THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.26229 OF 2008

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed seeking verbatim the following relief:

> "… to issue a Writ of Mandamus or any other appropriate writ, order or direction to declare the Memo No.17116/204/A1/Admn.II/SCA/2007-4, dated 16.8.2007 issued by the Government of Andhra Pradesh as communicated by the District Audit Officer, State Audit, Guntur in Lr.S.A.No.305 S & D/2008-09, dated 22.8.2008 as illegal, arbitrary, unreasonable and violative of Art. 14 of the Constitution of India, null and void and consequently direct the 1st Respondent herein to entertain the Appeal filed by the Petitioner herein and to pass such other order or orders as may deem fit and proper in the circumstances of the case."

2. I have heard the submissions of the learned counsel for the petitioner, of the learned Government Pleader for Panchayat Raj & Rural Development, appearing for respondent nos.2 and 3, and of the learned Government Pleader for Finance & Planning, appearing for respondent nos.1 and 4. I have perused the material record.

3. The facts, which are necessary to be stated for the purpose of disposal of this Writ Petition, in brief, are as follows:

"The petitioner was issued a Surcharge Certificate for a sum of Rs.77,422/-. Aggrieved thereof, the petitioner preferred an appeal before the Commissioner, Panchayat Raj. The said Commissioner, having found that the appeal is to be preferred to the Government, vide Memo, dated 05.06.2004, directed the petitioner to prefer an appeal in terms of G.O.Ms.No.130, Finance & Planning Department, dated 08.09.2000, before the Government. According to the petitioner, the order returning the appeal by the Commissioner, Panchayat Raj, was communicated to him in September, 2004. Immediately thereafter, that is, within three months' time from the date of communication of the said order of the Commissioner returning the appeal, the petitioner preferred an appeal before the Government. However, that appeal was rejected by the impugned order on the ground of delay. Aggrieved thereof, the petitioner is before this Court."

4. Learned counsel for the petitioner submits that in the facts and circumstances of the case, the Government ought to have considered and allowed the appeal, as the petitioner is having a strong case on merits of the matter.

5. Learned Government Pleader for Finance & Planning and the learned Government Pleader for Panchayat Raj would submit that the appeal was rejected on the ground of delay and that the petitioner has no case.

6. It is pertinent to refer to the interim order of this Court, dated 08.12.2008, which reads as under:

> "The petitioner has specifically averred that, against the order of Surcharge dated 11-01-2002, he had filed an appeal before the Commissioner, Panchayat Raj, within time and that the said appeal was returned on 05-06-2004 with the endorsement that it was not maintainable. The petitioner thereafter preferred an appeal to the Government on 29-06-2004 which was rejected on the ground that it was belated. While Sri A.V. Sesha Sai, learned counsel appearing on behalf of the petitioner, would contend that the proceedings dated 05-06-2004 were communicated to the petitioner only in September 2004 and, therefore, the appeal

> preferred to the Government is within time, even assuming that the period is computed from the date on which the appeal was returned on 05-06-2004 it is within three months. Copy of the proceedings of the Director of State Audit dated 28-07-2007 is also filed as part of the material papers which reflects the name of the petitioner as the person against whom Surcharge notice was issued and in a box, which is part of the said order, the District Audit Officer, State Audit, Guntur, is stated to have been informed that during the course of local verification of records so produced, it was noticed that an amount of Rs.1,01,295/- covered by the surcharge certificate was spent in purchasing the electrical goods and on the public health articles, that the said purchases made were in order, that there was no irregular and inadmissible purchases, that there was no loss caused to the Gram Panchayat funds and, therefore, the appeal ought to be allowed and the entire surcharged amount to be waived. *Prima facie*, these proceedings indicate that the petitioner is not guilty and, as such, the order of surcharge passed against him is required to be set aside. For a delay of three months in preferring the appeal, seeking recovery of a sum of Rs.77,422/- from the petitioner may not be justified more so in the light of the remarks of the State Audit referred to above.
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> There shall be interim stay of recovery."

7. Having given earnest consideration to the facts and submissions, this Court is of the considered view that the Government, in the facts and circumstances of the case, is not justified in rejecting the appeal merely on the ground of delay, when the petitioner who was prosecuting his appeal before the Commissioner, that is, before a wrong forum under a *bona fide* mistake is entitled for exclusion of the time spent in prosecuting *bona fide* his appeal before the Commissioner, who had no jurisdiction. In that view of the matter, the Government ought to have condoned the delay and ought not to have rejected the appeal merely on the ground of delay more particularly when it appears *prima facie* that the petitioner has got a fair and arguable case and when the result of the appeal before the Government will have civil consequences.

8. Accordingly, the Writ Petition is allowed and the impugned order is set aside. The Government are directed to entertain the appeal already filed by the petitioner, not withstanding the period of limitation prescribed, and dispose of the appeal on its merit as expeditiously as possible, preferably within a period of one month from the date of receipt of a copy of this order and communicate the decision thereon to the petitioner within a week thereafter.

There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

M.SEETHARAMA MURTI, J

September 10, 2018
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