

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CR No.8419 of 2014 (O&M)
Date of decision: 09.09.2015**

The Regional Provident Fund Commissioner, Punjab

...Petitioner

versus

National Fertilizers Ltd. & others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sanjay Tangri, Advocate,
for the petitioner.

Mr. Vipul Aggarwal, Advocate,
for respondent No.1.

Mr. Mahesh Dheer, Advote,
for respondent No.2.

RITU BAHRI, J.

Challenge in this petition is to the order dated 11.03.2014 passed by the Additional District Judge, Chandigarh, whereby application filed by the petitioner for condonation of 131 days in filing the appeal, has been dismissed.

In a proceeding conducted under Section 7-A of the Employees Provident Fund & Miscellaneous Provisions Act, 1952, assessment of dues was made by the authority against respondent Nos. 1 & 3 i.e. National Fertilizers Ltd. and M/s Calcutta Construction Company vide order dated 03.09.2001, which became final. National Fertilizers Ltd-respondent No.1 was principal employer and M/s Calcutta Construction Company-respondent No.3 was working as contractor with respondent No.1. Under the provisions of Employees Provident Fund & Miscellaneous Provisions Act, 1952,

respondent No.1 was responsible for deposit of the Provident Fund contributions of the employees employed by it through the Contractor M/s Calcutta Construction Company. When the efforts to recover statutory assessed were not fruitful, vide orders dated 08.11.2002 and 08.12.2002 proceedings were initiated against respondent No.1 under Section 8-F of the Act and the prayer was made to remit Rs.6,40,000/- from the account of National Fertilizers Ltd. Thereafter, plaintiff-National Fertilizers Ltd. filed a suit for declaration that the orders dated 08.11.2002, 18.12.2002 and 10.01.2003 passed by defendant Nos.1 to 3 respectively were illegal, null and void with consequential relief of recovery of Rs.6,40,000/-. The said suit was decreed vide judgment and decree dated 11.05.2010 (Annexure P-1) passed by the Civil Judge (Junior Division), Chandigarh.

Defendant No.1-petitioner challenged the said judgment and decree after a delay of 131 days by filing an application under Section 5 of the Limitation Act (Annexure P-2). The respondents did not choose to file any reply to the said application. However, vide impugned order, the lower appellate Court did not condone the delay of 131 days and dismissed the appeal.

Learned counsel for the petitioner has argued that there was some procedural delay in the organization, which was well explained in the application (Annexure P-2). After getting certified copies of the judgment and decree dated 11.05.2010, a decision was taken on 07.07.2010 to file an appeal. Sometime was taken to arrange the Court fee of Rs.13,500/- and to collect the oral as well as documentary evidence. On 02.08.2010, legal opinion was given and thereafter, necessary information was supplied to the counsel on 11.10.2010. He has further argued that Employees Provident

Fund & Miscellaneous Provisions Act, 1952 is a welfare legislation for providing social security to the weaker section of employees working in the establishment engaging 20 or more person on any day. The delay of 131 days being procedural in nature had been sufficiently explained in the application.

Learned counsel for respondent No.1, at the same time, has argued that the order dismissing the appeal does not require any interference as no sufficient cause and explanation of each day has been given in the application (Annexure P-2) for condonation of delay.

The Hon'ble Supreme Court in State (NCT of Delhi) Vs. Ahmed Jaan, 2008 (4) RCR (Criminal) 119, has held that the State could not be put on the same footing as an individual. The law of limitation was same for a private citizen as for State, but certain amount of latitude is not impermissible. Government decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red-tape in the process of their making. Hence, certain amount of latitude is, therefore, not impermissible. It was further held as under:-

13. In G. Ramegowda, Major v. Spl. Land Acquisition Officer (1988 (2) SCC 142), it was held that no general principle saving the party from all mistakes of its counsel could be laid. The expression "sufficient cause" must receive a liberal construction so as to advance substantial justice and generally delays in preferring the appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of delay. 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. The law of limitation is, no doubt, the same for a private

citizen as for governmental authorities. Government, like any other litigant must take responsibility for the acts, omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it. It was, therefore, held that in assessing what constitutes sufficient cause for purposes of [Section 5](#), it might, perhaps, be somewhat unrealistic to exclude from the consideration that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the Government. Government decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red-tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have "a little play at the joints". Due recognition of these limitations on governmental functioning - of course, within reasonable limits - is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. Implicit in the very nature of Governmental functioning is procedural delay incidental to the decision-making process. The delay of over one year was accordingly condoned.

15. The above position was highlighted in [State of Haryana v. Chandra Mani and Ors.](#) 1996 (3) SCC 132; [Special Tehsildar, Land Acquisition, Kerala v. K.V. Ayisumma](#) 1996 (10) SCC 634 and [State of Nagaland v. Lipok AO and Ors.](#) 2005 (3) SCC 752. It was noted that adoption of strict standard of proof sometimes fail to protract public justice, and it would result in public mischief by skilful management of delay in the process of filing an appeal."

Recently, the Hon'ble Supreme Court in **Esha Bhattacharjee Vs.**

Managing Committee of Raghunathpur Nafar Academy and others, 2013

(12) SCC 649, has laid down some guidelines for condonation of delay to be considered by the Courts at the time of condoning the delay in filing the appeals, which are reproduced as under:-

15. From the aforesaid authorities the principles that can broadly be culled out are:

(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic

approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

Keeping in view the observations of the Hon'ble Supreme Court in the aforesaid judgments, this Court is of the view that due to the procedural delay, the petitioner could not file the appeal in time. The delay in filing the appeal before the lower appellate Court has been sufficiently explained and the same deserves to be condoned.

Resultantly, the impugned order dated 11.03.2014 is set aside, delay of 131 days in filing the appeal before the lower appellate Court is set aside and the matter is remanded back to the lower appellate Court to decide the appeal on merits.

Allowed accordingly.

(RITU BAHRI)
JUDGE

09.09.2015
ajp