

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO(OS) 642/2010 and FAO(OS) 645/2010

FAO(OS) 642/2010

NAFED

..... Appellant

Through : Mr.K.M.Singh, Advocate for Mr.Shree
Pal Singh, Counsel for the Appellant.

versus

UNION OF INDIA

..... Respondent

Through : Mr.Anuj Agarwal, Advocate.

FAO(OS) 645/2010

NAFED

..... Appellant

Through : Mr.K.M.Singh, Advocate for Mr.Shree
Pal Singh, Counsel for the Appellant.

versus

UNION OF INDIA

..... Respondent

Through : Mr.Anuj Agarwal, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% 28.02.2012

CM No.19687/2010 (For Condonation of Delay of 113 days in filing the appeal) in FAO(OS) No.642/2010)

CM No.19697/2010 (For Condonation of Delay of 113 days in filing the appeal) in FAO(OS) No.645/2010)

The appeals arise from the impugned order dated 04.03.2010 dismissing

the objections filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 ('the said Act' for short) to the award dated 04.08.2000 passed by the Sole Arbitrator Sh. D.L.Nishad, Additional Legal Advisor (Ministry of Law and Justice).

We may notice at the threshold that the appellant is a cooperative society and as stated by learned counsel for the appellant to be under the Ministry of Agriculture while the respondent is UOI. Thus, as to whether money goes from once pocket of UOI to the other – 16 years have elapsed since the dispute pertains to a tender of 1996 and 12 years have elapsed since the award has been rendered. In an era where the Government's professed policy is to discourage unnecessary litigation, it is really shocking to note that a dispute of this nature should be dragged on from one forum to the other by carrying out a ritualistic exercise.

Now we turn to the applications which have been filed seeking condonation of delay in filing the appeals. The applications run into only three paragraphs (reference to OMP No.being different in the first paragraph of the two applications in view of there being two appeals) which read as under:

"1. That the order was pronounced by Hon'ble High Court on 4th March, 2010 in OMP No.286 of 2000. The certified copy of the judgment was received by the Appellant on 22.03.2010. After the receipt of the judgment the same was studied by the legal department of the Appellant. Thereafter to find out whether there was any legal ground to challenge this judgment, the judgment was sent to the counsel for the appellant. After going through the judgment, the legal counsel of the appellant asked for the complete file of the case to go through the same to find out whether there was any legal ground to challenge the same in appeal. The counsel of the appellant gave his opinion to the department that there was a valid ground available to challenge the

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judgment. This opinion of the counsel was sent to the legal department, which was sent to the competent authority for approval for filing the appeal. On getting approval from the competent authority, all the papers were sent to the counsel for the appellant to prepare and file the present appeal. After preparing the appeal, the same was filed before this Hon'ble Court.

2. That there are no laches or negligence on the part of the appellant in filing this appeal. The delay caused in filing this appeal is due to the bona fide reasons as stated above.

3. That in view of the above stated circumstances, it is in the interest of justice that the delay of 113 days in filing this appeal may be condoned by this Hon'ble Court."

The aforesaid averments, thus, only show that the matters went from one table to the other or from one counsel to the other and in this process, 113 days are stated to have been taken while pleading that there are no laches or negligence. *Ex facie* this plea has to be rejected and other than general pleas there are no details given in the applications nor dates have been specified.

We are fortified in our view by the recent pronouncement of the Supreme Court in Civil Appeal No.2474-2475/2012 Office of the Chief Post Master General & Ors. Living Media India Ltd. & Anr., decided on 24.02.2012. The Supreme Court has discussed various pronouncements rendered by the Supreme Court from time to time on the aspect of delays in filing the appeal and the factual matrix required to be disclosed for the said purpose. It has been emphasized that where the concerned Departments have personnel who are well-aware or conversant with the issues involved including prescribed period of limitation for taking up the matters by way of filing of appeals in the Court, they cannot claim that they have a separate period of limitation when the Department is possessed of such persons. The condonation

of delay mechanically merely because the Government or a wing of the Government is a party, has been discouraged. It was, thus, observed: "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."

The Supreme Court thereafter proceeded to record the conclusion in para 13 as under:

" 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."

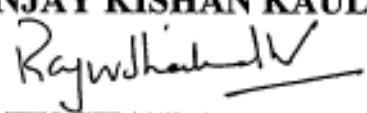
The ratio of the aforesaid judgment is clearly applicable to the facts of the present cases and, thus, there is no sufficient cause shown for condonation of delay of such an inordinate nature in filing the appeals.

Dismissed.

FAO (OS) No.642/2010 & CM No.19686/2010 (Stay)
FAO (OS) No.645/2010 & CM No.19696/2010 (Stay)

In view of the applications for condonation of delay having been dismissed, the appeals are dismissed as barred by time and the stay applications are also consequently dismissed.


SANJAY KISHAN KAUL, J


RAJIV SHAKDHER, J

FEBRUARY 28, 2012/dm