

Court No. - 5

Case :- WRIT - C No. - 42253 of 2023

Petitioner :- Heera Singh

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Azim Ahmad Kazmi

Counsel for Respondent :- C.S.C.

Hon'ble Piyush Agrawal,J.

1. Heard Mr. Azim Ahmad Kazmi, learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

2. By means of this writ petition, the petitioner has assailed the order dated 04.11.2023 passed by the Tehsildar Level Selection Committee, headed by the Sub-Divisional Magistrate, Tehsil and District- Etah.

3. Brief facts of the case are that the father of the petitioner namely Havaladar Singh was running a fair price shop since 1989 in Village- Nagla Hamir. On 15.6.2023, the father of the petitioner expired leaving behind the petitioner and his four brothers. Further, the petitioner used to help in running and operation of the fair price shop and also act as an authorized representative at the time of needs and his four brothers were gainfully engaged in their own occupation who have no concern in running the fair price shop. On 01.09.2023, the petitioner moved an application as legal heir for appointing him as successor in place of his deceased father and along with the aforesaid application, the petitioner also filed documentary evidence in support of delay, which was beyond 30 days, as prescribed in the Government Order dated 05.08.2019, but by the impugned order, the application has been rejected being beyond period of 30 days. Hence the present petition.

4. Learned counsel for the petitioner submits that the father of the petitioner expired on 15.06.2023 and thereafter, from 28.06.2023 to 30.08.2023, the petitioner was seriously ill as suffered from Septicemia in support thereof, annexed the medical certificate as a documentary evidence, copy of which has been annexed as **Annexure No.3** to the present writ petition, but the authorities without giving any weightage to the same, have simply rejected his claim by the impugned order holding that the application is beyond

period of 30 days as prescribed in the Government Order dated 05.08.2019, which is bad. He prays for allowing the writ petition.

5. *Per contra*, learned Standing Counsel supports the impugned order and submits that since the prescribed limit of 30 days have been given in the Government Order dated 05.08.2019, but the application was filed after 75 days and therefore, the application has rightly been rejected. He prays for dismissal of this writ petition.

6. The Court has perused the records.

7. Admittedly, it is not in dispute that the father of the petitioner expired on 15.06.2023. It is a admitted fact between the parties that the petitioner moved an application on 01.09.2023 for being appointed as successor and a legal heir in place of his father after his death and along with application dated 01.09.2023, the petitioner filed documentary evidence showing that the petitioner was suffered from Septicemia due to which he was under medical observation from 26.06.2023 to 30.08.2023 which was certified from the medical certificate submitted by the petitioner. Further, he was medically fit with effect from 31.08.2023 and after being recovered from his ailment, on the very next date i.e. 01.09.2023, he moved an application before respondent no.2 but the same has been rejected by the impugned order but in the said order, not a single word has been whispered with regard to the ailment of the petitioner, which restricts him to move an application beyond the prescribed limit of 30 days. In the impugned order, the authorities have failed to consider the certificate filed by the petitioner in support of his medical ailment, which prevents him to apply beyond the prescribed period mentioned in the Government Order dated 05.08.2019.

8. The Hon'ble Apex Court in the case of **Government of Maharashtra (Water Resources Department) represented by Executive Engineer Vs. Borse Brothers Engineers and Contractors Private Limited, (2021) 6 Supreme Court Cases 460** by condoning the delay, has held that the delay can be condoned by way of an exception but not by way of rule. Paragraph 63 of the said judgment is reads as under:-

"63. Given the aforesaid and the object of speedy disposal sought to be achieved both under the [Arbitration Act](#) and the Commercial Courts Act, for appeals filed under [section 37](#) of the Arbitration Act that are governed by Articles 116 and 117 of the [Limitation Act](#) or section 13(1A) of the Commercial Courts Act, a delay beyond 90 days, 30 days or 60 days, respectively, is to be condoned by way of exception and not by way of rule. In

a fit case in which a party has otherwise acted bona fide and not in a negligent manner, a short delay beyond such period can, in the discretion of the court, be condoned, always bearing in mind that the other side of the picture is that the opposite party may have acquired both in equity and justice, what may now be lost by the first party's inaction, negligence or laches."

9. The Hon'ble Apex Court has recently on 27.11.2023 followed the aforesaid judgment i.e. **Borse Brothers Engineers and Contractors Private Limited (supra)** in the case of **M/S Jaitley Construction Co. Vs. Union of India, [Civil Appeal No. Nil of 2023 (Arising out of S.L.P. (Civil) No.12180 of 2023)]**, which reads as under:-

"Leave granted.

By the impugned order dated 6th February, 2023, the High Court has not condoned the delay of 244 days in preferring an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, "the Arbitration Act"). In view of what is held in paragraph 63 of the decision of this Court in the case of Government of Maharashtra (Water Resources Department) represented by Executive Engineer vs. Borse Brothers Engineers and Contractors Private Limited¹, delay in filing an appeal under Section 37 of the Arbitration Act, beyond the stipulated period of limitation, can be condoned by way of an exception and not by way of a rule, by exercising the power under Section 5 of the Limitation Act, 1963.

After having perused the grounds taken in the application for condonation of delay and the documents produced along with the application, we find that this case will have to be held as an exception as observed in paragraph 63 of the aforesaid decision. Sufficient cause is made out to condone the delay.

We, therefore, set aside the impugned order dated 6th February, 2023 and condone the delay in preferring the appeal under Section 37 of the Arbitration Act. We remit the appeal to the High Court for deciding afresh. The High Court will proceed to decide the appeal on its own merits.

The Appeal is, accordingly, allowed"

10. Once, the petitioner has brought on record the reason for not able to approach within prescribed time, the authorities ought to

have considered the same and pass an order. The impugned order is silent about the ailment and documentary evidence filed in support thereof, therefore, the impugned order cannot sustain in the eye of law and is hereby quashed.

11. In view of the forgoing discussion here-in-above, the writ petition is **allowed**. Thee matter is **remanded back** to the respondent-authority to decide afresh without being influenced from any of the observations made here-in-above.

12. The respondent authority may decide the application of the petitioner within two months from the date of production of certified copy of this order by passing reasoned and speaking order after hearing all the stakeholders.

13. Learned counsel for the petitioner undertakes to serve the the certified copy of this order before the respondent-authority within two weeks from today.

Order Date :- 7.12.2023

Pravesh Mishra