



IN THE HIGH COURT OF ORISSA AT CUTTACK

FAO No. 191 of 2020

State of Odisha & Anr.

.....

Appellants

Mr. P.K. Panda, ASC

-versus-

Minati Mohanta & Ors.

.....

Respondents

Mr. S.D. Routray, Advocate

CORAM:

THE HON'BLE MR. JUSTICE BIRAJA PRASANNA SATAPATHY

ORDER

28.02.2025

Order No. 06

I.A. No. 168 of 2020 & FAO No. 191 of 2020

1. This matter is taken up through hybrid mode.
2. Heard Mr. P.K. Panda, learned Addl. Standing Counsel appearing for the State-Appellants and Mr. S.D. Routray, learned counsel appearing for the Respondents.
3. This is an application filed by the State seeking condonation of delay of around 2212 days in filing the appeal in question.
4. It is contended that because of some official procedure, the matter got delayed and could not be filed within the period of limitation. However, the delay in filing the appeal is not intentional and rather bonafide one.
- 4.1. In support of the condonation of delay, learned ASC relied on the stand taken in Para 2 to 9 of the interim application which are reproduced hereunder:-

“2. That, the statutory provisions of Section 24-C of the Orissa Education Act, 1969 requires for filing of Appeal within 60 days from the date of passing of the judgment. But in the present GIA case, the learned Tribunal disposed of the GIA case dated 28.11.2013 and for a long time till 04/2018 no information



regarding disposal of the said Grant-in-Aid case could be made available with the present appellants/petitioners. It was on 28.04.2018 the appellant/ petitioners were served with notice pertaining to execution case No. 47/2017 filed by the Respondents/ opposite parties alleging non compliance of the order dtd. 28.11.2018 passed in GIA case No. 415/2012. On 01.05.2018, the notice was diarized and the appellants/ petitioners could be aware of the fact that the GIA case had got disposed of since 28.11.2013.

3. That, immediately thereafter on 31.05.2018 the Director, Higher Education was requested vide Letter No. 17178/HE, dtd. 31.05.2018 to submit appropriate memorandum examining eligibility of the Respondents. On receipt of the same the Director, Higher Education called for service records of the Respondents opposite parties from the concerned college and such records were received at a delayed stage with him. In the meantime, the certified copy of the impugned judgement dtd. 28.11.2013 was applied by the Govt. Advocate before the Learned Tribunal on 21.10.2019 and the same was delivered to him on the same day.

4. That, the Director, Higher Education thereafter examined the eligibility of the Respondents on 23.12.2019 and submitted desired memorandum reflecting eligibility of the Respondents in his UOI No. 03/HE, dtd. 24.12.2019. The same was received in the office of the appellant No. 1 on 24.12.2019. On receipt of the. On receipt of the same the Administrative Branch in the office of the Appellant No. 1 examined the eligibility of the Respondents and submitted the file to the Branch officer on 31.12.2019 suggesting to prefer FAO against the order dtd. 28.11.2013 passed in GIA case No. 415/2012. The Branch Officer after analysis of the eligibility of the Respondent No. 1 to 8 proposed for filing of FAO before the Hon'ble High Court



challenging the propriety and correctness of the order dtd. 28.11.2013 passed in GIA case No. 415/2012. He submitted the file to the Appellant No. 1 on 04.01.2020 and the appellant No. 1 took decision on 06.01.2020 to file FAO before the Hon'ble High Court. It is a fact that for taking decision for filing of FAO on the basis of the verification report submitted by Director, Higher Education is neither intentional nor deliberate but is bonafide in view of the reason that non receipt of the certified copy of the impugned order either from the Learned Tribunal or from the then Learned Govt. Advocate and after such information was received, non-receipt of adequate information from the concerned college for a prolong period after which a decision could be taken for filing of FAO. Therefore, the delay caused may be treated as bonafide and may be condoned in the interest of justice.

5. That, after such decisions were taken the office of the Advocate General was requested vide Letter No. 1191/HE, dtd. 08.01.2020 to take effective steps to prepare and file the FAO.

6. That, such Letter was received in the office of the Advocate General on dtd. 13.1.2020 and the concerned branch placed the proposal before the Learned Advocate General on dtd. 13.1.2020. The matter was entrusted to the concerned Law officer on dtd. 16.1.2020.

7. That, the Law Officer concerned vide his Letter No. 1251 dtd. 18.1.2020 called for the officer well aware of the issue to take up discussions in the matter for finalizing the FAO grounds. Sri Pranabandhu Rout, Deputy Secretary was authorized for the purpose in the Administrative Department who attended the Office chamber of the concerned Law officer concerned on 14.1.2020 and held discussions for the purpose with the Law Officer on 14.2.2020 and as per discussions held, the draft FAO was prepared by the Law Officer concerned in the Office of the



Advocate General, Odisha, Cuttack on 15.2.2020. The draft FAO grounds were verified and it was finalized on 17.2.2020. The finalized FAO memorandum was filed on 18.2.2020 wherein a delay of 2211 days occurred which is calculated excluding the period of 60 days available u/s 24(C) of Orissa Education Act, 1969 and the duration consumed by the Tribunal to supply the certified copy of the impugned judgment in filing an Appeal against the orders passed by Ld. State Education Tribunal.

8. That, it is humbly submitted that the Department of Higher Education is fighting with a large number of cases before this Hon'ble Court and in the Learned State Education Tribunal. In more than hundreds of cases, the Department is likely to prefer FAO against the orders of the Tribunal as per Section-24 (C) of the Orissa Education Act, 1969. It is because of the fact that such orders of the Tribunal have been passed without looking to the provisions of Grant-in-Aid Order, 1994. The Department of Higher Education is on the way of protecting the interest of Government with the limited staff strength and processing the matters for filing Appeal before the Hon'ble High Court. It is also fact that before filing of FAO the eligibility of the incumbent concerned is examined upon conducting verification of services as per the Grant-in-Aid Order, 1994, by calling for service documents from the concerned college at the level of Director, Higher Education. Thereafter, on the basis of the report of Director, Higher Education, decision is taken by the Administrative Department in consultation with Law Department. After the same, the office of the Advocate General is contacted by the Department officials to prepare and finalize the FAO grounds where after the FAO is filed. And all these procedure are being maintained with the limited staff strength for which a lot of time is consumed.



9. That, the delay caused in filing of Appeal is neither intentional nor deliberate but is bonafide in view of the fact that due to inter and intra departmental consultation as a matter of administrative requirement and for collection of documents/ materials connected with the service record of the Respondent No.1 from different quarters, sometime was required by the present Appellants which was unavoidable. For analysis of the claim of the Respondent at different levels under bureaucratic methodology, sometime was required to be consumed by the present Appellants for preferring the instant Appeal which is bonafide and the same may kindly be condoned in the interest of justice.”

4.2. Learned counsel appearing for the Respondents on the other hand contended that the delay in filing the appeal has not been properly explained by showing sufficient cause and in view of the decision of the Hon’ble Apex Court in Para 27 and 29 of the Judgment in the case of ***Postmaster General & Ors. Vs. Living Media Ltd. & Anr.*** ((2012) 3 SCC 563) has held as follows:-

“27. 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.

29. 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 bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years 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 the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.”

4.3. Similarly this Court in the case of ***State of Odisha & Ors. Vs. Sales Tax Officer, Cuttack II (W.P.(C) No. 15763 of 2021)*** in Para-5 has held as follows:-

“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. Shamshuddin)*
- (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)”*

5. Having heard learned counsel appearing for the Parties and placing reliance on the decisions as cited (supra), this Court does not find any sufficient cause pleaded by the Appellants for condoning the delay in question. Therefore, this Court is not inclined to condone the delay in filing the appeal and dismiss the I.A. accordingly.

6. I.A. accordingly stands rejected. Consequentially the appeal also fails and stands dismissed.



7. Amount deposited towards cost pursuant to order dtd.17.08.2023 be returned back to the learned counsel appearing for the Appellants along with accrued interest, if any on proper identification.

(BIRAJA PRASANNA SATAPATHY)
Judge

Sneha

Signature Not Verified

Digitally Signed
Signed by: SNEHANJALI PARIDA
Reason: Authentication
Location: High Court of Orissa, Cuttack
Date: 02-Apr-2025 18:05:31

