

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CM No. 2972/2023 in
LPA No. 90/2023 c/w
LPA No. 117/2023
CM Nos. 3234/2024, 3695/2023 & 3696/2023

Union Territory of JK & Ors.

...Petitioner(s)/Appellant(s)

Through: Mr. Abdul Rashid Malik, Sr. AAG with Mr. Mohd Younus Hafiz, AC

Vs.

Rifat Arifa & Ors.

...Respondent(s)

Through: Mr. Saqib Amin Parray, Adv.
Mr. Musavir Mir, Adv.

CORAM:

HON'BLE MR. JUSTICE ATUL SREEDHARAN, JUDGE

HON'BLE MR. JUSTICE MOHAMMAD YOUSUF WANI, JUDGE

O R D E R
31.08.2024

CM No. 2972/2023
LPA No. 90/2023

Heard on CM No. 2972/2023 which is an application for condonation of delay.

2. The brief background of facts leading to the filing of this appeal and the present application in which the order is being passed which are as follows:-
3. The respondents are recipient of an order passed in their favour in SWP No. 2133/2018 and SWP No. 475/2013 dated 21st October 2022. The seal of the certified copy of the said judgment annexed along-with the appeal reflects that the date on which this copy was applied for by the appellants is 28.02.2023. The date on which the copy was ready for delivery is 01.03.2023 and same was received by the appellants on 01.03.2023.
4. The instant appeal has been filed belatedly on 17.05.2023 after a delay of 148 days.

5. The application for condonation of delay was grossly perfunctory as no material particulars were given for the cause of delay. However, this Court granted the appellants an opportunity of filing a “better affidavit” pursuant to which the “better affidavit” dated 28th May 2024 was filed on behalf of respondents.
6. It is essential to refer to the said better affidavit in some detail. In paragraph No. 2, the deponent Chowdhary Mohammad Iqbal states that the certified copy of the judgment dated 15.10.2022 passed in SWP No. 2133/2018 titled Rifat Arifa & Ors. Vs. Union Territory of JK & Ors. was served upon the respondents (UT) on 15.11.2022. Paragraph No. 2 does not clarify whether the said copy was served upon the UT by the original petitioners or the certified copy was served upon the UT by the Advocate General Office. It is also necessary to mention here that the judgment dated 21.10.2022 was a common judgment that disposed of SWP No. 2133/2018 and SWP No. 475/2013. Thus, the limitation for filing the appeals against the impugned order commenced from 21.10.2022.
7. Paragraph Nos. 2 and 3 of the better affidavit reveals that the certified copy of the impugned order was in the hands of the appellants on 15.11.2022. Thereafter, in paragraph No. 4 of the affidavit, it is averred that vide communication dated 02.01.2023, the respondent No. 4 took up the matter with the Administrative Department for consideration of the case of the original petitioners as per the directions of the Hon’ble High Court dated 21.10.2022. Thus, the inference that can be drawn from the averment made in paragraph No. 4 is that two months after the receipt of the certified copy of the impugned order, the first communication is made on 02.01.2023 by the Director Agriculture, Kashmir, to take up the matter with the Administrative Department for consideration of the case of the original petitioners. Thereafter, in paragraph No. 5, it is averred that the Administrative Department after examining the case forwarded the same to the Department of Law, Justice and Parliamentary Affairs on 10.02.2023 from where the said department grants sanction in favour of Sr. AAG J&K Mr. Abdul Rashid Malik, vide communication dated 15.02.2023. After the sanction was granted, the deponent states in paragraph No. 7 that it took some time for the appellants to collect and

compile the relevant records from the subordinate office required for filing the appeal and the said records along-with certified copy of the judgment was forwarded to Sr. AAG for drafting the appeal and it took some time for the learned counsel to draft the appeal. The time period spent in collecting and compiling the relevant records from the subordinate office is not mentioned in this paragraph and neither is the date of dispatch of the relevant records from the subordinate office along-with the certified copy of the judgment which was forwarded to the Sr. AAG, is given.

8. In paragraph No. 8, it is averred that the learned Sr. AAG Mr. Abdul Rashid Malik, had proceeded on leave and therefore Mr. Fahim Nisar Shah, GA was authorized by the Department of Law, Justice and Parliamentary Affairs to file the appeal against the impugned order vide communication dated 26th April 2023. Thereafter, it is averred that after completing all formalities, the appeal was filed before this Court on 23.05.2023.
9. Several arguments have been placed before us by the learned Sr. AAG as to why the delay of 148 days should be condoned. A judgment of the Supreme Court also has been placed before this Court by the learned counsel for the appellants.
10. The reasons given by the deponent with regard to the delay does not appeal this Court for the following reasons:-
 1. That it is not for the department to assign the case to a particular counsel in the Advocate General Office.
 2. That it is for the Advocate General who has sole prerogative to decide the counsel who shall handle the case and file the appeal.
 3. The role of the UT ended with the grant of sanction to file the appeal and thereafter the sole prerogative of when and who would file the appeal was with the Advocate General Office.
11. In the course of arguments, learned counsel for the UT states before this Court that he had to go on a pilgrimage and that is why further delay was occasioned and the same should be taken into consideration while appreciating the causes for delay.

12. The counsel who was initially assigned this case being not available on account of his personal reasons cannot be a reason for condoning the delay as there were other counsels in the Advocate General Office to whom this matter could have and ought to have been assigned to file the appeal within limitation. Thereafter, a further delay in filing the appeal for three months after sanction was granted, which is not adequately explained and appears to be an excuse rather than an explanation.
13. Learned counsel for the respondents on the other hand has drawn the attention of this court to the objections filed by them. According to the respondents, the judgment was passed on 21/10/2022 and that the appellant's have belatedly filed this appeal beyond the period of limitation and that the appellants have failed to give any sufficient reason for the said delay. It is further stated that the claim of the respondents dates back to the year 2009 and that the present LPA is the third round of litigation between the parties after the respondents had first approached this Hon'ble Court through SWP No. 1638/2011. The respondents have also submitted that sufficient cause to be shown by the appellant is a necessary condition for the extension of the prescribed period of limitation and the appellant needed to satisfy the court what the sufficient cause was that prevented the appellant from preferring the appeal within the prescribed time limit.
14. Heard the learned counsels for the parties and perused the records of the case.
15. In the better affidavit filed by the appellant's, in paragraph No. 2, it is stated that the certified copy of the judgment dated 15/10/2022 passed in SWP No. 2133/2018 was served upon the respondents (appellants herein) on 15/11/2022. Learned counsel for the respondents has informed the court that it was his client who has served the copy of the impugned judgment upon the appellant's on 15/11/2022. After, the receipt of the certified copy of the impugned order from the respondents herein, the Department of Law, Justice and Parliamentary Affairs vide communication number LAW-LIT4/232/2023-10 dated 15/02/2023 granted sanction in favour of the Sr. AAG Mr Abdul Rashid Malik for filing the LPA. Thereafter, the better affidavit

reveals that it took some time for the appellants to collect and compile the relevant records from the subordinate offices required for filing of the LPA. The time taken is not mentioned.

16. The judgment that has been relied upon by the learned Sr. AAG is ***Sheo Raj Singh vs. Union of India (2023 10 SCC 531)***. Relying upon the same with specific reference to paragraph 27, the learned counsel has impressed upon this court that the state machinery is impersonal and it has inherited a bureaucratic methodology which causes delay. In opposition to the said judgment, learned counsel for the respondents has relied upon a Circular dated 28/10/2020 passed by the Department of Law Justice and Parliament Affairs wherein it has taken cognizance of the various orders passed by this High Court on various occasions and in order to streamline the litigation in the Union Territory of Jammu & Kashmir, the Department had taken a serious view in respect to delays in filing the replies, counter affidavits, statement of facts and LPAs. The said order also referred to the order passed by a Co-ordinate Bench in LPA No. 82/2020 in SWP No. 441/2014 where, vide its order dated 21/09/2020, this court had held that there is a lack of coordination between different departments regarding filing of an appeal etc. and that there is no system in place in various departments as to how to deal with the litigation. This court had also observed that no one is responsible or held accountable for the delay and there is no procedure. The learned counsel for the respondents specifically drew the attention of this court to paragraph 8 of the said order which is relevant as it provides guidelines for filing LPA's and SLP's. It directs that where the sanction for filing of LPA's and SLP's is accorded, the department concerned shall immediately file the same before the High Court or the Supreme Court as the case may be, and that any laxity in this regard shall be viewed seriously and will entail action against such persons who are found to have caused the delay in the matter. It further required that after sanction is accorded by the Law Department, the Law Officer concerned shall be responsible for filing of SLP's/LPA's at the earliest occasion without delay.

17. Most pertinent for the present case is directive nine which required that there should be no delay in filing of LPA's/SLP's and where in an exceptional case delay occasions, the application for condonation of delay should not be drafted casually and in a routine manner without proper application of mind. It further required that it shall be the responsibility of the Government counsels to carefully draft an application for condonation of delay identifying the areas and causes of delay after receiving the inputs from the Law Officer concerned. However, these directives which have been issued in the year 2020 seem to have had little effect. In this particular case, the clear-cut non-observance of the directives are apparent. Earlier also, there was a Circular dated 23/01/2019, issued by the Department of Law Justice and Parliamentary Affairs which took into consideration the fact that despite the grant of sanctions for filing Appeals/LPA's, these petitions are not being following by the Department/counsels representing the departments before the courts expeditiously. Thereafter, the circular directs that in order to overcome the difficulty, it was enjoined upon all the Administrative Secretaries/HODs to ensure filing of Appeals/LPA's/SLP's is within a period of 10 days from the date of grant of sanction, and where that was not possible, the matter should be placed before the competent authority for appropriate action under the rules. However, even this circular is observed in breach rather than in compliance.
18. In this case, the sanction for filing the LPA was granted in February 2023 and the appeal itself is filed after a further delay of three months in the month of May 2023. Thus it is clear that the appellants have dragged their feet and have not given sufficient reasons for the cause of delay. The judgment relied upon by the Union Territory has not stated anything new and has in fact in paragraph 31, held that the absence of sufficient cause or an acceptable explanation being proffered, delay of even the shortest range may not be condoned whereas in certain cases delay of long periods can be condoned if the explanation satisfactory and acceptable. In this case, no satisfactory explanation has been given by the Union Territory.

19. Under the circumstances, the application for condonation of delay and so-called better affidavit filed subsequently are perfunctory and do not give sufficient cause for the delay that has occasioned i.e., 148 days in filing the appeal. Therefore, in the absence of sufficient cause being shown by the appellant, the application for condonation of delay is dismissed and consequently the appeal also is dismissed.

CM No. 3695/2023
LPA Nos. 117/2023,
3234/2024, & 3696/2023

20. In view of the order passed above, the instant condonation of delay application is also dismissed along-with appeal.

(MOHAMMAD YOUSUF WANI)
JUDGE

(ATUL SREEDHARAN)
JUDGE

SRINAGAR:
31.08.2024
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