

***HON'BLE SRI JUSTICE CHALLA KODANDA RAM**
+WRIT PETITION No.5242 of 2010

%07.12.2015

District Cooperative Central Bank Limited, Visakhapatnam
..... Petitioner

And

The A.P. Cooperative Tribunal, Visakhapatnam and others.

.....Respondents

! Counsel for the Petitioner: Smt Bobba Vijayalakshmi

^ Counsel for the respondent No.1:
Government Pleader for Cooperation.

^ Counsel for the respondent No.2: Ms. V. Uma Devi.

^ Counsel for the respondents 3 to 6:
Sri P. Vidyasagar

^ Counsel for the respondent No.8: Dr. P.B. Vijayakumar.

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> Head Note:

? Cases referred:
1997(6) SCALE 209
2.AIR 2010 Supreme Court 3043
3. 1997(6) SCALE 209

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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ORDER:

The writ petition is filed challenging the order dated 28.01.2010 passed by the 1st respondent-Tribunal in M.P.No.18 of 2009 in Appeal S.R.No.2625 of 2009.

It is the case of the petitioner that the Joint Registrar, District Cooperative Office, Visakhapatnam vide his proceedings dated

26.02.2005 authorised Sri N.D. Milton, Deputy Registrar/OSD, DCCB Limited, Visakhapatnam, to conduct an enquiry under Section 51 of the A.P. Cooperative Societies Act, 1964 (for short "the Act") into the constitution, working and financial affairs of the petitioner-bank with regard to the irregularities pointed out in the preliminary enquiry report of the Deputy Registrar/Audit Officer, DCC Bank Limited, Visakhapatnam relating to entrustment of reconciliation work to private computer agencies and incurring an expenditure of Rs.10.81 lakhs to the computer agencies without completion of the work including the purchase of the soft ware development by bank worth Rs.3.5 lakhs. After conducting the enquiry, the Deputy Registrar/OSD dropped the proceedings against the respondents 3 to 7. The enquiry report reveals that a sum of Rs.9,63,972.24 ps was made to various agencies as excess for rendering accounting service. However, in the surcharge proceedings issued under Section 60 of the Act, the respondents 3 to 7 were exonerated from the charges particularly a finding was recorded that the allegations of the irregularities in entrustment of computer work to the agencies as well as payments made to the said agencies were found to be in order. Aggrieved thereby, the petitioner filed an appeal before the A.P. Cooperative Tribunal (for short, "the Tribunal") on 15.10.2009 and sought a condonation of delay of 87 days in filing the appeal. In support of the delay condonation petition, the Chief Executive Officer filed an affidavit stating that on 16.09.2009 he addressed a letter to the Senior Advocate Sri L. Satyanarayana, Visakhapatnam seeking his legal opinion and thereafter on receiving the legal opinion, the matter was placed before the management under Resolution No.14 dated 21.08.2009 and the same came to be approved on 25.09.2009. Further on account of the financial year ending and also on account of the debt relief work pressure in the bank, the papers could not be sent to the said Senior Advocate in time and there occurred a delay of 87 days. It is stated that the delay is neither wilful nor wanton and it is

only on account of the process involved in getting the approval, the delay was occurred. Hence, the delay condonation petition was filed along with the appeal. The Tribunal having not satisfied with the reasons stated in the affidavit filed in support of the delay condonation petition, dismissed the delay condonation petition filed by the petitioner by an order dated 28.01.2010 holding that the Chief Executive Officer of the appellant bank did not take adequate care and interest even in preparation of the delay condonation petition. Questioning the said order, the present writ petition is filed by the petitioner.

Heard Smt Bobba Vijayalakshmi, learned counsel for the petitioner-bank, learned Government Pleader for the 1st respondent-Cooperation, Ms. V. Uma Devi, learned counsel for the 2nd respondent, Sri P. Vidyasagar, learned counsel for the respondents 3 to 6 and Dr. P.B.Vijayakumar, learned counsel for the 8th respondent.

Learned counsel for the petitioner submits that in the affidavit filed in support of the delay condonation petition, the petitioner-bank had set out all the correct facts and the delay has occurred only on account of getting the legal opinions and approval from the concerned authorities.

Learned counsel for the 3rd respondent vehemently opposes for condoning the delay. He placed on record the judgments of the Supreme Court reported in **P.K. Ramachandran vs. State of Kerala and another**^[1], **Balwant Singh (Dead) v. Jagdish Singh and others**^[2] in support of his contentions. He further emphasises that though the surcharge proceedings dated 20.05.2009 were received by the petitioner-bank on 30.07.2009, petitioner-bank had only placed the said surcharge proceedings before the Board on 16.09.2010 only. In other words for about 48 days, petitioner had not taken any steps to

attend to the matter and there is no explanation with respect to 48 days. He further submits that even though the Board meeting supposed to have been held on 16.09.2010, nothing thereafter was done till 20.09.2010. Thereby another ten days time was allowed to lapse. In other words, at every stage, there is negligence on the part of the petitioner-bank in prosecuting the appeal and thereby he submits that the sufficient cause as explained by the Supreme Court in the case of **Balwant Singh** (2 supra) has not been satisfied and he pressed this Court to dismiss the writ petition.

Having considered the rival submissions, I am of the opinion that the Tribunal had taken too hyper technical view in considering the delay condonation petition. So far as the judgment placed by the learned counsel for the petitioner reported in **P.K. Ramachandran vs. State of Kerala and another** ^[3] is concerned on the very facts of the particular case, there was delay of 565 days and in those circumstances and the explanation which was given in the said case was that the Advocate General's Office was fed up with so many arbitration matters. The explanation offered in the said case was totally unsatisfactory and the Court found it to be not a sufficient ground for condonation of delay. If we notice the **Balwant Singh's case** (2 supra), **P.K. Ramachandran** (3 supra) was referred to in para No.8 of the judgment. Further, in **Balwant Singh's case** (2 supra), there was delay of 778 days, which cannot be said to be reasonable. In fact, in the very case cited by the learned counsel for the 3rd respondent, the Supreme Court had recognised the crucial aspect and finally held that the each case has to be considered separately. In other words, there is straight jacket formula which can uniformly be applied to all cases without reference to the peculiar facts and circumstances of a given case. In other words, in each of the case, the judicial forum before which the delay condonation petitions come up is required to take into consideration of various factors and the factors peculiar to the case. In

that view of the matter, the explanation submitted by the petitioner-bank in the present case cannot be said so unreasonable warranting the dismissal of the delay condonation petition. In that view of the matter, the order impugned deserves to be set aside and the delay deserves to be condoned. However, it is also a fact that allowing of the delay condonation petition at this point of time, would definitely cause prejudice to the private respondents who are individuals, some of them retired way back in the year 2000 and some even during the pendency of the surcharge proceedings before the 2nd respondent. In those circumstances, the delay condonation petition is allowed subject to condition that each of the private respondents shall be paid costs of Rs.10,000/- (Rupees ten thousand only) each within a period of two weeks from the date of receipt of copy of this order. It is also made clear that in the event of the Tribunal finding that there was any element of negligence or liability on the part of any of the respondents, the respondents shall not be mulcated with interest liability during the entire period leaving first sixty days which is the statutory period for filing the appeal.

Subject to the above direction, the writ petition is allowed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

CHALLA KODANDA RAM, J.

Date:07.12.2015.
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THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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[3] 1997(6) SCALE 209