation Act has been filed by the State Appellant-applicants for condoning a delay of 277 days in filing the appeal (L.A. Appeal No. 15 of 2011) against the judgment and award dated 12.1.2010 passed in Case No. Misc.(L.A.) 73 of 2005 by the learned Land Acquisition Judge (Court No. 3), West Tripura, Agartala wherein the learned L.A. Judge enhanced the amount of compensation awarded by the Land Acquisition Collector, West Tripura, Agartala for the acquired land from Rs. 60,000/- per kani to Rs. 8,00,000/- per kani for Bastu class of land, from Rs. 80,000/- per kani to Rs. 9,00,000/- per kani for Dokan/Nal class of land, from Rs. 55,000/- per kani to Rs. 7,00,000/- per kani for Nal class of land, from Rs. 40,000/- per kani to Rs. 4,00,000/- per kani for pukur, pukurpar, bhiti and charra class of land and from Rs. 30,000/- per kani to Rs. 3,00,000/- per kani for khelarmath, path, nala class of land.

2. This matter was partly heard on 29.3.2011 and it was directed to be listed today for further hearing. Accordingly, it is listed today and this Court has heard the

learned Counsel appearing for both the parties.

3. Mr. N. Majumder, learned Counsel appearing for the State Appellant-applicants submitted that the delay caused is bona fide and not intentional as the Appellant-applicants are machinery impersonal and no individual is looking the interest of the Government properly though some of the employees/officers are entrusted with specific responsibilities, but those employees/officers try to shift their responsibility to other officers and in the instant case also due to non- action of the officers/employees concerned the aforesaid delay has occurred in filing the appeal. He further submitted that though in belated stage the requiring department, i.e. the Public Works Department took initiative in collecting necessary papers/documents from the LA Collector, West Tripura, Agartala and to place the same before the Law Department, Govt. of Tripura for obtaining their opinion whether an appeal can be filed or not, it took time as for receiving the necessary documents from the LA Collector, the requiring Department had to wait for some time, which prevented the Appellant-applicants from preferring the appeal within the statutory period of limitation. He submitted that the Apex Court in Special Tehsildar, Land Acquisition, Kerala Vs. K.V. Ayisumma, held that when the delay was occasioned at the behest of the Government, it would be very difficult to explain the day to day delay as the transaction of the business of the Government being done leisurely by officers who had not evinced or 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 inspite of pointing at the delay, they do not take expeditious action for ultimate decision in filing the appeal. Learned Counsel again submitted that in State of Haryana Vs. Chandra Mani and others, the Apex Court also observed, inter alia, In litigations to which the Government is a party, there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Govt. are lost for such default, no person is individually affected; but what, in the ultimate analysis suffers is public interest. The decision of Govt. are collective and institutional decision and do not share the characteristics of decision of private individual. 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 Govt. makes out a case where public interest was shown to have suffered owing to acts of fraud or bad fate on the part of its officers or agents and where the officers were clearly at cross-purposes with it. It was, therefore, held that in assailing what constitutes sufficient cause for purpose of Section 5, it might, perhaps, be somewhat unrealistic to exclude from consideration that go into the judicial verdict. These factors which are peculiar to and characteristics of the functioning of the Government. Govt. 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 right said that those who bears responsibility of Govt. must have a little play at the joints. Due recognition of this limitation on Governmental functioning of course, within reasonable limit - is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put Govt. 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 decision making process. The delay of over one year was accordingly condoned.

4. Mr. Majumder contended that in the instant case, the learned LA Judge while enhancing the award passed by the LA Collector failed to consider the market rate of the land in question at the relevant time. Placing reliance on the decisions of the Apex Court in [State of Bihar and Others Vs. Kameshwar Prasad Singh and Another](#), and [State of Nagaland Vs. Lipok AO and Others](#), learned Counsel contended that it would be proper for this Court to allow the prayer for condonation of delay taking note of the aforesaid judgments of the Apex Court in the interest of justice.

5. Dr. A. Saraf, learned senior counsel, assisted by Mr. A. Sarma as well as Mr. A. Goyal, learned Counsel appearing for the sole Respondent while resisting the prayer for condonation of delay, referring the decision rendered by a Division Bench of this Court in *Indian Oil Corporation Ltd. and Ors. v. Subrata Borah Chowlek*, reported in (2010) 3 GLR 312 would contend that the essential preconditions for condoning a delay, the Court is to see whether the cause of delay has been satisfactorily explained and Court should not condone the delay on equitable and sympathetic consideration in a case where the Government is praying for condonation of delay. He also placed reliance on *United India Insurance Co. Ltd. v. Sahadev Ghosh* [(2005) 2 GLR 648], wherein a learned Single Judge of this Court while considering a prayer for condonation of delay and law of limitation noted thus -

Law of limitation does not envisage that when an application seeking condonation of delay is filed by the Govt. or any other authority, the Court must invariably condone the delay regardless of whether sufficient cause is shown or not. If sufficient cause is, prima facie, not found in the application seeking condonation of delay, the Court has no alternative but to dismiss the petition. Consideration of hardship and equitable consideration are out of place when construing the provision pertaining to limitation....

6. Learned Senior Counsel also placed reliance on the decision rendered by a co-ordinate Bench of this Court in *The State of Assam and Ors. v. Shri Anil Chandra Das*, reported in (1990) 1 GLR 183 wherein the co-ordinate Bench after taking note of the facts of that case noted, inter alia, in construing Section 5 of the Limitation Act the Court has to keep in mind two important considerations. First is that the very purpose of providing a period of limitation for challenging any order by way of appeal, revision etc. is to give finality to all legal proceedings on the expiry of specified time and to set at rest all judicial controversies in a particular matter. On

the expiry of the period of limitation, a right is created in favour of a decree-holder to treat the decree or an award as binding. The other consideration is that the delay might have been caused due to reasons beyond the control of the Appellant or, in other words, there may be "sufficient cause" for the delay and refusal to condone it might result in grave injustice. The Court has to strike a balance between the two equally important considerations. What is, therefore, necessary is to consider whether there was any gross negligence, deliberate inaction or lack of bonafide on the part of the Appellant. If that be so, the delay should not be condoned. On the other hand, if sufficient cause is shown, the Court should exercise its discretion and condone the delay. Proof of "sufficient cause" therefore, is a condition precedent for exercise of the discretionary power of the Court to condone the delay. No hard and fast rule can be laid down for determining what constitutes "sufficient cause". That would depend on the facts and circumstances of each case which should be considered by the Court in the proper perspective with the object of furthering substantial justice.

7. He finally placed reliance on the decision rendered by a Division Bench of this Court in *Union of India and Ors. v. Wood Crafts Products Ltd. and another*, reported in (2001) 1 GLR 327, wherein the Division Bench after taking note of catena of decisions of the Apex Court in Para 14 noted thus-

Under the concept of welfare State, in order to promote social justice, it is the bounden duty of the State to protect and preserve the public interest and public fund. Since public exchequer is incurring heavy expenses on the different departments of the State and its instrumentalities, it is incumbent upon them to be fast and prompt in discharging their duties and in carrying their responsibilities with due diligence. If there is good case on merit and the application for condonation of delay, unintentional or otherwise, filed by the State is not allowed, it is certain that damage will be caused to the public interest and public fund. Unfortunately the officers of the State and its instrumentalities carry an impression that with each and every case, the delay caused in filing an appeal is bound to be condoned, taking it for granted on the basis of a few decisions where the delay has been condoned considering the facts of those cases where sufficient causes were shown and proved.

8. In *Wood Crafts (supra)*, the Division Bench also noted "The term "sufficient cause" is not defined u/s 2 of the Limitation Act, but by the same, it means and so far has been construed as beyond control of the party seeking indulgence for extension of the period of limitation. But from a bare perusal of Section 5 of the Limitation Act and its preamble, it manifests that Limitation Act is an exhaustive Code governing the law of limitation in respect of matters specially dealt with by it. This is why the Law of Limitation is a panacea to prevent disturbance or deprivation of what may have been acquired in equity of justice or what may have been lost by the parties or inaction/negligence of laches. The Courts are not permitted to travel beyond the

provisions of the Act or to supplement them. The Court cannot grant exemption from limitation on equitable consideration or on the ground of hardship."

9. Relying upon the judgments as referred to by him, Dr. Saraf tried to convince this Court that Government being the machinery impersonal cannot be provided with more benefit, which is not intended by the legislature and the State cannot be put on a different footing than the common citizen justice seeker.

10. This Court has gone through the decisions referred to by the learned Counsel appearing for the respective parties and also given anxious thought to the submissions of the learned Counsel. This Court has also perused the impugned judgment and award.

11. In Anil Ch. Das (supra), the co-ordinate Bench of this Court in its decision mainly harped on the point that the Court has to strike a balance between the parties taking note of the fact that on expiration of the period of limitation, a right is created in favour of a decree- holder to treat the decree or an award as binding and also the fact that whether the delay caused due to reasons beyond the control of the party or in other words, whether there is any sufficient cause for causing such delay and refusal to condone the delay would result in grave injustice.

12. There is no quarrel with the proposition laid down by the co- ordinate Bench of this Court. The main factors to be considered by the Court while taking an application for condonation of delay for decision are whether any grave injustice would be caused to any of the parties if the application for condonation of delay is allowed and whether there is any merit in the appeal for which condonation of delay is prayed for and if it is found that really there is merit in the appeal then the Court should condone the delay as the duty of the Court is to see whether the impugned judgment/order is a reasoned one or not and if it is seen that the impugned judgment/order is an unreasonable one then the Court should condone the delay as the duty of the Court is to do justice and not to oust a justice seeker merely on technical ground.

13. In Wood Crafts (supra), the Division Bench of this Court also stated since public exchequer is incurring heavy expenses on the different departments of the State and its instrumentalities, it is incumbent upon them, to be fast and prompt in discharging their duties and in carrying their responsibilities with due diligence, but at the same time, in subsequent decisions, the Apex Court said that Government being the machinery impersonal, the employees/officers entrusted with specific responsibilities are not taking any initiative at an early date to file appeal against a judgment/order, which affects the public exchequer as well as public interest though there are grounds for preferring appeal and while making the aforesaid observation, the Apex Court also noted that the State cannot be put on the same footing as an individual as 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. The judgment in Wood Crafts (supra) is an earlier judgment than the judgment of the Apex Court passed in Kameshwar Prasad Singh (supra) wherein the Apex Court, looking into the facts and circumstances of that case held thus -

We are of the opinion that sufficient cause has been made out by the Petitioner which has persuaded us for condoning the delay in preferring the appeal, as we are of the opinion that dismissing the appeal on technical ground of limitation would not, in any way, advance the interest of justice but admittedly, result in failure of justice as the impugned judgments are likely to affect not only the parties before us, but 100 of other persons who are stated to be senior to the Respondents.

14. In the instant case, it appears from the impugned judgment and award that the learned LA Judge enhanced the amount almost 10 times than the award passed by the LA Collector, but it would not be proper for this Court to express any opinion regarding the impugned judgment and award as that would affect the merit of the appeal and not only that even after Wood Crafts (supra), the Apex Court in Lipok Ao (supra) also took note of the fact regarding individual and the State justice seeker and ultimately condoned the delay.

15. In the case of Indian Oil Corporation Ltd. and Ors. (supra), the Division Bench of this Court did not consider the case of Kameshwar Prasad Singh (supra) as well as the case of Lipok Ao (supra). In [State of Manipur and Others Vs. Khumanlambam Nilaroton Singh](#), a Division Bench of this Court, where I was a party, taking note of Kameshwar Prasad Singh (supra) and Lipok Ao (supra), held that condonation of delay being a discretionary power, the Court should exercise such discretion in the interest of justice and ultimately condoned the delay of 554 days in preferring appeal by the State of Manipur against the judgment and order dated 7.1.2005 passed by a learned Single Judge of this Court in W.P.(C) No. 761 of 2004, wherein the learned Single Judge directed the Appellant-Petitioner State to promote the Respondent writ Petitioner in the next higher scale of pay w.e.f. the date of his completion of 12 years regular service as Inspector (Sericulture).

16. Upon going through all the law reports and the contentions made in the instant application wherein day to day explanation has not been given as well as the points raised in the memo of appeal, this Court is of the considered opinion that the appeal (L.A. Appeal No. 15 of 2011) requires examination. Therefore, this Court is of the further opinion that for gross negligence and deliberate inaction or lack of bona fide on the part of the employees/agents of the Government machinery impersonal, who is the custodian of the public finance, it would not be proper to reject the prayer for condonation of delay and oust the justice seeker Appellant-applicant from the Court arena.

17. Accordingly, the prayer for condonation of delay is allowed and the delay of 277 days in preferring LA Appeal No. 15 of 2011 is hereby condoned.

18. The Civil Misc. Application stands disposed of accordingly.