

(2013) 09 AP CK 0009

Andhra Pradesh High Court

Case No: Wamp No. 2228 of 2011 and WA (SR) No. 163906 of 2011

Government of
Andhra Pradesh

APPELLANT

Vs

Commissioner
(Appeals), Hyderabad
and Others

RESPONDENT

Date of Decision: Sept. 24, 2013

Citation: (2014) 2 ALD 84

Judgement

G. Rohini, J.

WAMP No. 2228 of 2011 is filed to condone the delay of 1161 days in filing the writ appeal against the order of the learned Single Judge dated 11.8.2008 in WP No. 16781 of 2008. The State is the appellant in the main appeal. By the order under appeal the learned Single Judge dismissed WP No. 16781/2008 filed by the State seeking a declaration that the order of the Settlement Officer dated 22.12.1980 as confirmed by the Special Commissioner and Director of Settlements, A.P., Hyderabad by order dated 8.6.2000 and further confirmed by the Commissioner of Appeals by order dated 22.11.2003 are arbitrary and illegal.

2. The main appeal is filed against the said order with a delay of 1161 days. The District Collector, Chittoor, representing the State filed the affidavit in support of the application for condonation of delay, and the only explanation offered by him for the delay is as under:

Para 7. I respectfully submit that the writ petition was disposed of on 11.8.2008 and thereafter we have contacted the Government Pleader for filing writ appeal. The grounds of appeal were prepared by the Government Pleader and sent to the Collector in January, 2009 and unfortunately the file was misplaced in the Collector's Office, as the Office of the Collector was shifted to a new building and during the transferring of the files, this file was mixed up with the some other files. It is also respectfully submitted that we have received a letter from the Government

Pleader's office about filing of the contempt case for non-implementation of the orders in WP No. 26911 of 2010.

Thereafter the file was searched and noticed that the writ appeal was not filed and immediately contacted the Government Pleader in the 3rd week of October, 2011. Immediately, the present appeal is filed and therefore there is a delay in preferring the present appeal. The delay in preferring the present writ appeal is neither wilful nor wanton, but for the circumstances stated supra and therefore I tender my unconditional apologies for the delay and if the delay is not condoned, the Government would lose its valuable land.

3. The respondents/writ petitioners filed counter-affidavits opposing the condonation of delay.

4. We have heard the learned Special Government Pleader appearing for the petitioner/appellant, and Sri. C.V. Mohan Reddy, the learned Senior Counsel appearing for the respondents, and perused the material available on record.

5. It is no doubt true that the discretion conferred u/s 5 of the Limitation Act to condone the delay shall be exercised liberally to advance substantial justice to the parties and to decide the dispute on merits. However, the law is well settled that where the delay is on account of gross negligence or deliberate inaction or lack of bona fides, sufficient cause cannot be said to be made out within the meaning of Section 5 of the Limitation Act

6. In the instant case, a perusal of the affidavit filed in support of the application for condonation of delay reflects the negligence and indifference in the approach of the petitioner/appellant in availing the remedy of appeal. In fact, it is manifest from the tenor of the affidavit that the delay is on account of deliberate inaction on the part of the petitioner/appellant, but not on account of any unavoidable administrative delay.

7. As held in [Office of The Chief Post Master General and Others Vs. Living Media India Ltd. and Another](#), the law of limitation binds everybody including the Government and therefore in the absence of plausible and acceptable explanation there is no reason to condone the delay mechanically merely because the Government or a wing of the Government is a party. While strongly deprecating the approach of the Government bodies in seeking condonation of delay offering vague and routine explanations, it is observed by the Apex Court in *Office of the Chief Post Master General v. Living Media India Ltd.* (supra):

13. 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 bona fide 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. 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. Accordingly, the appeals are liable to be dismissed on the ground of delay.

8. In the light of the legal position noticed above, we are unable to accept the explanation offered in the present case for condonation of the inordinate delay of 1161 days. In our considered opinion, there was no bona fide effort on the part of the petitioner/appellant to avail the remedy of appeal within the period of limitation.

9. Therefore, WAMP No. 2228 of 2011 is dismissed. Consequently, the appeal shall also stand dismissed. No costs. As a sequel, the miscellaneous petitions, if any, pending in this writ appeal, shall stand closed.