

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.70 OF 2015
IN
CRIMINAL APPLICATION NO. OF 2015**

The Central Bureau of Investigation)...APPLICANT

V/s.

The State of Maharashtra & Ors.)...RESPONDENTS

Ms. Rebecca Gonsalves, Advocate for the Applicant.

Mr. Avinash Kamkhedkar, APP for the Respondent - State.

Ms. Swapna Gokhale, Advocate for R.No.2.

Mr. Chandansingh Shekhawat i/by ALMT Legal, Advocate for R.No.3.

Mr. Anish A. Desai, Advocate for R.No.4.

CORAM : A. M. BADAR, J.

DATE : 5th JANUARY 2017.

P.C. :

By this application, the Applicant/Central Bureau of Investigation is seeking condonation of delay of 313 days in filing an application for leave to appeal for challenging the judgment and order dated 31.12.2013 passed by the learned Special Judge,

Central Bureau of Investigation/ACB in Special Case No.22 of 2012 thereby acquitting non applicant nos.2 to 4 of offences punishable under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988.

2 Allegations against non-applicant nos.2 to 4/Original Accused were to the effect that they being public servants working as Superintendent, Service-Tax Inspector, Service-Tax and Assistant Commissioner Service-Tax employed with the Central Government had demanded and accepted an amount of Rs.1.25 Lakhs on 22.5.2012 and Rs.1.25 Lakhs within five days thereafter as a motive or reward for forbearing service tax dues of M/s. Gandharva Restaurant. After trial, the learned Special Judge was pleased to acquit non-applicant nos.2 to 4 of the alleged offences. This nature of litigation is required to be kept in mind while deciding the instant application.

3 Heard learned counsel for the Applicant-Prosecution. She submitted that delay was occasioned because offices of the prosecuting agency are located at different places and file was required to send to various offices for obtaining sanction for filing

application for obtaining leave to file appeal. The learned counsel for CBI placed reliance on **Special Tehsildar, Land Acquisition, Kerala v. K.V.Ayisumma AIR 1996 SC 2750, Basavalingappa v. Special Land Acquisition Officer, Bangalore in Civil Appeal Nos.856, 857 and 899 (N) of 1974**. As against this, learned counsel appearing for non-applicant nos.2 to 4 vehemently opposed the application by submitting that there is inordinate delay in filing application for leave to appeal. It is argued that State cannot be given different treatment from private litigants and when the application for condonation is filed by the State, no different parameters can be applied for condoning the delay. Reliance is placed on the judgment of the Hon'ble Apex Court in the matter of **Office of the Chief Post Master General & Ors. v. Living Media India Ltd. and Anr.** rendered in **Civil Appeal No.2474-2475 of 2012** and particularly paragraph 13 thereof which reads thus:

“13 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 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. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

4 Reliance is also placed on the judgment of the Hon'ble Sikkim High Court in the matter of **Central Bureau of Investigation v. Nirmal Pradhan** in **Criminal Appeal No.15 of 2013**.

5 I have carefully considered rival submissions and perused application for condonation of delay as well as reply filed

thereto. Way back in the year 1987 in the matter of **Collector Land Acquisition Anantnag v. Khatiji 1987 2 SCC**, the Hon'ble Supreme Court has interpreted 'Sufficient Cause' as found in Section 5 of the Limitation Act, 1963 and held that a litigant does not stand to benefit by causing delay in challenging the orders. It is further held that while condoning the delay, pragmatic approach should be taken and the word 'Sufficient Cause' needs to be given liberal construction. It is further held in the said judgment that when cause of substantial justice is pitted against technical considerations then the cause of substantial justice deserves to be preferred rather than adhering technical considerations. What was challenged in the matter of **Office of the Chief Post Master General & Ors. (Supra)** relied upon by the learned counsel for non-applicants/accused is grant of concessional rate of postage to the issue of magazine. In that context, the Hon'ble Supreme Court has held that law of limitation equally applies to Government bodies and their instrumentalities. Similar are the observations of the Hon'ble Sikkim High Court. As against this in the matter of **Basavalingappa (Supra)** relied upon by the learned counsel for

the applicant, the Hon'ble Supreme Court has considered the issue of delay in challenging the orders by the authorities of the Government and in paragraph 8 thereof has held thus:

8. 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 or 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.

Therefore, in assessing what, in a particular case, constitutes 'sufficient cause' for purposes of [Section 5](#) it might, perhaps, be some what 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. 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 a reasonable limits-is necessary if the judicial approach is not 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. In the opinion of the High Court, the conduct of the law-officers of the Government placed the 207 Government in a predicament and that it was one of these cases where the mala fides of the officers should not be imputed to Government. It relied upon and trusted its law-officers. Lindley, M.R., in the *Re: National Bank of Wales Ltd.*, 1899 J 2 L.R. 629 at 673 observed, though in a different context:

"Business cannot be carried on, upon principles of distrust. Men in responsible positions must be trusted

by those above them, as well as by those below them, until there is reason to distrust them."

In the opinion of the High Court, it took quite sometime for the Government to realise that the law-officers failed that trust.

While a private person can take instant decision a "bureaucratic or democratic organ" it is said by a learned Judge "hesitates and debates, consults and considers, speaks through paper, moves horizontally and vertically till at last it gravitates towards a conclusion, unmindful of time and impersonally." Now at the end, should we interfere with the discretion exercised by the High Court? Shri Datar criticised that the delay on the part of Government even after 20.1.1971 for over an year cannot be said to be either bonafide or compelled by reasons beyond its control. This criticism is not without substance. Government could and ought to have moved with greater diligence and dispatch consistent with the urgency of the situation. The conduct of Government was perilously close to such inaction as might, perhaps, have justified rejection of its prayer for condonation."

6 I have carefully considered the reasons given by the applicant-prosecution for delay of 312 days in challenging the judgment and order of acquittal of non-applicant nos.2 to 4 for the offence punishable under Sections 7, 13(1)(d) and 13(2) of the Prevention

of Corruption Act, 1988. I am of the considered opinion that delay is sufficiently explained by the prosecution and, therefore, order:

- (a) Application is allowed.
- (b) Delay in filing application for grant of leave to file an appeal is condoned.

(A. M. BADAR, J.)