

The State Of Madhya Pradesh vs M/S Dharampal Satyapal Ltd. on 6 June, 2024

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IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE DEVNARAYAN MISHRA
ON THE 6th OF JUNE, 2024
MISC. APPEAL No. 2967 of 2022

MA-2964

BETWEEN: -
THE STATE OF MADHYA PRADESH THROUGH SHRI
RAJESH KUMAR RAI FOOD SAFETY OFFICER SAGAR
(MADHYA PRADESH)

(BY SHRI ASHOK SINHA - GOVERNMENT ADVOCATE)

.....PETIT

AND
YOGENDRA JAIN S/O LATE PREMCHAND JAIN, AGED
ABOUT 45 YEARS, KATRA NAMAK SAGAR M.P. FIRM
VINAY TRADERS NAYA BAZAR WALI GALI VARNI
COLONY, SAGAR (MADHYA PRADESH)

(BY SHRI AKSHAT SHRIVASTAVA - ADVOCATE)

.....RESPOND

MISC. APPEAL No. 2964 of 2022

BETWEEN: -
THE STATE OF MADHYA PRADESH THROUGH FOOD
SAFETY OFFICER SAGAR (MADHYA PRADESH)

(BY SHRI ASHOK SINHA - GOVERNMENT ADVOCATE)

.....PETIT

AND
M/S DHARAMPAL SATYAPAL LTD. THR. DIRECTOR
CHANDRA KANT KHEMKA B-1 SECTOR 3 NOIDA 201301
U.P. THROUGH R/O 25B BALLYGUNGE PARK KOLKATA
WB (WEST BENGAL)

(BY SHRI AKSHAT SHRIVASTAVA - ADVOCATE)

.....RESPOND

Signature Not Verified
Signed by: AMITABH
RANJAN
Signing time: 18-06-2024
14:04:52

RESERVED ON

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:- 08-04-2024

PRONOUNCED ON : - 06-06-2024.

These appeals having been heard and reserved for judgment on for pronouncement this day, the court passed the following
JUDGMENT

Heard on I.A. No. 6941 of 2022 filed in M.A. No. 2967 of 2022 and I.A. No. 6936 of 2022 filed in M.A. No. 2964 of 2022, which are the applications under Section 5 of Limitation Act for condoning the delay in filing the appeal on behalf of the State Government.

2. By these interlocutory applications filed under Section 5 of Limitation Act, learned counsel for the petitioner/State submitted that the order which has been challenged in these appeals was passed on 03.10.2019 by the Court of Food Safety Tribunal, Sagar district Sagar.

3. As per the calculation of the appellant, there is a delay of 923 days in filing these appeals. The delay occurred due to the reasons are behind the control of the appellant and are bona fide in nature. The appellant is the functionaries of State and required to obtain the permission at various level which procedural and consumes time. After the order of learned Tribunal on 03.10.2019 information was received, matter was scrutinized and after that opinion was sought from the Government Advocate and after obtaining the opinion, the matter was placed before the Administrative Department and instructions were sought and after obtaining the sanction dated 02.02.2021 from the Law and Legislative Affairs Department on 25.02.2021 the office of Advocate General was contacted for filing the appeal.

4. It is also submitted that the OIC of the case was retired and from April, 3 MA-2964-2022 2021 the second Lock-down was imposed, therefore, OIC could not contacted the office of Advocate General for filing the appeal. As per the order of the Hon'ble Apex Court in suo-moto Writ Petition Civil No(s). 03 of 2023 IN RE. Cognizance for Extension of Limitation Period vide order dated 23.03.2020 has exercised the power and ordered that the period of limitation in all such proceedings, irrespective of limitation prescribed under the general Law or special laws whether condonable or not shall extended till the month of February, 2022. In view of this the delay caused in filing these appeals is bona fide and not intentional or deliberate, therefore, the delay of 932 days be condoned.

5. Respondent has filed his reply and submitted that the order of the learned Tribunal is reasoned and no interference is called for.

6. I have gone through the record from that, it is clear that the order was passed on 03.10.2019 application for certified copy of the order was filed on 05.10.2019 and certified copy of the order and judgment was prepared on 11.10.2019 and as per Section 71(6) of the Food Safety and Standards Act, 2006 the person aggrieved by any decision or order of the Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Tribunal to him or on any question of fact or law arising out of such order: Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

7. Thus, basic limitation period is 60 days and if the Court is satisfied may extend the period of limitation to next 60 days, thus the maximum period that can be granted by the Court is 120 days.

8. Appeals have been filed on 01.07.2022. If the limitation is counted on 4 MA-2964-2022 the basis of above Section, without any exemption the basic period of limitation is till 09.12.2019, the appeal would have been to be presented counting 60 days plus the time spent in obtaining the certified copy of the order and if further 60 days is granted then the appeals would have been filed by 07.02.2020.

9. Thus, in this case, maximum period that can be granted was till 07.02.2020 and these appeals have been filed on 01.07.2022, learned Government Advocate for the respondents/State had filed the additional documents in support of these applications and as per that on the next day of the order the designated authority have written a letter to the Government Advocate of the District & Sessions Court, Sagar and requested that the draft of the appeal be prepared and the Government Advocate had submitted its opinion on 23.11.2019 and from perusal of that that letter, it is clear that in the month of January, 2020 the State of M.P. Law and Legislative Department has granted the sanction to file an appeal but after that no progress was held till 27.07.2020.

10. If the Officers of the State keep pending the proceedings on that ground they cannot claim that the period under undergone in the process be condoned, whereas the order of the Apex Court in suo-moto Writ Petition Civil No(s). 03 of 2023 (supra) is concerned the Apex Court taking cognizance of the fact that due to Pandemic COVID-19 and the lock-down extended the limitation period which has expired from 15.03.2020 to 28.02.2022 and further 90 days limitation was granted without any discrimination for all the proceedings starting on 01.03.2020.

11. In these cases, the period of limitation is expired firstly on 09.12.2019 and if 60 days extension is granted, then on 07.02.2020. Thus, if the State has 5 MA-2964-2022 not utilized properly this period and the appeals would have been filed till the month of May, 2020 but the appeal was filed on 01st July, 2022.

12. In the case of State of M.P. Vs. Jaspal Singh 2019 (1) MPWN 34 , this Court has held as under:

"It is also submitted that in view of the provisions contained in the Section 71(6) of the Food Safety and Standards Act, 2006 prescribing the period for condoning the delay, general provisions under section 5 of the Limitation Act are not applicable. In support, decisions in the case of Singh Enterprises v. Commissioner of Central Excise, Jamshedpur and others, reported in (2008) 3 SCC 70 and Narayandas (deceased) through Lrs Smt. Radhdevi and others v. Gopaldas s/o Dulichand, reported in 2016 (3) MPLJ 466 have been cited. A perusal of these citations show that in any special enactment, if there is a provision to condone the delay for a specific period, then general provisions under section 5 of the Limitation Act would not be applicable. Thus, it is clear that maximum period available for filing an appeal under the Food Safety and Standards Act, 2006 is only 120 days. As perusal of the appeal shows that it was filed on 13.6.2016 against against the judgment dated 16.12.2015,

which is a period of 179 days. In IA No. 5414/16, in paragraph-2, it has been shown that the copy of the judgment passed on 16.12.2015 was obtained on 18.1.2016 i.e. 33 days after pronouncement of the judgment. As per section 12 of the Limitation Act only that period can be excluded which has elapsed between the submission of copying application and receipt of copy of the judgment. Thus, out of 179 days only 33 days can be excluded which means the appeal was filed after 146 days. Thus, the period of delay is much more than 120 days which is the maximum prescribed period including 60 days of condonation of delay period. Thus, this appeal is clearly barred by limitation and section 5 of the Limitation Act cannot come into play in support of the appellant due to the reasons cited earlier. In the result, IA No. 5414/16 is rejected. Consequently, the petition as well as the appeal is dismissed as barred by limitation."

12. Hence, firstly the application under Section 5 of Limitation Act is not 6 MA-2964-2022 maintainable as stated above and the scheme of Section 71(6) of the Food Safety and Standard Act which itself provide the further period that can be condoned by the High Court up to 60 days, in the application under Section 5 of the Limitation Act the satisfactory reasons had not be assigned, hence, the I.A. No. 6941 of 2022 I.A. No. 6936 of 2022 shall not be allowed and the same are dismissed. Hence, the appeals being time barred are hereby dismissed.

13. Copy of the order alongwith record be sent to the concerned trial Court.

(DEVNARAYAN MISHRA) JUDGE AR