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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 29.10.2015

CRL.L.P. 298/2014

SOUTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Ms. Mini Pushkarna, Advocate with
Ms. Yoothica Pallavi, Advocate

versus

LARSEN & TOURBO LTD & ANR Respondents

Through: Ms. Sima Gulati, Advocate with Mr.
Alok Tripathi, Advocate for R-1 & R-
2

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

CRL.M.A.6901/2015 (Condonation of Delay)

1. The present is an application under section 5 of the Limitation Act, 1963 praying that the delay of 113 days in filing the accompanying leave petition be condoned.

2. The facts as are necessary for the disposal of the present application are that the leave petitioner filed a challan under sections 416/417/461 of the Delhi Municipal Corporation Act, 1957 against the respondent herein on the allegation that on 13.06.2012 at about 04.30 p.m. an officer of the respondent No.1 was found running the trade of data processing with 50 computers consuming power load of 25 HP (approximate) without Municipal Trade Licence at the subject premises. The concerned Metropolitan Magistrate by way of his order impugned herein dated 05.07.2013 came to a conclusion that the leave petitioner had failed to prove that the subject premises was being used by the respondent No.1 for the purpose of data processing. The respondent No.2, who as afore-stated, is an officer of respondent No.1, was acquitted of the alleged offences.

3. A perusal of the affidavit in support of the present application states as follows:-

“5. That the period of limitation for filing the present appeal is 6 months from the date of passing the order. Further, certified copy in the present case was applied on 05.07.2013 itself. The certified copy of the impugned judgment was made available only on 12.08.2013. Thus, the present appeal could have been filed within the statutory period by 12.02.2014 (6 months + 38 days for procuring certified copy).

6. That certified copy of the impugned judgment was thereafter forwarded by the counsel appearing on behalf of Municipal Corporation to the department on 26.08.2013. After receipt of the aforesaid impugned judgment, matter was discussed by the department officials with the concerned advocate, who opined that the department should file an appeal. Thereafter, on 12.09.2013, the matter was put up by the then Factory Inspector before the concerned Administrative Officer, Factory Licensing Department for filing an appeal against the impugned judgment. Thereafter on 16.09.2013 the said Administrative Officer forwarded proposal to the Deputy Commissioner. Thereafter, the Deputy Commissioner forwarded the file in question to the Assistant Law Officer on 18.09.2013. On the very same day the said ALO put up the matter before the Deputy Law Officer.
7. That the said Deputy Law Officer after taking into account the various aspects of the matter, on 20.09.2013, gave his opinion for filing the present appeal. Photocopy of the office noting in this regard is annexed hereto as Annexure A. The matter was also proposed to be marked to the previous counsel. After the name of the previous counsel was approved, the department issued an engagement letter dated 23.09.2013 in favour of the said counsel. Copy of the engagement letter dated 23.09.2013 is annexed hereto as Annexure B.

8. That after the engagement letter was issued by the law department in favour of the previous counsel, the file in question which was still with the law department, was returned to the office of the Deputy Commissioner with direction to contact the engaged counsel for filing the appeal. The file in question was received by the office of the Deputy Commissioner and subsequently, on 30.09.2013 the Deputy Commissioner forwarded the file to the Administrative Officer, who in turn forwarded the same to the concerned Factory Inspector on 01.10.2013 with the direction to contact the engaged counsel.
9. That after receiving the file from the AO on 01.10.2013, the Factory Inspector visited the office of the previous counsel on 03.10.2013 and handed the file in question along with engagement letter to the said counsel for purposes of filing appeal. A report in this regard was made by the Factory Inspector. Copy of the office noting in this regard is annexed hereto as Annexure C.
10. That thereafter, the department was in regular touch with the concerned counsel and attended meetings called by the said counsel on 15.10.2013 and 25.11.2013. Subsequently, the previous counsel called the department officials and handed over copy of the draft appeal on 11.12.2013. Thereafter, the draft appeal was forwarded to the AO and then to the JLO for approval from the legal department. After getting the approval from the legal department,

on 18.12.2013, the file was sent back to the Factory Inspector. On 24.12.2013 the Factory Inspector telephonically informed the engaged counsel about the approval of the draft appeal with certain changes.

11. That the appeal as vetted by the department was sent by email to the advocate on 27.12.2013. Thereafter, the said counsel took some time to make the requisite sets. The final sets of the appeal were thereafter collected by the department from the office of the said counsel on 31.01.2014.
12. That on 31.01.2014 after receiving the final appeal from the engaged counsel, the Factory Inspector forwarded the same to the Administrative Officer to put up before the competent authority for its signature. Thereafter, few administrative changes took place in the department due to which the delay occurred in approval of the appeal and then subsequently in getting signed by the concerned official.”

4. It is admitted by the leave petitioner that there was a delay in instituting the present leave petition. However, it is urged that the delay was neither intentional nor deliberate.

5. This Court not being satisfied with the explanation offered by the leave petitioner in the affidavit seeking condonation of delay, directed them to file a better affidavit by way of its order dated 09.09.2014.

6. A additional affidavit dated 16.10.2015 has been filed on behalf of the leave petitioner. The relevant paragraphs thereof read as follows:-

- “3. That in this regard it is submitted that on 31.01.2014 draft of the final petition was received by the department from the then Municipal counsel. Thereafter, in the month of February, 2014 the department, after obtaining the signature of the concerned officer handed over the copy of the petition to the Municipal Counsel on 13.02.2014.
4. That before the said petition could be filed by the said counsel, certain administrative changes took place and the then concerned official, who had signed the petition, was transferred, vide order dated 25.02.2014. Copy of the office order dated 25.02.2014 is annexed hereto as Annexure D.
5. That due to the said administrative change entailing transfer of the officer who had signed the petition, the office of the then Municipal counsel thought it fit to withhold filing of the petition and wait for further instructions from the department. Therefore, the signed copy of the petition kept lying with the earlier counsel. Though the said counsel had been informed about transfer of the concerned official, no instructions were given by the department not to file the petition. Thus, the department was under the bona fide belief that the present petition had already been filed.

6. That subsequently, the officials of the petitioner Corporation enquired about the status of the petition from the office of the said counsel. It was then that it came to the knowledge of the department that the present petition had still not been filed. Thereafter, the department gave instructions to the said counsel to file the petition immediately.
7. That in view of the aforesaid circumstances arising out of doubt and the ensuing confusion in the office of the said counsel and due to some misunderstanding as also lack of communication, there was delay in filing of the present petition. Thus, the gap in time from 31.01.2014 to the filing of the petition, which was ultimately filed on 24.04.2014, has been duly explained by way of the present affidavit. It may be submitted that the petition as signed by the earlier officer was filed and delay in filing the petition after 31.01.2014 occurred due to misunderstanding as explained above.”

7. A perusal of the explanation furnished on behalf of the leave petitioner reveals the malaise that plagues the administration in this country. At a time when an endeavour is being made to invite overseas investment and develop India as a commercial hub, the red-tape and the lethargic decision making process has the effect of negating all the efforts that are being made by the

Hon'ble Prime Minister in this behalf. It cannot by any stretch of expression be characterized as good governance.

8. Let us consider the sequence of events. The impugned order was rendered on 05.07.2013 and the counsel appearing on behalf of the leave petitioner diligently applied for certified copy on the same day. The certified copy of the impugned judgment was made available on 12.08.2013 and was forwarded to the department on 26.08.2013. What happened thereafter is not a matter for levity. A puts the file before B on 12.09.2013. B put it up before C on 16.09.2013, who in turn placed it before D on 18.09.2013. An opinion to institute an appeal against the impugned order was taken as far back as on 20.09.2013. However, the file travelled to and fro and the present petition for leave to appeal was filed only on 24.04.2014.

9. Even after a copy of the present leave petition was received by the concerned officer on 31.01.2014, the present leave petition came to be instituted only on 24.04.2014.

10. It is urged that this delay occurred due to certain administrative changes that took place including the transfer of the concerned officer.

11. In my view, the time has come to ensure that the administration does not come to a complete standstill when an officer is transferred.

Consequently, the justification trotted out on behalf of the leave petitioner cannot be countenanced.

12. In view of the foregoing, the present application seeking condonation of delay is devoid of merit and is accordingly dismissed.

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In view of the order passed in the application for condonation of delay, the leave petition is dismissed.

SIDDHARTH MRIDUL, J

OCTOBER 29, 2015
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