

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY
C.M.A. NO.51 OF 2015

JUDGMENT: (per Hon'ble Sri Justice M.Satyanarayana Murthy)

The petitioner in M.A.No.5 of 2008 in DDR.No.1239 of 2007 before the Railway Claims Tribunal Bench at Secunderabad preferred this appeal challenging the order passed by the Tribunal dated 01-09-2014, declining to condone the delay in filing the claim before the Tribunal.

The petitioner is National Mineral Development Corporation, which is a Government of India undertaking registered under the provisions of the Company's Act. The petitioner filed claim petition before the Railway Claims Tribunal, Secunderabad Bench along with a petition to condone the delay of 1139 days in filing the claim alleging that the applicant company own iron Ore Mines at Donimalai, Karnataka State and other places and having been dispatched iron Ore Lumps from Ranjitpura siding on the Bellary-Hospet Sector of South Central Railway. The Iron Ore Lump is booked as 'Doni Lump' under classification 120. The respondent erroneously changed the classification for lump ore to 125 from 20-07-2000 levied charges of Rs.1.07 Crores for the difference in fare or freight of 'Doni Lump' for the period from 01-04-2000 to 19-07-2000.

It is further contended that the petitioner/appellant paid total sum of Rs.3.01 Crores as additional fare or freight for the period from 01-04-2000 to 20-01-20002 due to alleged incorrect classification of the respondent. As such the respondent is liable to refund the excess fare or freight collected from the petitioner. The respondent in Railway Receipt No.281579, dated 20-02-2002, indicated that 'Doni Lump' as non-calibrated lump ore by classifying the same as Class-120. Therefore, the petitioner is entitled to seek refund of excess fare or freight collected up to 20-02-2002 treating 'Doni Lump' as Class-125.

As the petitioner is entitled for refund of excess fare or freight charge took up the matter with the respondent-authorities and after prolonged correspondence, the Railway Board rejected the request of the petitioner/applicant on 12-08-2005. As such there was delay of 1139 days in filing the claim before the Tribunal and prayed to condone the delay.

The respondent filed counter denying material allegations contending that iron

ore in different physical forms declared in the Forwarding Notes as “Iron Ore lumps” or “Doni lumps” etc., are not specified in Goods Tariff. Hence, it was charged as calibrated Iron Ore under Class-125 for train loads. As such the action taken by the respondent is in order and the petitioner is not entitled to refund. The respondent raised under charges at class-125 for the train load consignments booked during the period from 01-04-2000 to 19-07-2000 being difference in fare or freight in terms of Rule 115 of IRCA Goods Tariff vide FAC & CAO (T)/SC letter No.AGL/WOC/NMDC dated 16-02-2001 for Rs.1,06,821/- and the said amount was paid by the petitioner on 31-08-2001. Further the respondent’s demands for the balance amount of Rs.1.94 crores for the period between

20-07-2000 to 20-02-2002 being difference in fare or freight charges was realized through the periodical bills raised by the Railways under the weight only system agreement from the petitioner. Thus, the petitioner having accepted the demand of the respondent and paid the undercharges is estopped from claiming the refund of the said charges.

The respondent also further contended that the delay was not calculated correctly as the limitation of three years starts from the date of collection and not from the date of rejection of refund, no reason was assigned for the delay that caused in preferring the appeal and the reason is not satisfactory and finally prayed to dismiss the petition.

Upon hearing the argument of both the counsel, the Tribunal dismissed the petition declining to condone the abnormal delay in filing the claim.

At the time of admission, we heard the petitioner at length and the counsel for the petitioner would contend that if the delay is not condoned, the petitioner would be put to serious loss being the Government Undertaking and that the limitation starts only from the date of rejection of claim by the respondent and not from the date of payment. Therefore, the delay is correctly calculated and that there is sufficient cause for condonation of delay and prayed to set aside the order allowing the delay in the Tribunal.

The point for consideration is,

“Whether the petitioner was prevented by a cause which is beyond its reasonable control, if so, the delay in preferring claim be condoned”?

The appeal is preferred under Section 23 of the Railway Claims Tribunal Act, 1987 (for short “the Act”) and the powers of this Court under Section 23 of

the Act are limited. However, when the petitioner filed the present petition for condonation of delay of 1139 days, it is for the petitioner to prove that the petitioner was prevented by a sufficient cause for failure to prefer the claim within the time prescribed under the Act. As seen from the affidavit filed along with the petition the reason for the condonation of delay is correspondence between the Railway Board and the petitioner. The amount towards fare or freight was collected initially for the period from 01-04-2000 to 19-07-2000 on 31-08-2001 and the differential amount of Rs.1.94 crores for the period from 20-07-2000 to 20-02-2002 was paid immediately after demand. Therefore, the limitation to petitioner to file claim before the Tribunal starts from the date of payment to the respondent. Section 17 (1) of the Act deals with the period of limitation for filing claims. Therefore, Section 17 (1) (c) of the Act is relevant clause applicable to the present claim before the Tribunal, which runs as under:

c) Under clause (b) of Sub-Section (1) of Section 13 unless the application is made within three years from the date on which the fare or freight is paid to the railway administration.

Provided that no application for any claim referred to in sub-clause (i) of clause (a) of sub-section (1) of Section 13 shall be preferred to the Claims Tribunal until the expiration of three months next after the date on which the intimation of the claim has been preferred under Section 78-B of the Railways Act.

On bare reading of Clause (c) of Section 17 (1) of the Act, it is clear that the limitation starts from the date when the fare or freight was paid to the Railway Administration. Admittedly, Rs.1,06,65,821/- was paid on 31-08-2001 and Rs.1.94 crores was paid immediately after demand. Section 17 (1) of the Act mandates that the Tribunal shall not admit an application for any claim, which is presented beyond the prescribed period of limitation. The language used in Section couched in such terms that imposed a legal bar on the Tribunal from entertaining any claim application filed beyond the period of limitation. However, Sub-section (2) of Section 17 of the Act enables the Tribunal to entertain an application under sub-Section (1) after the period specified if the applicant satisfies the Claims Tribunal that he had sufficient cause for not making the application within such period. Thus, the application filed beyond the period of limitation, which is three years in the present case, may therefore be

entertained subject to satisfying the Court that the petitioner was prevented by sufficient cause to prefer the claim within the time. The only reason assigned by the petitioner for the delay is that the correspondence between the Railway Board and the petitioner, though limitation starts only from the date of actual payment of fare or freight to Railway Administration but not from the date of rejection of the claim after prolonged correspondence. But the petitioner calculated the period of limitation only from the date of rejection of claim on 12-08-2005 but not from the actual payment of fare or freight to the Railway Administration as contemplated under Section 17 (1) (c) of the Act. Curiously, in the affidavit filed by Sri K.V.V. Sastry, Executive Director (Commercial) on behalf of the applicant-Corporation did not make any whisper as to the reason, which occasioned for such abnormal delay in filing the claim petition. No explanation was offered for the delay that occasioned in filing the claim before the Tribunal. What all mentioned in the affidavit is only about correspondence between the Railway Board and the petitioner in the process of exhausting their remedy. In fact the correspondence between the Railway Board and the claimant is nowhere contemplated and if the petitioner is aggrieved by the demand of fare or freight paid, is only to file a claim before the Railway Claims Tribunal which gives rise to cause of action, limitation starts only from the date of actual payment of fare or freight to the Railway Administration and not from the date of rejection of claim if any submitted to the Railway Board.

When the petitioner approached the Tribunal to condone the delay, it is for the petitioner to prove that there is a sufficient cause for its inability to file the claim within time. What is sufficient cause is not defined either in the Limitation Act or Railway Claims Tribunal Act. But it depends upon the circumstances of the case. Time and again, the Apex Court held that while considering the application under Section 5 of the Limitation Act, the word 'sufficient cause' has to be construed liberally and the Courts or Tribunal shall not adopt pedantic approach but at the same time the Court shall not stretch the word 'sufficient cause' to frustrate the legislative intention in fixing time in filing the claims, suits etc., In the present case, no specific cause was assigned by the petitioner for the delay that occasioned in filing the claim before the Claims Tribunal. In the absence of any explanation for the delay that the petitioner was prevented by a cause which is beyond its reasonable control, the abnormal delay cannot be condoned. According to the Tribunal, the delay was not

calculated properly and the total delay is not (1139) days and it is more than six years. Learned counsel for the petitioner before the Tribunal while contending that the Court has to construe the word 'sufficient cause' liberally and condone the delay instead of throwing the claim at the threshold and placed reliance on a judgment of **Basawaraj and another v. Special Land Acquisition Officer** wherein the Apex Court held as follows:

"Sufficient cause" is the cause for which defendant could not be blamed for his absence. The meaning of the word 'sufficient' is 'adequate' or 'enough', in as much as may be necessary to answer the purpose intended. Therefore, the word 'sufficient' embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay".

The Tribunal after discussing the scope of power of the Tribunal in condonation of the delay with reference to Halsbury's Laws of England declined to condone the delay showing its own reasons.

It is evident from the allegations made in the affidavit filed by K.V.V.Shastry, the petitioner entered into correspondence with the Railway Board and continued the correspondence for three years. Ultimately, the request for refund was rejected. But correspondence with the Railway Board is not contemplated in the Railway Claims Tribunal before filing any claim. So the correspondence with the Railway Board by the petitioner is only at the peril of the petitioner and as such correspondence will not enure any benefit to the petitioner to claim exemption for filing the claim before the Tribunal, entering correspondence with the Railway Board, is nothing but negligence on the part of staff of the Applicant. However, when the petitioner approached the Court that the delay was occasioned on account of any cause beyond its control, it is for the petitioner to establish that it was prevented by a sufficient cause but

strangely the petitioner did not assign any cause much less sufficient cause even to condone the delay of 1139 days. When no cause is mentioned much less sufficient cause the Courts or Tribunals cannot condone the delay in filing the claims or appeals as held in **Lanka Venkateswarlu by L.Rs. –Vs- State of A.P. and others**. Wherein, the Apex Court held as follows:

“We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as “liberal approach”, justice oriented approach”, “substantial justice” cannot be employed to jettison the substantial law of limitation, especially in cases where the Court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any lis between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms. The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. Whilst considering applications for condonation of delay under Section 5 of the Limitation act, the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers.”

In a judgment of Supreme Court in **P.K.Ramachandran v. State of Kerala and another**. Wherein, the Apex Court held as follows:

“Law of limitation may harshly affect a particular party, but it has to be applied with all its rigor when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained.”

In the facts of the above decision, the explanation for seeking condonation of delay was opinion of District Government Pleader, Special Law Officer, Law Secretary and the Advocate General that there was no scope for filing the appeal, but later on, despite the opinion referred to above, the appeal was filed. Thus, the delay is due to opinion of the District Government Pleader, Special Law Officer, Law Secretary and the Advocate General, but the Supreme Court did not accept the reasons assigned by the petitioner as sufficient cause.

In a decision of **Sate of Andhra Pradesh, rep. by its Secretary to Government, Roads & Buildings Dept., and others v. A.Murali Madhava Rao and others**, this Court held as follows:

“In a petition U/Sec.5 of Limitation Act, to condone delay, sufficient cause is to be shown. In cases of inordinate delay, consideration of prejudice to other side is relevant factor. Such case calls for a more cautious approach and causes of short delay deserves liberal approach. No hard and fast rule can be laid down by the court and the courts should exercise discretion on facts of each case so as to give advancing substantial justice, since it is a prime importance.”

It is further held as follows:

“Sufficient cause is a condition precedent for condonation of delay. In considering application for condonation of delay, sufficiency of cause that counts and not the length of delay.”

In the Judgment of **Pundlik Jalam Patil (D) by Lrs. v. Exe. Eng. Jalgaon Medium Project and another** wherein the Supreme Court held as follows:

“It is true when the State and its instrumentalities are the applicants seeking condonation of delay they may be entitled to certain amount of latitude but the law of limitation is same for citizen and for Governmental authorities. Limitation Act does not provide for a different period to the government in filing appeals or applications as such. It would be a different matter where the Government makes out a case where public interest was shown to have suffered owing to acts of fraud or collusion on the part of its officers or agents and where the officers were clearly at cross purposes with it. In a given case if any such facts are pleaded or proved they cannot be excluded from consideration and those factors may go into the judicial verdict. In the present case, no such facts are pleaded and proved though a feeble attempt by the learned counsel for the respondent was made to suggest collusion and fraud but without any basis. We cannot certain the sub mission made across the Bar without there being any proper foundation in the pleadings.

In one of the recent judgments, the Apex Court while considering similar case held that **“condonation of delay is discretionary and to exercise such discretion proof of sufficient cause for the delay to the satisfaction is pre-requisite, moreover inordinate delay caused by inaction or negligence lacking bonafides disentitles the claimant from protection under Section 5 of Limitation Act”**.

In view of the law laid down by the Apex Court, it is for the petitioner to lay

foundation in the affidavit to prove that the petitioner was prevented by a cause, which is beyond reasonable control of the petitioner to file the claim before the Tribunal. But when the petitioner did not plead and prove any cause, the Court or the Tribunal cannot condone the delay on the ground of principle of substantial justice etc., to jettison the law of limitation. If the contents of affidavit of K.V.V.Sastry alone considered, there is nothing explaining the reason for delay that occasioned in preferring the claim before the Tribunal and in such circumstances by applying principle of law laid down in the judgment **Lanka Venkateswarlu's case** (supra 2), the petition deserves to be dismissed. Added to that even by applying the principle laid down in **Pundlik Jalam Patil's case** (supra 5) there is no pleading that there is fraud or collusion and affecting public interest. In the present case, the petitioner is a Central Government organization i.e. National Mineral Development Corporation and the respondent is a Railways which is a Government organization, as such no public interest is involved. Even if any amount is paid, it will go to the Central Government. Therefore, it is difficult to condone the unexplained abnormal delay in preferring the claim before the Railway Claims Tribunal, in view of the law laid down by Supreme Court and Division Bench of this Court, as we find no illegality committed by the Tribunal in dismissing the petition in the impugned order under challenge before this Court. Hence, we find no grounds warranting interference by this Court in the order. Accordingly, the point is answered.

In the result, the appeal is dismissed confirming the order of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad.

RAMESH RANGANATHAN, J.

M.SATYANARAYANA MURTHY, J.

27 -03-2015

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