

THE HIGH COURT OF TRIPURA

A G A R T A L A

C.M. Appl. No. 112 of 2014
in WA 56 of 2014

Appellant-applicants :

- 1.** The State of Tripura,
Represented by the Secretary to the Home
Department, Government of Tripura, having his
Office at New Secretariat Complex, Gurkhabasti, P.O-
Kunjaban, P.S-East Agartala, Sub-Division-Agartala,
District-West Tripura.
- 2.** The Director General of Police,
Government of Tripura, having his Office at Police
Head Quarters, Fire Brigade Chowmuhani, P.O-
Agartala, P.S-West Agartala, Sub-Division-Agartala,
District-West Tripura.
- 3.** The Assistant Inspector General of Police
(PERS), Home Department, Government of Tripura,
having his Office at Police Head Quarters, Fire
Brigade Chowmuhani, P.O-Agartala, P.S-West
Agartala, Sub-Division-Agartala, District-West
Tripura.

By Advocate :

Mr. S. Chakraborty, Addl. G.A.

Respondents :

- 1.** Shri Samiran Deb, (C/5256),
S/o. Late. Debendra Deb, Vill-Rajnagar, P.O & PS-
Kumarghat, Unakoti District, Pin-799264.
Presently posted under Control of
Superintendent of Police, Unakoti District, P.O & P.S-
Kailashahar, Pin-799277.
- 2.** Shri Govinda Patari, [Head Constable(UB)].
S/o. Shri Haradhan Patari, Vill- Dharmanagar, P.O-
Debipur, Pin-799156. P.S-Belonia, District-South
Tripura.
Presently posted under Control of
Superintendent of Police, (SB, Organization). Near
Fire Brigade Chowmuhani, P.S-West Agartala, P.O-
Agartala, Dist.- West Tripura, Pin-799001.
- 3.** Shri Arup Chakraborty, [(Head Constable
(UB)] S/o. Sri Kanti Chakraborty, Vill-South Mirzapur,
P.O-Sarasima, Pin-799155, P.S-Belonia, District-
South Tripura.
Presently posted under Control of
Superintendent of Police, Gomati District, P.O & P.S-
R. K. Pur, Udaipur, Pin-799120.

- 4.** Shri Sambhulal Bhowmik (T/13841)
 S/o. Lt. Binode Behari Bhowmik, Vill + Po-Bijoynagar,
 PS-Sabroom, District-South Tripura, Pin-799145.
 Presently posted under Control of
 Superintendent of Police, South Tripura District, P.O
 & P.S-Belonia, Pin-799155.
- 5.** Md. Najrul Islam (CD-7154)
 S/o. Abdul Hossain, Vill: Ratan Nagar, P.O-KK.
 Nagar, P.S-Bishalgarh, Sepahijala District, Pin-799
 102.
 Presently posted under Control of
 Superintendent of Police,(SB, Organization) Near Fire
 Brigade Chowmuhani, P.S-West Agartala, P.O-
 Agartala, District-West Tripura, Pin-799001.
- 6.** Shri Bidhan Bhowmik [(Head Constable(UB))]
 S/o. Sri Birendra Kumar Bhowmik, Vill- Abhoynagar,
 P.O-Nalua, P.S-Belonia, District-South Tripura, Pin-
 799 156.
 Presently posted under Control of
 Superintendent of Police, (Traffic Unit), P.O-A.D.
 Nagar, Agartala, Distt.-West Tripura, Pin-799 003.
- 7.** Shri Rajib Majumder.(Naik)
 S/o. Late Balaram Majumder, Vill-Sonapur, P.O-
 Barpathari, P.S-P.R. Bari, District-South Tripura, Pin-
 799 155.
 Presently posted under Control of
 Superintendent of Police, South Tripura District, P.O
 & P.S-Belonia, Pin-799155.
- 8.** Shri Sunil Kumar Deb [(Head Constable(UB))]
 S/o. Late Amar Ch. Deb, Vill.-Dharchai, P.O-
 Madhupur, Pin-799102, P.S-Bishalgarh, Sepahijala
 District.
 Presently posted under Control of
 Superintendent of Police, (Mobile Task Force), P.O-
 A.D Nagar, Agartala, Distt. West Tripura, Pin-799
 003.
- 9.** Shri Maran Baidya, [(Head Constable(UB))],
 S/o. Narayan Ch. Baidya, Vill + P.P- Ram Rai Bari,
 Pin-799144, P.S-Baikhora, District-South Tripura,
 Presently posted under Control of
 Superintendent of Police, South Tripura District, P.O
 & P.S-Belonia, Pin-799 155.

By Advocates :

Mr. Somik Deb, Adv.
 Mr. A. Bhowmik, Adv.
 Mr. Sougat Dutta, Adv.

CM Appl. No. 118 of 2014
in WA 59 of 2014

Appellant-applicants :

- 1.** The State of Tripura,
Represented by its Secretary-cum-Commissioner,
Department of Home, Government of Tripura, P.O-
Kunjaban, District-West Tripura.
- 2.** The Director General of Police,
Department of Police, Police Head Quarters, P.O-
Agartala, District-West Tripura.

By Advocate :

Mr. S. Chakraborty, Addl. G.A.

Respondent :

Shri Sudhangshu Pal
S/o. Late Krishna Chandra Pal, Village & P.O-Hadra,
P.S-Kakraban, District-Gomati, Tripura.

By Advocates :

Mr. Somik Deb, Adv.
Mr. A. Bhowmik, Adv.
Mr. Sougat Dutta, Adv.

B E F O R E
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA
THE HON'BLE MR. JUSTICE U.B. SAHA

Date of hearing : **26th February, 2015**

Date of Order : **12th March, 2015.**

Whether fit for reporting :

Yes	No
✓	

ORDER

(Deepak Gupta, C.J.)

By this order we propose to dispose of the C.M. Appl. No.112 of 2014 in WA No.56 of 2014 and C.M. Appl. No.118 of 2014 in WA No.59 of 2014 since they arise out of virtually similar judgments, passed by the learned Single Judge and the reasons for condonation of delay are identical.

[2] Reference is being made to the facts stated in C. M. Application No.112 of 2014 in which the delay is of 165 days. In the other case, the delay is 176 days.

[3] The judgment was delivered on 10.02.2014 and certified copy was received by the Office of the Advocate General on 10.02.2014. According to the affidavit the department referred the matter to the learned Additional Government Advocate on 20th March, 2014 for drafting the memo of appeal from the judgment. This memo was drafted after one month on 22.04.2014. It was sent to the department and now the learned Additional Government Advocate was directed to draft condonation petition and stay petition on 24th April, 2014. It took almost one month to draft the same and the matter was sent to the department on 20th May, 2014. Thereafter the department suggested certain modifications in the application for condonation of delay on 3rd June, 2014 and the modification was sent by the learned Government Advocate on 11th June, 2014. Again the department suggested further modification on 23.06.2014 and the modified application was sent to the department after one month on 21.07.2014 and returned to the learned advocate on 28.07.2014. Again the appeal was not filed and for preparation of copies of the memo of appeal etc. another one month time was taken and the appeal was filed on 26.08.2014. This is the application for condonation of delay does nothing more than detailed the aforesaid facts and it is prayed that delay should be condoned.

[4] This Court is normally liberal in condoning the delay. This Court is also aware of the fact that government bodies do not function as speedily as they should. There is lot of red-tape involved and invariably the Court is

liberal while considering the applications filed by the Government. At the same time, this Court cannot be totally oblivious to the period of limitation prescribed by law.

[5] Mr. Somik Deb, learned counsel for the respondents has drawn our attention to two judgments. The first is ***Commissioner of Wealth Tax, Bombay Vrs. Amateur Riders Club, Bombay : 1994 Supp (2) SCC 603*** wherein the Apex Court held as follows:

"3. ****There is a point beyond which even the courts cannot help a litigant even if the litigant is Government which is itself under the shackles of bureaucratic indifference. Having regard to the law of limitation which binds everybody, we cannot find any way of granting relief. It is true that Government should not be treated as any other private litigant as, indeed, in the case of the former the decisions to present and prosecute appeals are not individual but are institutional decisions necessarily bogged down by the proverbial red-tape. But there are limits to this also. Even with all this latitude, the explanation offered for the delay in this case merely serves to aggravate the attitude of indifference of the Revenue in protecting its common interests. The affidavit is again one of the stereotyped affidavits making it susceptible to the criticism that the Revenue does not seem to attach any importance to the need for promptitude even where it affects its own interest."

[6] The second judgment relied upon is ***Postmaster General and others Vrs. Living Media India Limited and another : (2012) 3 SCC 563*** in which case the Apex Court has made reference to various earlier judgments of the Apex Court.

[7] In ***Collector, Land Acquisiton, Anantnag and another Vrs. Mst. Katiji and others : (1987) 2 SCC 107*** the Apex Court held as follows:

"3. *****
1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*****"

[8] In ***G. Ramegowda, Major and others Vrs. Special Land Acquisition Officer, Bangalore : (1988) 2 SCC 142*** the Apex Court held as follows:

"15. In litigations to which Government is a party there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected; but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals.

17. Therefore, in assessing what, in a particular case, constitutes "sufficient cause" for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the government. Governmental decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making. *****"

[9] In ***State of Haryana vrs. Chandra Mani and Others: (1996) 3 SCC 132***, there was 109 delay in filing the LPA and the Apex Court held that certain amount of latitude within reasonable limits is permissible having regard to the impersonal bureaucratic set-up involving red-tapism. However, the State was also directed to constitute legal cells.

[10] In ***State of U.P. and Others vs. Harish Chandra and Others: (1996) 9 SCC 309***, by giving similar reasons, as mentioned in ***Chandra Mani's*** case (supra) the Apex Court, condoned the delay of 480 days in filing the SLP.

[11] In ***National Insurance Co. Ltd. vs. Giga Ram and Others: (2002) 10 SCC 176***, the Apex Court, after finding that the High Court was not justified in taking too technical a view of the facts and refusing to condone the delay, accepted the case of the appellant-Insurance Company by protecting the interest of the claimant and condoned the delay. It is relevant to point out that while accepting the stand of the Insurance Company for the delay, the Apex Court has safeguarded the interest of the claimant also.

[12] In ***State of Nagaland vs. Lipok Ao and Others: (2005) 3 SCC 752***, the Apex Court, while reiterating the principle that latitude be given to government's litigation, allowed the appeal filed by the State of Nagaland. It is also relevant to note here that this matter relates to criminal jurisdiction and delay in filing the SLP was only 57 days.

[13] In ***Postmaster General(supra) : (2012) 3 SCC 563*** the Apex Court held as follows:

"19. Though the learned ASG heavily relied on the above said decisions and the principles laid down, on going through all the factual details, we are of the view that there is no quarrel about the propositions inferred therein. However, considering the peculiar facts and circumstances of each case, this Court either condoned the delay or upheld the order of the High Court condoning the delay in filing appeal by the State. ***"**

[14] In ***Pundlik Jalam Patil (Dead) by Lrs. Vrs. Executive Engineer, Jalgaon Medium Project and another : (2008) 17 SCC 448***, the question was whether the respondent-Executive Engineer, Jalgaon Medium Project had shown sufficient cause to condone the delay of 1724 days in filing appeals before the High Court. In para 17, the Apex Court held as follows:

".....The evidence on record suggests neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and "do not slumber over their rights".

[15] After referring to various earlier decisions, taking a very lenient view in condoning the delay, particularly, on the part of the Government and Government Undertaking, the Apex Court observed as under:-

"29. It needs no restatement at our hands that the object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.

30. Public interest undoubtedly is a paramount consideration in exercising the courts' discretion wherever conferred upon it by the relevant statutes. Pursuing stale claims and multiplicity of proceedings in no manner sub serves public interest. Prompt and timely payment of compensation to the land losers facilitating their

rehabilitation/ resettlement is equally an integral part of public policy. Public interest demands that the State or the beneficiary of acquisition, as the case may be, should not be allowed to indulge in any act to unsettle the settled legal rights accrued in law by resorting to avoidable litigation unless the claimants are guilty of deriving benefit to which they are otherwise not entitled, in any fraudulent manner. One should not forget the basic fact that what is acquired is not the land but the livelihood of the land losers. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under Section 5 of the Limitation Act. Dragging the land losers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. It serves no public interest."

[16] In *Postmaster General(supra)* : (2012) 3 SCC 563 the Apex Court 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.

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 bonafide, 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.

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 bonafide 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.”

[17] Relying upon the aforementioned cases Sri Somik Deb contends that the application for condonation of delay should be dismissed.

[18] Sri S. Chakraborty, learned Additional Government Advocate when questioned by us, why it took so much time to type out documents stated that there is very little infrastructure available in the Office of the Government Advocate or in the Office of the Advocate General. The number of stenographers and other assisting staff is very low and, therefore, delay has occurred, because they are over burdened with cases. The law of limitation has been enacted by parliament and not by Court. The legislature in its wisdom thought it fit to lay down a limitation for filing actions. The limitation prescribed for filing a Letters Patent Appeal is thirty days. In the present case, in the first thirty days after receipt of the order nothing was done. The file moved at a very slow pace and it appears that nobody was bothered that there is a limitation prescribed for filing an appeal. The State is also one of the biggest litigants. As pointed out by the Apex Court some latitude can be shown to the State but does not mean that the State is exempted from the laws of limitation. If the State wants to prosecute its cases it must make sure that adequate infrastructure is available with its law officers and they are provided with adequate number of staff to help them in discharging their duties and in future we shall not permit this to be taken as an excuse for delay in filing cases/appeals/petitions.

[19] The manner in which the case has proceeded shows that no system much less a proper system is being followed in the State. We are

dealing here with a writ appeal which has to be filed within thirty days. The counsel who conducted the writ petition before the Single Judge is best suited to decide whether the order should be appealed against or not. He knows what are the defences taken before the learned Single Judge and therefore, as soon as the copy is received before sending it to the department concerned, the counsel handling the case on behalf of the State Government must along with the judgment send his opinion as to whether an appeal should be filed or not. He must also specify the date on which the limitation for filing the appeal is to expire.

[20] The department may get the opinion, re-examined from the law department or any other counsel but it must approach the Government Advocate for filing an appeal, if decision is taken to file an appeal forthwith. They cannot wait for eternity. If limitation has expired or is expiring then the application for condonation of delay must be prepared simultaneously and the Government Advocate and the department should not first prepare the grounds of appeal, wait for the same to be approved and then prepare an application for condonation of delay.

[21] In today's day and age all such work of preparation of appeals is done on the computer and the draft appeals must be exchanged between the departments and the office of the Government advocate by e-mail. Any suggestion for amendment/modification of the pleadings should be sent by e-mail.

[22] We further direct that in future the officers of the department deputed to attend to the cases must regularly attend to the office of the Government Advocate/Public Prosecutor/Advocate General as the case may

be to instruct the counsel handling the case and they should not come to Court only when the case is called during Court hours.

[23] As far as the present cases are concerned, we are clearly of the view that the explanation given by the State cannot be accepted at its face value. There is in fact no explanation worth the name other than giving a chronological list of dates. At the same time we cannot lose sight of the various decisions of the Apex Court that some latitude has to be shown to the State. This is the first case of limitation which we are dealing in great detail in the State of Tripura and therefore, we feel that one chance may be given to the State to improve its function.

[24] Accordingly, the applications for condonation of delay are allowed, subject to payment of Rs.5,000/- as costs in each one of these applications. The costs shall be paid to the Bar Council of Tripura is to be used for welfare of the advocates. It is further made clear that this indulgence shall not be shown in future and in case the State does not improve its functioning, this Court will not hesitate to dismiss the applications for condonation of delay.

A copy of this order be sent to the Secretary, Law to the State of Tripura.

C.M. Applications is disposed of.

JUDGE

CHIEF JUSTICE