

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLLP No.37 of 2006

State of Orissa

....

Petitioner

Mr. J. Katikia, AGA

-versus-

Susama Panda

....

Opposite Party

None

CORAM:

THE CHIEF JUSTICE

JUSTICE R. K. PATTANAİK

ORDER

21.07.2022

Order No.

Misc. Case No.32 of 2006

06. 1.This is an application to condone the delay of 589 days in filing the Criminal Leave Petition to Appeal (CRLLP).
2. The impugned judgment acquitting the Opposite Party was passed by the Additional District and Sessions Judge, Rourkela on 13th May, 2004 in Sessions Trial No.99/38 of 2002. The present CRLLP was filed on 23rd March, 2006. The explanation offered in this application is that after receipt of the judgment, it was placed before the Assistant Public Prosecution on 22nd August, 2005 i.e. more than one year and three months for offering his views. This delay of one year and three months is not explained. After receiving opinion on 25th August 2005, it was sent to the office of the Advocate General only on 3rd January 2006, which is again a delay of almost four months. This again is not explained. Apparently, an endorsement was made by the Advocate General on

the file to one Shri P.K. Mohanty for his legal opinion. That legal opinion was given on 16th January, 2006. Ultimately, the petition was filed only on 23rd March, 2006.

3. It is clear that there is an unexplained delay at every stage and the delay is only due to administrative reasons.

4. The Supreme Court has made it clear in a series of judgments, including the decision in *The State of Madhya Pradesh v. Bherulal* 2020 SCC OnLine SC 849, that there have to be proper and convincing reasons for the delay in the State or its entities filing appeals or petitions. In the said decision the Supreme Court observed as under:

"2. We are constrained to pen down a detailed order as it appears that all our counseling to Government and Government authorities have fallen on deaf ears i.e., the Supreme Court of India cannot be a place for the 2 Governments to walk in when they choose ignoring the period of limitation prescribed. We have raised the issue that if the Government machinery is so inefficient and incapable of filing appeals/petitions in time, the solution may lie in requesting the Legislature to expand the time period for filing limitation for Government authorities because of their gross incompetence. That is not so. Till the Statute subsists, the appeals/petitions have to be filed as per the Statutes prescribed.

3. No doubt, some leeway is given for the Government inefficiencies but the sad part is that the authorities keep on relying on judicial pronouncements for a period of time when technology had not advanced and a greater

leeway was given to the Government (*Collector, Land Acquisition, Anantnag & Anr vs. Mst. Katiji & Ors. (1987) 2 SCC 107*). This position is more than elucidated by the judgment of this Court in Office of the ***Chief Post Master General & Ors. v. Living Media India Ltd. & Anr. (2012) 3 SCC 563*** where the Court observed as under:

“12) It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

13) In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the

usual explanation that the file was kept pending for several months/years 4 due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.”

Eight years hence the judgment is still unheeded!

4. A reading of the aforesaid application shows that the reason for such an inordinate delay is stated to be only “due to unavailability of the documents and the process of arranging the documents”. In paragraph 4 a reference has been made to “bureaucratic process works, it is inadvertent that delay occurs”.

5. A preposterous proposition is sought to be propounded that if there is some merit in the case, the 5 period of delay is to be given a go-by. If a case is good on merits, it will succeed in any case. It is really a bar of limitation which can even shut out good cases. This does not, of course, take away the jurisdiction of the Court in an appropriate case to condone the delay.

6. We are also of the view that the aforesaid approach is being adopted in what we have categorized earlier as “certificate cases”. The object appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus

to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed. We have on earlier occasions also strongly deprecated such a practice and process. There seems to be no improvement. The purpose of coming to this Court is not to obtain such certificates and if the Government suffers losses, it is time when the concerned officer responsible for the same bears the consequences. The irony is that in none of the cases any action is taken against the officers, who sit on the files and do nothing. It is presumed that this Court will condone the delay and even in making submissions, straight away counsels appear to address on merits without referring even to the aspect of limitation as happened in this case till we pointed out to the counsel that he must first address us on the question of limitation.

7. We are thus, constrained to send a signal and we propose to do in all matters today, where there are such inordinate delays that the Government or State authorities coming before us must pay for wastage of judicial time which has its own value. Such costs can be recovered from the officers responsible.

8. Looking to the period of delay and the casual manner in which the application has been worded, we consider appropriate to impose costs on the petitioner-State of Rs.25,000/- (Rupees twenty five thousand) to be deposited with the Mediation and Conciliation Project Committee. The amount be deposited in four weeks. The amount be recovered from the officers responsible for the delay in filing the special leave petition and a certificate of recovery of the said amount be also filed in this Court within the said period of time.

9. The special leave petition is dismissed as time barred in terms aforesaid."

5. The Supreme Court has recently in a series of matters reiterated that the explanation usually offered by the State and its entities for the delay on account of administrative exigencies should not be accepted unless they are shown to be justified. A sampling of such orders is as under:

(i) Order dated 13th January 2021 in SLP No.17559 of 2020 (***State of Gujarat v. Tushar Jagdish Chandra Vyas & Anr.***)

(ii) Order dated 22nd January 2021 in SLP No.11989 of 2020 (***The Commissioner of Public Instruction & Ors. v. Shamsuddin***)

(iii) Order dated 22nd January 2021 in SLP No.25743 of 2020 (***State of Uttar Pradesh & Ors v. Sabha Narain & Ors.***)

(iv) Order dated 4th February 2021 in SLP No.19846 of 2020 (***Union of India v. Central Tibetan Schools Admin & Ors***)

(v) Order dated 11th January 2021 in SLP No.22605 of 2020 (***The State of Odisha & Ors v. Sunanda Mahakuda***)

6. In the present case, the Court is satisfied that there is no valid explanation for the inordinate delay of 589 days in filing the application for condonation of delay.

7. Interestingly, in this very application, the State has been extremely lackadaisical in taking steps. After filing the CRLLP on

23rd March 2006, it did not come up for hearing for five years thereafter. When notice was issued on this application on 22nd April, 2011 and a noting was made by the office that the addressee had left the place and shifted to her village, no steps were taken for another seven years. Then on 11th April 2018, the Registrar (Judicial) passed an order requiring the State to take steps for issuance of notice. That order was not complied with. Ultimately, eleven years after notice was first issued when the matter came up on 5th July 2022, one more chance was given to the State to take steps and the case therefore adjourned to today. Even till today, steps have not been taken.

8. Therefore, for sixteen years after filing the petition, even the first step of servicing notice of the present application on the Opposite Party has not been taken by the State.

9. For all of the aforementioned reasons, the Court is not satisfied that the State has been diligent in pursuing the matter. There is a delay at every stage of the proceedings. The inordinate unexplained delay is not condoned. Accordingly, the application is dismissed. Consequently, the CRLLP is dismissed.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge