



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

IL APPLICATION (CAF) NO.1311/2023 IN FIRST APPEAL ST.NO.8648/2023

VI.D.C. Minor Irrigation Division No.3, Washim .Vs. Pralhad H. Tanpure & Ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mrs. U. A. Patil, Advocate for applicant.

Mrs. D. I. Charlewar, A.G.P. for non applicant-State.

CORAM : ANIL L. PANSARE, J.

DATE : 28.02.2024

Applicant – Vidarbha Irrigation Development Corporation (For short, 'VIDC') has filed present application under Section 5 of the Limitation Act, 1964 to condone the delay of about 318 days in filing appeal against the award dated 15.02.2022, passed by Reference Court, Buldhana in Land Acquisition Case No.14/2020.

2. On 14.02.2023, following order was passed.

“The delay is sought to be condoned on administrative exigencies. The judgment and award has been passed on 15/2/2022. The Counsel concerned has applied for certified copy on 22/2/2022. The certified copy was received on 9/3/2022. The Counsel appearing before the trial Court handed over certified copy to the appellant on 6/6/2022. There is absolutely no justification as to what prevented the Counsel to handover certified copy immediately after 9/3/2022. The Executive Engineer opined to file appeal on 14/7/2022. Thus he took more than a month to give opinion. The Standing Counsel at Nagpur verified papers and allotted the matter to the present Counsel on 25/7/2022. Further time is required in communication for obtaining Court fees and other such administrative formalities.

2] *In my view, the applicant will have to show sufficient cause as to what prevented the Counsel to handover certified copy immediately after 9/3/2022, why did the Executive Engineer took more than a month to give opinion and justification for time required in obtaining Court fees and other such administrative exigencies.*

3] *The attention of the learned Counsel is invited to the judgment passed by the Hon'ble Supreme Court in the case of State of Madhya Pradesh And Others Vs. Bherulal [(2020) 10 SCC 654], wherein the Supreme Court has held that law of limitation undoubtedly binds everybody including the Government and deprecated the practice of keeping the file pending for several months on the ground of administrative exigencies.*

4] *The ground of administrative difficulty will have to be dealt with in terms of Section 10 of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (for short "the Act of 2005"), which reads thus :*

"10. (1) Every Government servant shall be bound to discharge his official duties and the official work assigned or pertaining to him most diligently and as expeditiously as feasible:

Provided that, normally no file shall remain pending with any Government servant in the Department or Office for more than seven working days:

Provided further that, immediate and urgent files shall be disposed of as per the urgency of the matter, as expeditiously as possible, and preferably the immediate file in one day or next day morning and the urgent file in four days :

Provided also that, in respect of the files not required to be referred to any other Department, the concerned Department shall take the decision and necessary action in the matter within forty-five days and in respect of files required to be referred to any other Department, decision and necessary action shall be taken within three months.

(2) Any wilful or intentional delay or negligence in the discharge of official duties or in carrying out the official work assigned or pertaining to such Government servant shall amount to dereliction of official duties and shall make such Government servant liable for appropriate 1.[disciplinary action under the All India Services (Discipline and Appeal) Rules, 1969, the] Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 or any other relevant disciplinary rules applicable to such employee.

(3) The concerned competent authority on noticing or being brought to its notice any such dereliction of duties on the part of any Government servant, after satisfying itself about such dereliction on the part of such Government servant shall, take appropriate disciplinary action against such defaulting Government servant under the relevant disciplinary rules including taking entry relating to such dereliction of duty in the Annual Confidential Report of such Government servant.”

5] *As could be seen, sub-section (1) of Section 10 of the Act of 2005 provides that every Government servant shall discharge his official duties assigned or pertaining to him most diligently and expeditiously and that no file shall remain pending with any Government servant in the department, usually for more than seven working days. Thus, additional time taken will have to be properly justified. In addition, Rules 10 to 13 of the Maharashtra Prevention of Delay in Discharge of Official Duties Rules, 2013 (for short “the Rules of 2013) provides for detailed mechanism to prevent/avoid delay. Despite such provisions and several judgments of the Supreme Court deprecating casual approach in processing files, there is no improvement.*

6] *There is a reason for the same and the reason is not taking action, provided under sub-sections (2) and (3) of Section 10. It is unfortunate that the effect of sub-section (1) of Section 10 has been neutralized by not taking recourse to sub-sections (2) and (3) of Section 10. Resultantly, the casual approach of Government servants continue.*

7] *On the point of delay in filing appeal, the Supreme Court in the case of Basawaraj and anr. Vs. The Spl. Land Acquisition Officer [AIR 2014 SC 746], in paragraph 15, held as under:*

“15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and

circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.”

8] *Thus, the Supreme Court has held that in a case if a party is found to be negligent or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay.*

9] *In Ramlal Vs. Rewa Coalfields Ltd. [AIR 1962 SC 361, the Supreme Court, while interpreting the provisions of Section 5 of the Limitation Act, held thus:*

“In construing Section 5 (of the Limitation Act), it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree- holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be lightheartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown, discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice.”

Thus, in absence of showing sufficient cause, the legal right accrued in favour of the decree-holder, by lapse of time cannot be lightheartedly disturbed.

10] Accordingly, the applicant is directed to give details of the officials along with time taken by each official to process the file, which should include name of the official, time when the file was received, time taken to process the file and reasons for delay in processing the file, etc. so that appropriate orders could be passed. The applicant shall also state the amount of interest (15%) which the public exchequers will have to bear because of such delay, i.e. 318 days, if the appeal is ultimately dismissed. In other words, the applicant will mention the amount of interest which could have been saved by discharging duty in terms of Section 10 of the Act of 2005 and the Rules of 2013. The details be furnished on affidavit before the next date. Hopefully time will not be sought to furnish these details also.

11] Stand over to 28/2/2024.”

3. Response affidavit has been filed by Executive Engineer, Minor Irrigation Division, Washim. He states that the award was passed on 15.02.2022. The local counsel applied for the certified copy on 22.02.2022. The certified copy was received on 09.03.2022. The learned counsel Mr. Rajesh Gawai, vide letter dated 18.04.2022, intimated the Executive Engineer, VIDC Division No.3, Construction, Washim about the order passed by reference Court. The said letter was received on 29.04.2022, by the office of Mr. V. B. Sanap, Executive Engineer, Washim. Taking pause here, vide order dated 14.02.2024, not only the name of the officer was directed to be disclosed but also time taken by each officer to process the file was to be explained. The Executive Engineer appears to have stated the names of the persons who handled the file but has not explained the delay. For example, Executive Engineer states that the certified copy was received by the local counsel on 09.03.2022. The local counsel, however issued letter on

18.04.2022. What did the local counsel do for more than one month is not disclosed.

4. To continue with the response affidavit, the Executive Engineer states that on 02.05.2022, the letter along with certified copy was submitted to the Sub Divisional Engineer Mr. K. V. Narad. The letter was received back by the office on 20.05.2022. It was then forwarded to counsel at Amravati Mr. Shrikant Gohod on 29.05.2022. The local counsel has given opinion on 06.06.2022. Again, affidavit is silent as to what had happened in the intervening period from 02.05.2022 to 20.05.2022.

5. The Executive Engineer then states that the matter was submitted for further opinion to the Mandal Officer on 09.06.2022 and it was received back from Mandal Office on 23.06.2022. At that time, Mr. M. N. Rajbhog was working as Superintending Engineer. The opinion of Standing Counsel Mr. Jagtap at Nagpur was sought on 27.06.2022 and after obtaining opinion, the matter was allotted to Mrs. U. A. Patil, Advocate, the panel counsel, who intimated about the court fee on 01.08.2022. Why did it take so much time to calculate court fee, is absent.

6. The demand for Court Fee was submitted on 25.08.2022. Why it took 25 days to submit the demand for court fee is not known. The amount is received from the VIDC on 22.11.2022. Again what had happened between 25.08.2022 to 22.11.2022 is not known. On 22.11.2022, the amount of Court Fee is received and challan is filled up. The Executive Engineer then states that for want of requisite papers the appeal could not be drafted and further time was required. The application was ultimately filed on 21.04.2023 i.e. after about 5 months.

7. The Executive Engineer has then concluded that the delay has occurred due to time consumed in getting certified copy,

opinion from standing counsel, to get opinion and sanction from the authorities of the appellant, to get sanction of the court fee, to collect the relevant papers from the counsel as well as office of the appellant. The Executive Engineer has further stated that there is shortage of manpower. He further states that the authorities of the VIDC are required to visit Mantralaya for regular works and to attend the meetings at VIDC office at Nagpur and Regional Office at Amravati. The authorities are required to submit their progress reports to Mantralaya. They are required to attend meetings called by the Collector accordingly.

8. First let us deal with reason for consuming time to obtain the court fee which, in the present case, is about 3 ½ months (from 01.08.2022 to 22.11.2022). The Supreme Court in the case of *Ajay Dabra Vs. Pyare Ram and ors.*, reported in *2023 SCC Online SC 92*, while dealing with ground of being short of funds to pay the Court Fee to condone the delay, has referred to Section 149 of the Civil Procedure Code, 1908, which refers to power to make up deficiency of court fee and held thus:

“6. It also needs to be emphasized that this Court as well as various High Courts, have held that Section 149 CPC acts as an exception, or even a proviso to Section 4 of Court Fees Act 1870. In terms of Section 4, an appeal cannot be filed before a High Court without court fee, if the same is prescribed. But this provision has to be read along with Section 149 of CPC which we have referred above. A short background to the incorporation of Section 149 in CPC would explain this aspect.

9. In Mannan Lal (supra), this aspect was dealt in rather detail, where the Court referred to several decisions of different High Courts on interpretation of Section 149 CPC and Section 4 of Court Fees Act. It particularly referred to the decision of the Allahabad High Court which is S. Wajid Ali v. Mt. Isar Bano Urf Isar Fatima wherein it was held that a court has to exercise its discretion for allowing a deficiency of court fees to be made good but

once it was done, a document was to be deemed to have been presented and received on the date when it was originally filed, and not on the date when the defects were cured.....

10.

11. *We do not have a case at hand where the appellant is not capable of purchasing the court fee. He did pay the court fee ultimately, though belatedly. But then, under the facts and circumstances of the case, the reasons assigned for the delay in filing the appeal cannot be a valid reason for condonation of the delay, since the appellant could have filed the appeal deficient in court fee under the provisions of law, referred above. Therefore, we find that the High Court was right in dismissing Section 5 application of the appellant as insufficient funds could not have been a sufficient ground for condonation of delay, under the facts and circumstance of the case. It would have been entirely a different matter had the appellant filed an appeal in terms of Section 149 CPC and thereafter removed the defects by paying deficit court fees. This has evidently not been done."* (emphasis now)

10. Thus, the Supreme Court has held that the appellants therein could have filed the appeal deficient in court fee and made good subsequently. Nothing prevented the VIDC from adopting such a mode. Appellant - VIDC is equipped with panel of advocates who ought to be aware of the scope of Section 149 of the Code. Thus, justification for delay on account of court fee is not acceptable.

11. So far as the other grounds are concerned, I have noted in order dated 14.02.2024, the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005, with a hope that the delay will be explained, considering the above provision. Instead the Executive Engineer has put forth a reason of shortage of manpower, frequent visits to Mantralaya, attending meetings,

etc. He has not explained as to how would these activities neutralize the rigor of Section 10 of the Act of 2005. As regards giving opinion, Rules 10 to 13 of the Rules of 2013 deal with the same. As against, in the present case, the time consumed at respective levels to give opinion is enormous and has been not duly explained.

12. Further, the time taken for collecting documents is too vague a statement to consider it a cause, muchless sufficient cause to condone the delay. The Supreme Court has, in **State of Madhya Pradesh and Others Vs. Bherulal; (2020) 10 SCC 654**, deprecated the practice of keeping the files pending for several months on the ground of administrative exigency. This judgment has been referred to in order dated 14.02.2024. Despite the position of law, the Executive Engineer has put forth administrative difficulty as a ground for condoning the delay. This delay, thus, cannot be condoned even by imposing costs in the light of law laid down by the Supreme Court in the case of **Basawaraj and anr. Vs. The Spl. Land Acquisition Officer; AIR 2014 SC 746**.

13. What transpires, thus, is there is no explanation as to what did local counsel do for the period from 09.03.2022 to 18.04.2022. There is no justification given for taking 34 days to calculate court fees and 25 days to submit the demand for court fees. No explanation is tendered as to why were necessary documents not collected in time. The applicant kept waiting for court fees for a period from 25.08.2022 to 22.11.2022 i.e. for about 90 days and then realized that necessary papers were not obtained. The applicant has not taken recourse to Section 149 of the Code to show due diligence. The delay for collecting necessary documents is about 5 months. The applicant has not disclosed the necessary documents nor is the source of collection disclosed. Thus, it is

evident that the applicant was negligent and remained inactive for months together. The applicant failed to show sufficient cause to condone the delay.

14. Further, the Executive Engineer has, in his affidavit, not mentioned the amount of interest which the officials could have saved by discharging the duties in terms of Section 10 of the Act of 2005 and the Rules of 2013. As mentioned in the order dated 14.02.2024, despite the provisions of the Act of 2005, public servants have shown no improvement because the competent authority has not taken recourse to Section 10 of the Act of 2005. It is, therefore, right time to remind the competent authority of its duty to act diligently and to make subordinates act diligently.

15. The copy of order, therefore, be served upon the Chief Engineer concerned for information and taking appropriate action in terms of Sub Sections (2) and (3) of Section 10 of the Act of 2005. Needless to say that the principles of natural justice will be followed. Compliance report be filed by 30.04.2024.

Application is accordingly rejected.

(Anil L. Pansare, J.)