SUPREME COURT OF INDIA

State of Karnataka

Vs.

Y. Moideen Kunhi (dead) by Lrs.

S.L.P.(C) Nos. of 2009

(Dr. Arijit Pasayat and Asok Kumar Ganguly JJ.)

04.05.2009

JUDGMENT

Dr. Arijit Pasayat, J.

1. The special leave petitions are directed against the judgment and order dated 7.11.1990 in Writ Petition No.40425 of 1982 and Writ Petition No.10920 of 1983 and order dated 26.9.2007 in Review Petition No.817 of 2004 passed by a learned Single Judge of the Karnataka High Court. It appears that there is a delay of more than nearly 6500 days against the original order and about 300 days so far as the review petition is concerned.

2. Before dealing with the question of delay it is necessary to take note of the State's case before the High Court.

3. The records disclose that the agricultural lands to the extent of 50.89 acres, 30.00 acres, 462.00 acres, 3485.83 were purchased through registered partnership firm M/s Y. Moideen Kunhi & Company. All the lands are sub- divisions of Sy. No.146 of Neriya Village, Puttur Taluk.

4. The declaration under Section 66 (4) of the Karnataka Land Reforms Act, 1961(hereinafter referred to as the `Act') was filed by the three partners of the firm i.e.. respondent Nos. 1,2 and 3 herein for determination of the excess holding. In the very declaration it is stated that the lands being the plantation lands, are exempted under Section 104 of the Act. It is further mentioned therein that all the declarants are the partners of the firm, having 1/3rd share in the properties purchased and that the declarants have furnished the declaration without prejudice to their contentions that the provision of the Act and the provisions of the Karnataka Ordinance No. 11 of 1975 are not applicable to the aforesaid lands. The Land Tribunal, Belthangady by the order dated 27.9.1982, held that the declarants are holding the lands to an extent of 368.16 acres in excess of the ceiling limit. The tribunal opined that 2820 acres are exempted lands. After deducting the tenanted lands and exempted lands, the Tribunal ultimately held that an area of 530.16 acres has to be taken into consideration for the purpose of determining excess holding. After deducting 10 units for

each of the declarants, the Tribunal held that an area of 368.16 acres is the excess land. Thereafter the Land Tribunal suo motu initiated review proceedings under Section 122 A of the Act for reviewing its order dated 27.9.1982. The review proceedings were also dropped on 10.11.1982.

5. The order of the Land Tribunal was questioned before the High Court by the three declarants in W.P. no. 40425/1982. So also the State of Karnataka challenged the order of the Land Tribunal by filing W.P. No. 10920 of 1983. During the course of hearing, the three declarants withdrew W.P. No, 40425/1982. However, W.P. No. 10920/1983 filed by the State of Karnataka was dismissed by the High Court on 7.11.1990 on merits holding that there is no error in the order passed by the Land Tribunal.

6. It was contended on behalf of the State that the Tahsildar being the Secretary of the Land Tribunal should have sent the declaration filed under Section 66 of the Act by the three declarants, to the Deputy Commissioner to be dealt with under the provision of Section 79B of the Act, to consider the question by the registered partnership firm is valid or not; instead he proceeded to submit the report to the Land Tribunal which has no jurisdiction to decide the question about the lands purchased by the firm, the Tahsildar should not have been merely dependant upon the certificates of the Cardamom Board and Rubber Board to conclude that the lands in question are plantation lands, the Tahsildar has fraudulently prepared the inspection report according to which he visited the lands in question within a day and that he could not visit every nook and corner of the lands in question, that the Land Tribunal should also not have entertained the declaration filed under Section 66 of the Act as the lands have been purchased and held by the registered firm, that the Tribunal also says that the members of the Land Tribunal inspected the lands within one day, which is a make believe affair; that the statement made before the High Court in W.P. No. 42774/1982 that the excess lands have been surrendered, is also a fraud practiced on the Court inasmuch as the declarants have not actually surrendered the excess lands; that the learned Judge who decided W.P. No. 10920/1983 has opined that the Tahsildar being the Government official, there was no need to send notice to the State or other officials, that when the Tahsildar who is directly concerned with the case has practiced fraud, learned Judge should have issued notice to the Deputy Commissioner or Revenue Secretary; that the learned Judge while disposing of W.P. No. 10920/1983 has opined that the declarants claim the lands not as partners but in their personal capacity which is an error apparent on the face of the record as the declaration itself has been filed as the partners of firm; that fraud vitiates everything and therefore the order passed by the Tribunal as well as by the High Court in W.P. No. 10920/1983 are null and void as they are obtained by the declarants by practicing fraud. Therefore the review petition was filed.

7. Stand of the respondents on the other hand was that no fraud was committed by the respondents or by the Secretary of the Land Tribunal. Error of judgment cannot be equated to fraud and since there was a delay of 14 years in filing the review petition even after the Deputy Commissioner allegedly discovered the alleged fraud on 10.2.2003 the delay in filing the review petition which was in fact filed on 8.10.2004 has not been explained. It was their

stand that non filing of the appeal by the State will not amount to fraud by the officials of the State.

8. The High Court found that there was no element of fraud and, therefore, the review petition was dismissed. However, liberty was given to the State or the Tribunal to get the land to the extent of 368.16 acres surrendered in accordance with law.

9. The State found that the allegation of fraud related to non-surrender of the land. Stand of the respondents was that lands were surrendered by the declarants before the surveyor of the State who had accepted the possession. The High Court accepted that the land was surrendered before the Tribunal as is required under law. It was further observed that if the State felt that the lands surrendered by the respondents are not suitable, it is open to the State to initiate action under Section 67 (3A) of the Act. Liberty was given to the Tribunal or the State to initiate steps for getting the land surrendered in accordance with Section 67 by initiating necessary proceedings.

10. It is submitted by learned counsel for the appellant that this Court while dealing with an application for condonation of delay especially those filed by governments, has held that adoption of strict standard of proof sometimes fails to protect public justice, and it would result in public mischief by skilful management of delay in the process of filing an appeal.

11. It is submitted that many government matters are delayed by either the nature of the bureaucratic process or by deliberate manipulation of the same by taking advantage of loopholes in the conduct of litigation.

12. By way of an example only reference is invited to Chapter 3 of a report for the year 2003 of the Comptroller and Auditor General of India. The chapter entitled REVIEW ON HANDLING OF APPEAL CASES IN THE CENTRAL EXCISE DEPARTMENT reads in pertinent part as under: 3.5 Analysis of adverse decisions due to departmental lapses 3.5.1 Dismissal of Appeals on account of delay in filing of appeals

13. As per instructions issued by the Board in October 1991, the Commissioner of Central Excise, must ensure that all the documents including the original certified copy of the CEGAT order, photocopies of the order-in-original & order-in-appeal alongwith application for condonation of delay are enclosed with the proposal sent to the Board for filing civil appeal before the this court. The time limit prescribed for review by the Commissionerate is 10 days from the date of receipt of certified copy of the order. The processing of case at the Board's office includes drafting, vetting and finalisation of appeal. The jurisdictional Commissioner within 60 days may file the appeal from the date of receipt of the CEGAT orders in the Commissionerate of Central Excise.

14. Test check of the records, in 16 Commissionerates of Central Excise, revealed that 32 appeals filed by the department involving revenue of Rs.50.41 crore were dismissed by this Court and 3 cases involving Rs.2.00 crore by CEGAT on account of abnormal delays in filing of the appeals. Audit scrutiny revealed that delays had occurred at all the stages viz.

receipt of certified copy, submission of papers to the Board, examination of papers at Board's office, drafting of appeal by the Panel Counsel; and filing of appeal by the CCE. The total period of delay varied. from 119 to 691 days. Some of the illustrative cases are discussed below: - (i) Delay by Panel Counsel The CEGAT set aside (March 1997) an order issued by CCE in April 1992 confirming demand of Rs.29.13 crore and penalty of Rs.2 crore, against M/s. National Organic Chemicals. India Limited, in Mumbai VI Commissionerate of Central Excise, for invoking Section 11A without adequate evidence of intention to evade duty. This Court on 15 January, 1999 dismissed the appeal filed by the department against the CEGAT order dated 5 March 1997, on account of delay in filing of appeal by seven months. The period of delay included four months taken by the Panel Counsel in drafting the appeal. (ii) Delay by the Board In the case of M/s. Time Pharma, involving revenue of Rs.1.83 crore , the Commissionerate of Central Excise Mumbai II (now Mumbai III) received certified copy of the CEGAT's order after 14 days on 4 February 1997 and sent comments to the Board after 23 days as against prescribed period of 10 days. Although the Board decided before 17 April 1997 to go in appeal, the appeal was filed only on 5 June 1998. This court dismissed the appeal on the ground that there was an inordinate delay of about 360 days in filing the appeal without giving any satisfactory explanation. The Commmissionerate of Central Excise attributed the delay to the Board. (iii) Supplementary appeal filed after six years Mumbai II Commissionerate of Central Excise, filed an appeal in CEGAT on 14 June, 1993 against an order of the Commissioner dated 31 March 1992 regarding irregular availment of SSI exemption and consequent availment of Modvat credit at higher rates by a group of six assessees (M/s. Azo Dye Chem and five others). The appeal was, however, filed in respect of only one assessee whereas the case was against all the six manufacturing units and fourteen others being Directors and Managers of the said units. After six years, on the instructions from Junior Departmental Representative, the supplementary appeals alongwith application for condonation of delay in filing appeals against the others were filed in CEGAT on 11 October 1999 under section 35 E (4) of the Act. However, CEGAT dismissed these appeals on 21 July, 2000 borrowing a Larger Bench decision dated 12 July, 2000 in the same case where it was held that CEGAT has no power to condone the delay. The main appeal filed in time (14 June 1993) was also dismissed by CEGAT on 21 July, 2000 on the ground that no appeal had been filed against the other noticee. The revenue involved in this case was Rs.1.18 crore. (iv) Frivolous reasons for condonation In Hyderabad I Commissionerate of Central Excise, two appeals filed by the department against order of Commissioner (Appeals) on whether certain products manufactured by the assessees (M/s.Neyland Laboratories Limited and M/s. Aurbindo Pharma Ltd.) are bulk drugs under `Drugs and Cosmetics Act', were dismissed (17 August 2002) by CEGAT as time barred as there was a delay of 48 days in filing the appeals. The reasons put forth by the department that the new Collector of Central Excise needed time to familiarize to the work were not accepted. Failure to file an appeal before CEGAT in time resulted in dismissal of the appeal involving revenue of Rs.81.81 lakh.

15. It is submitted that even with the introduction of safeguards against delay in the process, in an occasional case delay occurs which is inexplicable in normal circumstances. The question is whether such delay, should result in the negation of the state's claim and at the cost of the interest of the members of the public whose cause has not been carefully

espoused. It is submitted by the appellant-State that in such cases, delay must be visited with consequences but the interest of the inhabitants of the State must be protected. In *State (NCT of Delhi) v. Ahmed Jaan*[1] it was held as follows: ....It is axiomatic that decisions are taken by officers/ agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay - intentional or otherwise - is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. .....In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants" Further at para 15 this court held that: "... The above position was highlighted in *State of Haryana v. Chandra Mani and Ors.*[2], *Special Tehsildar, Land Acquisition, Kerala v. K V.Ayisumma*[3] *and State of Nagaland v. Lipok AO and Ors.*[4]. It was noted that adoption of strict standard of proof sometimes fail to protract public justice, and, it would result in public mischief by skilful management of delay in the process of filing an appeal."

16. This Court has in appropriate cases even condoned delays of over 30 years in filing of SLPs. In *Nand Kishore v. State of Punjab*[5] this court held: ".....13. The step of the three-member Bench so taken reveal its mind as reflected in the above proceedings. Their Lordships wanted to do substantial justice. It was thought better to advise the petitioner to file special leave petition. As we view this order, having invited the petitioner to file the special leave petition, it is no longer advisable or appropriate for us to retrace back the step put forward by the three- member Bench. It is significant to recall that the writ application was dismissed on 5-2-1962 and the moment Moti Ram Deka case appeared on the scene, the appellant or 24-2-1964, within limitation, brought forward his suit which got strengthened by Gurdev Singh case appearing within a couple of months of its filing. The appellant-special leave petitioner was thus bona fide pursuing an appropriate remedy for all these years. In these circumstances, we think that an appropriate case for 12 condonation of delay of the intervening period has been made out. We, therefore, allow CC 11644 of 1991 and condone the long durated delay in these exceptional circumstances. On doing so, we grant leave to appeal. The appeal thus arising and the Civil Appeal No. 632 of 1975 may now be disposed of together...."

17. On perusal of the explanation offered it is clear that the officials who were dealing with the matter have either deliberately or without understanding the implications dealt with the matter in a very casual and lethargic manner. It is a matter of concern that in very serious matters action is not taken as required under law and the appeals/petitions are filed after long lapse of time. It is a common grievance that it is so done to protect unscrupulous litigants at the cost of public interest or public exchequer. This stand is more noticeable where vast tracts of lands or large sums of revenue are involved. Even though the courts are liberal in

dealing with the belated presentation of appeals/applications, yet there is a limit upto which such liberal attitude can be extended. Many matters concerning the State Government and the Central Government are delayed either by the nature of bureaucratic process or by deliberate manipulation of the same by taking advantage of loopholes in the conduct of litigation. Several instances have come to the notice of this Court where as noted above appeals have been filed where the revenue involved runs to several crores of rupees. It is true that occasionally delay occurs which is inexplicable in normal circumstances.

18. The case at hand is a classic example where the circumstances are the same. More than 4000 acres of land are involved out of which, according to the State, nearly 3500 acres constitute forest land. Ultimately, the Court has to protect the public justice. The same cannot be rendered ineffective by skillful management of delay in the process of making challenge to the order which prima facie does not appear to be legally sustainable.

19. The expression `sufficient cause' as appearing in Section 5 of the Indian Limitation Act, 1963 (in short the `Limitation Act') must receive a liberal construction so as to advance substantial justice as was noted by this Court in *G. Ramegowda, Major etc. v. The Special Land Acquisition Officer, Bangalore*[6]. Para 8 of the judgment reads as follows:

> "8. .....The law of limitation is, no doubt, the same for a private citizen as for governmental authorities. Government, like any other litigant must take responsibility for the acts or omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it. Therefore, in assessing what, in a particular case, constitutes "sufficient cause" for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the government. Governmental decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have "a little play at the joints". Due recognition of these limitations on governmental functioning -- of course, within reasonable limits -- is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put government and private parties on the same footing in all respects in such matters. Implicit in the very nature of governmental functioning is procedural delay incidental to the decision-making process. In the opinion of the High Court, the conduct of the law officers of the Government placed the Government in a predicament and that it was one of those cases where the mala fides of the officers should not be imputed to Government. It relied upon and trusted its law officers. *Lindley, M.R., in the In re National Bank of Wales Ltd.*[7] at p.673 observed, though in a different context: "Business cannot be carried on upon principles of distrust. Men in responsible positions must be trusted by those above them, as well as by those below them, until there is reason to distrust them."

20. Keeping in view the importance of questions of law which are involved we are inclined to condone the delay subject to payment of exemplary costs which we fix at rupees ten lakhs to be paid within a period of 8 weeks to the respondents. The delay is condoned subject to the payment of the aforesaid amount as costs. After making the payment the receipt thereof shall be filed before this Court alongwith an affidavit. Only after the payment is made the special leave petitions shall be listed for admission. We make it clear that we have not expressed any opinion on the merits of the case.

21. It is imperative that the State shall immediately initiate action as available in law against every person responsible for the alleged fraud and delay in persuing the remedies, fix responsibility and recover the amount paid as costs from them. Needless to say orders shall be passed in this regard by the competent authority after grant of opportunity to the concerned person(s). If any, action under criminal law(s) is to be taken, same shall be taken.

[1]2008 (11) SCALE 455 *[2]1996 (3) SCC 132* *[3](1996 (10) SCC 634)*
[4](2005 (3) SCC 752) *[5]1995 (6) SCC 614* *[6]AIR 1988 SC 897*
[7](1899) 2 Ch. 629