

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Judgment : 08.04.2009

WP(C) No.9053/2008

M/S AL-HAMAN EXPORT & IMPORTS

..... Petitioner

Through : Mr. Rakesh K. Mudgal for Mrs. Santosh Singh, Advocate

Versus

UNION OF INDIA & ORS.

..... Respondents

Through : Mr. R.V. Sinha, Advocate

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HON'BLE MR. JUSTICE S.RAVINDRA BHAT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

S.RAVINDRA BHAT, J. (OPEN COURT)

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1. The writ petitioner, challenges a letter dated 18.11.2008 of the Deputy Secretary, Govt. of India (second respondent) communicating the decision of the appellate authority of rejecting its application for condonation of delay in filing an appeal and thereby rejecting it under section 23 of the Emigration Act, 1983 (hereinafter "the Act").

2. The brief facts are that the petitioner had applied for registration as a recruiting agency before the appropriate authority i.e. Protector of Emigrants, Chennai alongwith the prescribed

fee of Rs. 5,000. On 14.02.2008 the said authority issued a letter to the Protector General of Emigrants (third respondent) for consideration of the said application. By letter dated 10.03.2008 the petitioner was directed to appear before the third respondent for a personal interview on 25.03.2008; it complied with the said direction. By a letter dated 26.03.2008 of the Protector General of Emigrants, the petitioner was apprised that its application has been rejected on the ground that it was determined to be unsuitable after consideration of his overall awareness of the Emigration Act, capacity to organize demands from abroad, financial status, experience in the field, disposition and performance in the interview. The petitioner, aggrieved by the said order, moved the appellate authority, being the second respondent, by an appeal dated 23.10.2008 i.e. with a delay of 175 days. The appeal of the petitioner was accompanied with an application for condonation of delay supported by medical certificates, stating the illness due to which the action of appeal could not be taken within the prescribed time period. The said application for condonation of delay was rejected as it was not found convincing. This was communicated to the petitioner by letter dated 18.11.2008 by the appellate authority.

3. The relevant part of the impugned communication dated 18.11.2008 is as under:

“The Appellate Authority, after going through the application for condonation of delay filed alongwith the appeal, did not find the reasons convincing to condone the delay. As such, your appeal has been rejected by the Appellate Authority on the grounds of limitations.”

5. The petitioner contends that no notice was served on either him or his advocate before arriving at the impugned decision and that the procedure adopted by the appellate authority

was in clear violation of the principles of natural justice and Section 23 (5) of the Act. The said provision reads as under:

“23. Appeals –

(5) The procedure for disposing of an appeal (including remand of the matter for further consideration to the authority whose order has been appealed against) shall be such as may be prescribed :

Provided that before disposing of an appeal, the appellant shall be given a reasonable opportunity of representing his case.”

4. It is also submitted that the impugned order is mechanical and passed without application of mind as the authority did not consider the medical certificates of the proprietor of the petitioner firm. The petitioner, in support of its challenge, places reliance on the following observation of the Supreme Court in *N. Balakrishnan v. M. Krishnamurthy* (1998) 7 SCC 123, which was reiterated in *State of Bihar and Anr. v. Kameshwar Prasad Singh and Anr.* (2000) 9 SCC 94

“It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncontainable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior Court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammelled by the conclusion of the lower Court.”

5. The respondents, in their return, say that as the grounds for condonation of delay of 175 days were not found to be satisfactory, and consequently the delay was not condoned. The Protector General of Emigrants is empowered under notification dated 06.06.2006 of the Central Government issued under Section 38 of the Act to not grant registration unless satisfied with the applicant's capability of discharging duties under the Act, upon personal hearing and after considering such other documents as he deems fit, thus, mere submission of all documents did not entitle the applicant for grant of registration. They further state that under Section 23 (2) of the Act it has been provided that (*"no appeal shall be admitted if it is preferred after the expiry of the period prescribed therefore: Provided that an appeal may be admitted after the expiry of the period prescribed therefore if the appellant satisfies the Central Government that he had sufficient cause for not preferring the appeal within that period."*). Thus, on being unsatisfied by the petitioner's explanation, the same was not condoned. The respondents stated that the judgment referred to and relied upon by the petitioners were not applicable in the facts of the present case.

6. It is apparent on the face of the communication that no reasons whatsoever were provided to the petitioner for rejecting his application for condonation of delay, apart from just one statement that the appellate authority did not find the reasons convincing to condone the delay. Concededly the petitioner was not provided an opportunity of hearing before rejecting his application. Commenting on the construction of rules prescribing limitation, the Apex Court observed in N. Balakrishnan's case (supra):

“11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis Mum (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" Under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari, AIR 1969 SC 575 and State of West Bengal v. The Administrator, Howrah Municipality, (1972) 1 SCC 366.

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss.”

7. In Vedabai @ Vijayanatabai Baurao Pateil v. Shantaram Baburao Patil & Ors. (2001) 9

SCC 106 it was observed that:

“4. In exercising discretion under Section 5 of the Limitation Act the courts should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case no such consideration may arise and such a case deserves a liberal approach. No hard and fast rule can be laid down in this regard. The Court has to exercise the discretion on the facts of each case keeping in mind that in construing the expression 'sufficient cause', the principle of advancing substantial justice is of prime importance. In our view in this case, the approach of the learned Civil Judge is wholly erroneous and his order is unsustainable. It is evident that the discretion under Section 5 of the Limitation Act is exercised by the Civil Judge in contravention of the law laid down by this Court, that the expression 'sufficient cause' should receive liberal construction, in catena of decisions (see State of West Bengal vs. The Administrator, Howrah Municipality & Others [1972] 1 SCC and Smt. Sandhya Rani Sarkar vs. Smt. Sudha Rani Debi & Others (1978) 2 SCC 116. The High Court in exercising its jurisdiction under Section 115 C.P.C. failed to correct the jurisdictional error of the Appellant Court.”

8. There is no challenge to the discretionary powers of the authority in deciding applications, such as the one in the present case but at the same time the procedure that has been adopted by the authority for the purpose was not reasonable. The appellate authority's approach in not providing an opportunity of hearing before deciding the application and manner of communicating its decision are clearly vitiated due to non-observance of principles of natural justice.

9. As far as merits are concerned, procedure is – as the saying goes, but the hand maiden of justice. Though undoubtedly a period of limitation to file appeals is provided for, at the same time, allowing consideration of a delayed appeal prejudices no one. More importantly, the appellate authority did not doubt the proprietor's illness or reject the medical certificates

enclosed with the condonation application. In this view of the matter, its failure to exercise jurisdiction was unreasonable.

10. For the above reasons, the writ petition must succeed. Accordingly, the petitioner's application for condonation of delay is allowed. Its appeal is directed to be heard and disposed of on merits, in accordance with law, after giving advance adequate notice of hearing. The writ petition is allowed in the above terms.

April 08, 2009

S.RAVINDRA BHAT
(JUDGE)