

**HIGH COURT OF TRIPURA
AGARTALA**

IA No.01/2024 in/and WA No.114 of 2024

1. The State of Tripura to be represented by the Secretary, Department of Agriculture, Govt. of Tripura, New Secretariat Complex, Kunjaban, Agartala, West Tripura, Pin-799010
2. The Director, Department of Agriculture, Government of Tripura, Krishi Bhavan, Agartala, P.O. Agartala, Pin-799001
3. The Managing Director, Tripura Horticulture Corporation Ltd. (A Govt. undertaking) R.C.D.F. Complex, P.O. Arundhatinagar, West Tripura, Pin-799003
4. The Secretary, Department of Finance, Government of Tripura, New Secretariat Building, New Capital Complex, Agartala, West Tripura, PIN-799010

.....Applicant/Appellant(s);

Versus

Sri Churamuni Malakar, S/o Lt. Brajendra Malakaar, R/o Bhuiya Chara, Uttar Machmara, Pecharthal, North Tripura, Pin:799263

.....Respondent(s)

For Applicant/Appellant(s) : Mr. Dipankar Sarma, Addl. G.A.

For Respondent(s) : Mr. P. Roy Barman, Sr. Advocate,
Ms. Aradhita Debbarma, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**

Date of hearing : **14.08.2025**

Date of Judgment & Order : **26.08.2025**

Whether Fit for Reporting : **YES**

JUDGMENT & ORDER

(M.S. Ramachandra Rao, C.J.)

This application is filed under Section 5 of the Limitation Act, 1963 to condone the delay of 920 days in filing a Writ Appeal challenging the judgment dt. 20.01.2022 passed by the learned Single Judge.

2. It is stated that after the learned Single Judge allowed the Writ Petition on 20.01.2022, the applicants in this application filed a Review Petition No.22 of 2024 which was dismissed on 03.10.2024.

3. It is stated that the Tripura Horticulture Corporation Limited (third applicant) had no Chairman, who was its Administrative Head from

28.01.2023 to 22.09.2023 due to the resignation of predecessor, and a new person was appointed as the Chairman only on 23.09.2023. It is contended that the third applicant was not in a position to take appropriate decision during that period of eight months.

4. According to the applicants, in the meantime the Managing Director of the Corporation of the third applicant was transferred, and a new person was appointed on 30.10.2023.

5. It is stated that the third applicant filed WA No.01 of 2024 in this Court against one Bikash Roy where one of the issues was also of leave encashment; and after hearing, a Division Bench of this court, according to the applicants, stayed till the disposal of the Writ Appeal, the operation of the judgment dt. 02.12.2021 of the learned Single Judge.

6. According to the third applicant, it believed that the stay will operate in all cases including the instant case.

7. Later it appears to have realized, after discussing with its lawyer, that it had to file appeal in all cases.

8. Then, a letter dt. 03.07.2024 was issued calling an emergency meeting on 04.07.2024 as per the desire of the Chairman, and it was then decided by the Board of Directors to file a Writ Appeal before this Court against the impugned judgment. Consequently the Review Petition was withdrawn on 03.10.2024, and the Writ Appeal was filed on 07.10.2024.

9. From the facts narrated above, it is clear that the impugned judgment was pronounced on 20.01.2022 by the learned Single Judge in WP(C) No.307 of 2021, and though the limitation period for filing a Writ

Appeal against the said judgment is only thirty days, admittedly the instant Writ Appeal was filed on 07.10.2024 with a delay of 920 days.

10. Since the Writ Appeal is being filed against the judgment dt. 20.01.2022, the fact that the applicants had filed a Review Petition No.22 of 2024, and then withdrew it on 03.10.2024, cannot be of any help to them.

11. It may be that there was no Chairman of the third applicant from 28.01.2023 to 22.09.2023, but it is not as if all work of the third applicant was kept in suspended animation for these 8 months. There would have been an incharge arrangement so that day to day affairs are carried on.

12. In fact there is no explanation as to why there was inaction on the part of the applicants in challenging the judgment of the learned Single Judge from 20.01.2022 when the said judgment was pronounced till 27.01.2023 (when the vacancy arose in the post of Chairman of the third applicant) i.e. for almost one year. During the period when there was a Chairman functioning, nothing prevented the applicants to file a Writ Appeal against the impugned judgment.

13. The fact that in another WA No.01 of 2024, there was an interim stay granted against the judgment dt. 02.12.2021 of the learned Single Judge till the disposal of the Writ Appeal, cannot be a ground for the third applicant to believe that the said stay would operate in all cases including the judgment dt. 20.01.2022 in WP(C) No.307 of 2021. The legal advisors of the applicant would have clarified this aspect to the applicants had they been approached at that time.

14. The fact that even after the new Chairman was appointed on 23.09.2023, the matter was dragged on till 07.10.2024 speaks volumes of the negligent attitude of the applicants.

15. Moreover, a perusal of the certified copy of the judgment of the learned Single Judge annexed to the Writ Appeal filed by the applicants shows that even the application for issuance of certified copy of the impugned judgment was made on 15.07.2024, though the judgment had been rendered on 20.01.2022. No explanation is even offered for the delay in filing application for certified copy of the judgment of the learned Single Judge for filing the Writ Appeal.

16. In ***Postmaster General and others v. Living Media India Limited and another***¹, the Supreme Court held:

“25. We have already extracted the reasons as mentioned in the “better affidavit” sworn by Mr Aparajeet Pattanayak, SSRM, Air Mail Sorting Division, New Delhi. It is relevant to note that in the said affidavit, the Department has itself mentioned and is aware of the date of the judgment of the Division Bench of the High Court in Office of the Chief Postmaster v. Living Media India Ltd. as 11-9-2009. Even according to the deponent, their counsel had applied for the certified copy of the said judgment only on 8-1-2010 and the same was received by the Department on the very same day. There is no explanation for not applying for the certified copy of the impugned judgment on 11-9-2009 or at least within a reasonable time. The fact remains that the certified copy was applied for only on 8-1-2010 i.e. after a period of nearly four months.

26. In spite of affording another opportunity to file better affidavit by placing adequate material, neither the Department nor the person-in-charge has filed any explanation for not applying the certified copy within the prescribed period. The other dates mentioned in the affidavit which we have already extracted, clearly show that there was delay at every stage and except mentioning the dates of receipt of the file and the decision taken, there is no explanation as to why such delay had occasioned. Though it was stated by the Department that the delay was due to unavoidable circumstances and genuine difficulties, the fact remains that from day one the Department or the person/persons

¹ (2012) 3 SCC 563

concerned have not evinced diligence in prosecuting the matter to this Court by taking appropriate steps.

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.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.”

(Emphasis supplied)

17. The said judgment has been followed by the Supreme Court in several cases such as ***Commissioner of Customs, Chennai v. Volex Interconnect (India) Private Limited***², ***Principal Commissioner Central Excise Delhi-I v. Design Dialogues India Pvt. Ltd.***³, ***Union of India v. Central Tibetan Schools Administration & Others***⁴, ***Union of India & Others v. Vishnu Aroma Pouching Private Limited and another***⁵, and ***State of Uttar Pradesh & Others v. Sabha Narain & Others***⁶.

18. In ***Union of India & Another v. Jahangir Byramji Jeejeebhoy (D) through his legal heir***⁷, the Supreme Court held that it is not permissible to look into the merits of the matter as long as it is not convinced that sufficient cause has been made out for condonation of long and inordinate

²(2022) 3 SCC 159

³ (2022) 2 SCC 327

⁴ (2021) 11 SCC 557

⁵ (2022) 9 SCC 263

⁶ (2022) 9 SCC 266

⁷ 2024 INSC 262 : 2024 SCC OnLine SC 489

delay; that it hardly matters whether a litigant is a private party or a State or Union of India when it comes to condoning gross delay of more than 12 years; length of delay is a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not; from the tenor of the approach of the appellants, it appears that they want to fix their own period of limitation for instituting the proceedings for which law has prescribed a period of limitation; once it is held that a party has lost his right to have the matter considered on merits because of his long inaction, it cannot be presumed to be non-deliberate delay and in such circumstances, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. It was reiterated while considering plea for condonation of delay, Court must not start with the merits of the main case and the Court owes a duty to first ascertain the *bona fides* of the explanation offered by the party seeking condonation. It declared that delay should not be excused as a matter of generosity.

19. This was also reiterated in ***State of Madhya Pradesh v. Ramkumar Choudhary***⁸.

20. In the judgment of the Supreme Court in ***Inder Singh v. The State of Madhya Pradesh***⁹ referred to by the counsel for the applicants, no doubt, there are observations indicating that though delay cannot be condoned without sufficient cause, it has to be kept in mind that, if in a particular case merits need to be examined, it should not be scuttled merely on the basis of limitation.

⁸Special Leave Petition (C) Diary No. 48636 of 2024 dt.29.11.2024

⁹Special Leave Petition (Civil) No.6145 of 2024 dt. 21.03.2025

21. **Inder Singh** (9 supra) was a case where the learned Single Judge of the High Court had allowed an application for condonation of delay in filing a Second Appeal, though, the appeal had been filed with a delay of 1537 days, and the Supreme Court did not deem it fit to interfere with the same.

22. It appears that the attention of the Bench of the Supreme Court in **Inder Singh** (9 supra) was not drawn to the judgments referred to by us in **Jahangir Byramji Jeejeebhoy** (7 supra) and in the case of **Ramkumar Choudhary** (8 supra), where the Court had stated that while considering pleas of condonation of delay, Court must not start with the merits of the main case and the Court owes a duty to first ascertain the *bona fides* of the explanation offered by the party seeking condonation of delay. It also stated that if there is a long inaction, party would lose the right to have the matter considered on merits and in such circumstances, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical consideration.

23. Counsel for respondents also relied on **Ramchandra Shankar, Deodhar & Others v. State of Maharashtra & Others**¹⁰ and also the judgment in **Sheo Raj Singh (deceased) through Legal Representatives & Others v. Union of India & Another**¹¹, to contend that liberal approach should be taken in condoning delays where the limitation ground undermines the merits of the case and obstructs substantial justice.

24. In **Sheo Raj Singh** (11 supra), referred to in the judgment of the Hon'ble Supreme Court in **Inder Singh** (9 supra), the High Court had

¹⁰ (1974) 1 SCC 317

¹¹ (2023) 10 SCC 531

condoned the delay of 479 days in filing the Land Acquisition Appeal in the High Court and the explanation offered found favour of the Supreme Court.

In that case, the Supreme Court observed that it was not hearing an application for condonation of delay, but sitting in appeal over a discretionary exercise of the High Court granting the prayer for condonation of delay; in the case of the former, whether to condone or not, would be the only question, whereas in the latter, whether there has been proper exercise of discretion in favour of grant of prayer for condonation, would be the question; that the law is well-settled that a court of appeal should not ordinarily interfere with the discretionary exercise by the courts below; and that the appellate power should be exercised only when the order challenged in appeal is clearly wrong and not when it is merely not right.

25. Both these decisions cannot help the applicants, since, in the instant application, this Court has to consider the question whether sufficient cause has been shown by the applicants to condone the period of delay. It is not considering an order passed by a subordinate forum condoning the delay or refusing to condone it.

26. In the judgment of *State of Rajasthan and Another v. Bal Kishan Mathur (dead) through legal representatives and others*¹² cited by the counsel for the applicants, the delay on the part of the State in filing the Special Appeal Writ was only 98 days. Also in the facts of that case, the High Court had declined to condone delay which was not explained merely for a period of six days out of 98 days. It was undoubtedly a harsh approach on the part of the High Court, and therefore the Supreme Court rightly intervened, set

¹² (2014) 1 SCC 592

aside the judgment of the High Court and condoned the delay. But where the delay as in the instant case is 920 days, such a view cannot be adopted.

27. In *Executive Officer, Antiyur Town Panchayat v. G. Arumugam (dead) by legal representatives*¹³ cited by the counsel for the applicants, a delay of 1373 days in filing Second Appeal by the Executive Officer of a Panchayat in relation to Panchayat property was condoned on the ground that there were deliberate lapses on the part of the previous Executive Officer of the Panchayat at the relevant time, and there was an attempt on the part of the Government officials or public servants to defeat justice by causing delay. In the instant case there is no such contention raised, and therefore the said judgment also has no application.

28. We are satisfied that in the facts and circumstances of the case, that the applicants had been clearly negligent in taking steps to file the Writ Appeal within the time permitted by law, and no sufficient cause has been shown by them for condoning the inordinate delay of 920 days in filing the Writ Appeal.

29. Accordingly, the application for condonation of delay is dismissed. Consequently the Writ Appeal is also dismissed.

30. All pending applications shall stand closed.

(S. DATTA PURKAYASTHA, J) (M.S. RAMACHANDRA RAO, CJ)

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¹³ (2015) 3 SCC 569