

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) Nos.3200-3202/2004**

% **Date of Decision: 05.04.2011**

Union of India & Ors. Petitioners

Through Ms.Geeta Sharma, Advocate.

Versus

Gopal Saran & Anr. Respondents

Through Mr.Ashwani Bhardwaj & Mr.S.P.
Sharma, Advocates.

CORAM:

HON'BLE MR.JUSTICE ANIL KUMAR

HON'BLE MS.JUSTICE VEENA BIRBAL

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | NO |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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CM Nos.1867-68/2011

1. These are the applications by the petitioner/applicant for setting aside the order dated 15th December, 2009 dismissing the writ petition in default of appearance of the petitioner and his counsel and for condonation of 361 days' delay in filing the application seeking setting aside the writ petition in default.

2. The petitioner/applicant has contended that the matter was taken up by this Court for hearing on 15th December, 2009 on which date the counsel for the petitioner/applicant missed the case in the cause list on account of inadvertence and over-sightedness and could not reach the Court room at the time of hearing on the said day. The applicant has further contended that sometime in second week of December, 2010 an enquiry was made by the department from the counsel when the matter was checked up and the counsel came to know that the writ petition had been dismissed in default due to non appearance of the parties on 15th December, 2009.

3. The applicant contended that after coming to know sometime in December, 2010 an application for restoration along with an application for condonation of delay under Section 5 of the Limitation Act has been filed within 30 days from the date of knowledge. The applicant asserted that the condonation of delay is sought by way of abundant caution. The applicant also contended that grave prejudice would be caused to the petitioner/applicant if the order dismissing the writ petition in default of appearance of the applicant and his counsel dated 15th December, 2009 is not set aside and 361 days' delay in filing the application is not condoned.

4. The applications are contested by the respondent contending *inter-alia* that the petitioner and his counsel were aware of dismissal of

the writ petition in default of appearance of applicant and his counsel on 15th December, 2009. According to the respondents despite having knowledge of dismissal of the writ petition on 15th December, 2009 no steps were taken till December, 2010 and the application for restoration has been filed after a delay of 361 days. The respondent/non-applicant also contended that the application is supported by the affidavit of Mr.Yashpal alleged to be authorized signatory, however, it has not been alleged as to how he has been aware of these facts. It is further contended that the matter was taken up on 24th September, 2009 and on account of an early hearing granted in the matter it was listed in the category of “Regular Matters for Senior Citizens” on 10th December, 2009. In the circumstances, it was not a case whether the writ petition had been listed in the category of “Regular Matters” in the cause list after its admission after a number of years but the matter was listed in the week commencing from 10th December, 2009 and, therefore, the counsel was aware of listing of the matter in December, 2009. It is further contended that from the pleas raised in the application also it is apparent that on 15th December, 2009 the counsel could not reach the Court when the matter was taken up for hearing.

5. The non-applicant/respondents have also contended that no sufficient cause either in the facts and circumstances or any law has been made seeking condonation of 361 days’ delay in filing the application. According to the respondents it has not been disclosed that

after the matter was listed in Regular Matters on 10th December, 2009 why no enquiries were made by the counsel for the petitioner and why the enquiries were made only after the information was sought by the department in December, 2010.

6. The non-applicant further contended that he has been unnecessarily harassed by the petitioner on trivial charges pertaining to the year 1981. For the alleged charges of 1981 the respondent was issued a chargesheet on 22nd December, 1997. For the delay in issuing the chargesheet, a petition was filed before the Tribunal and the Tribunal had directed the petitioners to complete the enquiry within a period of four months from 29th December, 1998. The enquiry was not completed despite a categorical order in 1998 to complete the enquiry within four months. After about one year a writ petition was filed against the order of the Tribunal dated 29th December, 1998 granting four months time, in 2000 which writ petition was disposed of by order dated 7th February, 2001 and the petitioners were granted more time to complete the enquiry within four months from the date of receipt of the copy of the order. Despite directions by the Tribunal and the High Court to complete the enquiry within four months, the enquiry was not completed for the alleged charges of 1981 which were raised in 1997.

7. The respondents asserted that as the petitioner failed to complete the enquiry within four months pursuant to the order dated 29th

December, 1998 and thereafter again within four months pursuant to order dated 7th February, 2001, he filed an O.A No.3010/2002 which was disposed of by the Tribunal by order dated 28th November, 2002 and again 15 days time was granted to the petitioner to pass the order. Yet again the order dated 28th November, 2002 was also not complied with and the order in the enquiry proceedings was not passed.

8. On failure to pass an order in the enquiry proceedings within 15 days from the order dated 28th November, 2002, yet another application for extension of time was filed by the petitioner which was disposed of by order dated 21st January, 2003 whereafter the order was passed on 24th January, 2003. The order was again not passed within the time granted by the Tribunal. Therefore, the applications of the respondent were allowed and enquiry proceedings were quashed by order dated 6th August, 2003 against which the abovenoted writ petition was filed.

9. In the facts and circumstances it is contended that the petitioners have failed to make out sufficient cause for non appearance on 15th December, 2009 and for condonation of 361 days' delay in filing the application.

10. This Court has heard the learned counsel for the parties. Perusal of the record reveals that on 24th September, 2009 the matter was ordered to be listed in the category of "Regular Matters for Senior

Citizens” in the week commencing from 10th December, 2009 in the presence of Ms.Geeta Sharma and Ms.Preeti Dalal, advocates on behalf of petitioners. The writ petition was listed in the category of “Regular Matters” in the week commencing from 10th December, 2009 and was taken up for hearing on 15th December, 2009, however, as no one appeared on behalf of petitioners though the counsel for the respondent had appeared, therefore, the Court was pleased to dismiss the writ petition in default of appearance of the petitioners and his counsel.

11. No reasons have been disclosed as to why no steps were taken by the petitioner’s counsel for almost one year when the matter was dismissed in default on 15th December, 2009. The plea of the learned counsel for the petitioner that by inadvertence the matter was missed and the counsel could not reach within the time cannot be accepted as the application is supported by the affidavit of an authorized representative, Mr.Harish Kumar, son of Sh.A.P.Bangar, Engineer Officer (D) II, CPWD. This is not the case of the petitioners that Mr.Harish Kumar, authorized representative was present or had come to the Court in December, 2009 to ascertain about the case. The plea of the petitioner’s counsel does not disclose at all any facts as to how from December, 2009 till December, 2010 no efforts were made to find out the fate of the case when it was ordered to be listed in the week commencing from 10th December, 2009 by order dated 24th September, 2009 in the presence of the counsel for the petitioner.

12. From the pleas and contentions raised by the respondent it is also apparent that the petitioner filed the chargesheet for an incident pertaining to 1981 in 1997, i.e., almost after 16 years. Again for number of years the enquiry was not concluded despite repeated orders by the Court which have been flouted by the petitioners time and again.

13. In the circumstances, it is difficult to infer that the petitioner has been able to make out sufficient cause for non appearance of his counsel and the petitioner on 15th December, 2009 nor there is sufficient cause for condonation of 361 days delay in filing the application seeking restoration of the writ petition.

In the circumstances, the applications are without any merit and they are, therefore, dismissed.

ANIL KUMAR, J.

VEENA BIRBAL, J.

April 05, 2011.

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