

JUDICIAL DELAY- A CRITICAL ANALYSIS

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Abstract

In the present situation, judicial delay is an immediately noticeable one. Nowadays, a large number of cases have been pending before the courts for a long time. "Delayed justice is denied justice" is a legal maxim and the current situation is in line with this one. Judicial delay, implications of cases becoming 'infructuous' due to judicial delay and how to avoid the judicial delay, are considered here. Consider two illustrations: First, suppose a person "A" contests in an election for State Assembly. If elected, his term is for five years. Suppose "A" loses the election by a slender margin, say, below 50 votes. He alleges irregularities in the process of counting of votes and approaches the Hon'ble Court for remedy. If it drags on for five years, it could become 'infructuous'. It could happen in the case of Mr. M.APPAVU who contested Assembly Elections from RADHAPURAM constituency held in 2016. Second, suppose a candidate "Z" applies for the admission to a course in a University after ascertaining his eligibility from several judgments including that of a judgment from the First Bench of the Hon'ble High Court in a State against the same University. Non application of mind and blatant refusal of the Chairman, Admission Committee to comply with earlier High Court orders, result in denial of a seat to "Z". Several candidates below his rank get admission and some seats are lying vacant. Now he is made to approach the High Court for remedy. He immediately files a petition in the High Court. The case drags on for, say, about one year and the Court says he is 'eligible' but due to lapse of time, it has become 'infructuous' and also based on the mistaken notion that all the seats are filled up. Obviously it is because of judicial delay that the case becomes infructuous and the use of the word 'infructuous' in the judgment, virtually closes any chance of the University to set right the wrong meted out to the candidate.

Introduction

In the present situation judicial delay is an immediately noticeable one. Nowadays a large number of cases have been pending before the courts for a long time. Judiciary is a separate Constitutional body. Hon'ble Supreme Court, Hon'ble High Courts in every State, and large number of Learned Subordinate Court in every State of India provide justice to people, most of the time not in time. While judicial delay is common in India, even Fast Track Courts are not providing quick justice, one of the reasons being the lack of Judges. Sometimes inefficiency creeps in, resulting in delay. "Delayed justice is denied justice" is a legal maxim and the current situation is in line with this one. Judicial delay, implications of cases becoming 'infructuous' due to judicial delay and how to avoid judicial delay, are considered here.

Judicial Delay

Judicial delay results in a situation wherein the right heard in a case filed in a court can't be exercised after it has been obtained from the court. Consider cases falling under Article 21 and Article 226 of Indian constitution. Article 21 of Indian Constitution states that "No person shall be deprived of his life or personal liberty except according to procedure established by law" . Under Article 226 of the Constitution of India, Writ of Habeas Corpus, Writ of Mandamus, Writ of Prohibition, Writ of Certiorari, Writ of Quo-Warranto are issued when there is a violation of fundamental right .Petitions are filed to assert the rights of the petitioners in such cases. Often the rights acquired by law are unenforceable because of judicial delay.

Implication of the Term ‘Infructuous’

In some cases, the use of the word “infructuous” given in judgments, is dreaded by the litigants. Among the situations when the case becomes infructuous are: firstly, when the remedy sought by the litigant has been fulfilled before the conclusion of the legal proceedings and secondly the remedy sought has become difficult to implement. It is the second case that a litigant dread when it becomes infructuous due to judicial delay. It may become infructuous based on actual facts or perceived ones without any basis. Hence, judicial delay in such situations deprives the right of a person who files the case and the Hon’ble courts should not close its door on the face of the litigants when the case becomes ‘infructuous’ and may give a chance for him to regain his rights. Consider two illustrations: First, suppose a person “A” contests in an election for State Assembly. If elected, his term is for five years. Suppose “A” loses the election by a slender margin, say, below 50 votes. He alleges irregularities in the process of counting of votes and approaches the Hon’ble Court for remedy. If it drags on for five years, it could become ‘infructuous’. It could happen in the case of Mr.M. APPAVU, who contested Assembly Elections from RADHAPURAM constituency held in 2016.

Second, suppose a candidate “Z” applies for the admission to a course in a University after ascertaining his eligibility from several judgments including that of a judgment from the First Bench of the Hon’ble High Court in a State against the same University, as he has some doubt over his eligibility. Non application of mind and blatant refusal of the Chairman, Admission Committee to comply with earlier High Court orders, result in denial of a seat to “Z”. Several candidates below his rank get admission and some seats are lying vacant. Now he is made to approach the High Court for remedy. He immediately files a petition in the High Court. The case drags on for, say, about one year and the Court says he is ‘eligible’ but due to lapse of time, it has become ‘infructuous’ and also based on the mistaken notion that all the seats are filled up. Obviously it is because of judicial delay that the case becomes infructuous and the use of the word ‘infructuous’ in the judgment, virtually closes any chance of the University to set right the wrong meted out to the candidate.

Avoidance of Judicial Delay

Judicial delay is very difficult to avoid due to several reasons, but it can be set right to some extent. Filling up of vacancy in Judiciary and appointing more judges are some of the means by which judicial delay may be avoided. Constituting more courts in every State is also an option. More funds are to be allocated for these purposes. Hearing by Judges specialized in the specified area of law may, to some extent, avoid judicial delay. Passing judgments in a manner that does not affect the rights of the litigants due to judicial delay, may give solace to them. It is essential to follow the natural justice and to provide equity in all cases.

Conclusion

‘Justice given in time’ is analogous to ‘giving food to a starved man in time’. Law commission of India in its 77th Report (1978), talks about ‘Delay and Arrears in Trial Courts’. Though judicial delay has been discussed in several forums till today, there seems to be no improvement in its regard. In this Article, Judicial delay, implications of cases becoming ‘infructuous’ due to judicial delay and how to avoid judicial delay, have been considered. Other than strengthening the structure of judiciary, speedy disposal of cases and transferring appropriate cases to Alternative Dispute Resolution Mechanism (ADR) like LOK ADALAT may give fruitful remedy to the litigants.

References

1. Article 21 of the constitution of India
2. Article 226 of the constitution of India