

Case No :CMAppl(FA) 0000416/2014

Party Name : UNION OF INDIA & ANR Vs SAGARMOY GHOSH & ANR

HONBLE THE CHIEF JUSTICE DEEPAK GUPTA THE HONBLE MR. JUSTICE S.C.DAS

This is an application for condonation of delay wherein the appellant Union of India has prayed for condoning 223 days delay in preferring the appeal.

[2] Even as per the averments made in the petition itself the appeal after deducting the necessary time for obtaining the copy of the judgment should have been filed on or before 27th May, 2013.

[3] Undoubtedly, the certified copy was available on 20th April, 2013. It appears to have been sent to the Officer Commanding, 120 RCC, GREF on 2nd May, 2013. In the affidavit it is stated that the Officer Commanding forwarded it to the higher authority and finally it was sent to the highest authority and the Ministry of Law & Justice approved the proposal for filing the appeal in the last week of June, 2013. Even assuming that this delay is justified, there must be an explanation why the delay occurred from 1st July, 2013 till the appeal was actually filed on 9th March, 2014. Nothing has been stated as to what happened in the month of July, 2013 and there is not a single averment in regard to this month. In the affidavit it is stated that in the first week of August, 2013 the office of the Chief Engineer sent the case records along with approval to the M.O., 755, BTRP during last part of August, 2013. In future we expect that the applications will be better drafted. First part of August or last part of August makes no sense. Communications are made by letters and each letter should be bearing a date and we expect that those dates are given in the application seeking condonation of delay.

[4] It is that as may, according to the applicant, on 19th September, 2013 learned counsel was asked to file the appeal and one Sri S.K. Das who has also filed the affidavit in support of this application went to the chamber of the learned counsel. Thereafter, Court fees, etc. was arranged in the month of August. We fail to understand why there should be a separate procedure for arranging Court fees. Once approval had been granted in the month of June by the Ministry of Law & Justice to file the appeal and there was no delay till then why should the Department have waited for three months to find out what is the Court fees payable. Surprisingly, even as per the averments made in the application itself the complete draft was handed over on 20th October, 2013 for vetting but the draft was actually vetted on 21st January, 2014. Therefore, it took three months for the Department to vet the draft. There is no explanation worth the name why the draft could not be vetted earlier. Even after the draft was vetted on 21st January, 2014 the appeal was filed only on 9th March, 2014.

[5] A Division Bench of this Court in **CN Appl. No.112 of 2014 in WA No.56 of 2014** dealing with a similar matter held as follows:

"[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 a 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."

In **Commissioner of Wealth Tax, Bombay Vrs. Amateur Riders Club, Bombay; 1994 Supp (2) SCC 603** 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 brought about by the prescribed 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 official is quite one of the starveling officials 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."

"3. In **Collector, Land Acquisition, Anantnag and another Vrs. Mst. Katij and others; (1987) 2 SCC 107** the Apex Court held as follows:

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 case 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, case 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 an account of culpable negligence, or an account of mala fide. 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 legislate injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

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

"15. In litigation 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.

.... In litigation 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. 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, those 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.

In **State of Haryana vs. Chandu Meen and Others; (1996) 9 SCC 392**, 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.

In **State of U.P. and Others vs. Harish Chandra and Others; (1996) 9 SCC 309**, by giving similar reasons, as mentioned in **Chandru Meen @@@@ case** (supra) the Apex Court, condoned the delay of 480 days in filing the SLP.

In **National Insurance Co. Ltd. vs. Gipe 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.

In **State of Nagaland vs. Lipik As 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.

In **Pundlik Jalam Petti (Dead) by Lrs. Vrs. Executive Engineer, Jaloan Medium Project and another; (2008) 17 SCC 448**, the question was whether the respondent Executive Engineer, Jaloan 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 stumble over their rights".

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 in **Pundlik Jalam Petti** (supra) observed as under:-

"28. It needs no restatement of our kinds that the object for fixing time limit for litigation is based on public policy being a litigant to 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. Substant in his jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.

"29. Public interest undoubtedly is a paramount consideration in exercising the courts @@@@s discretion whenever condoned upon it by the relevant statutes. Persuing stale claims and multiplicity of proceedings is no manner sub serve 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 accorded 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 their discretion dealing with the applications 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."

In **Post Master General & Others vs. Living Media India Limited & Another; (2012) 3 SCC 563** the Apex Court held as follows:

"19. Though the learned ASJ heavily relied on the above 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. It is not to dispute that the persons 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.

"20. 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 miles cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

"20. 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 conscientious."

[6] We are constrained to observe that the Union of India in this case has not followed a proper system. We are dealing with the Union of India which has the best counsel and legal aid available to it. When the counsel representing the Union of India receives a certified copy of the order and sends it to the higher authority we expect that he must along with the judgment give his opinion as to whether an appeal should be filed or not filed because he is the best judge in this regard. He must also clearly indicate what is the period of limitation prescribed for filing the appeal and what would be the last date for filing the appeal.

[7] The department may get the opinion, re-examined from the law department or any other counsel but it must approach the Central Government Standing Counsel/Assistant Solicitor General 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 Central Government Standing Counsel 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.

[8] 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 Central Government Standing Counsel/Assistant Solicitor General by e-mail. Any suggestion for amendment/modification of the pleadings should be sent by e-mail.

[9] 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 Central Government Standing Counsel/Assistant Solicitor 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.

[10] As far as the present case is concerned, we are clearly of the view that the explanation given by the Union of India 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 fact that in various decisions of the Apex Court some latitude has to be shown to the Union of India. This is the first case of limitation which we are dealing with in great detail as far as the Union of India is concerned and therefore, we feel that one chance may be given to the Union of India to improve its functioning.

[11] Accordingly, the application for condonation of delay is allowed, subject to payment of Rs.5,000/- as costs. The costs be paid within two months from today to the Bar Council of Tripura which is to be used for welfare of the Advocates.

[12] The appeal be listed for admission after two months on **09.06.2015**.

C.M. Application is disposed of.