

LPA No.2098 of 2016 (O&M) -1-

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

LPA No.2098 of 2016 (O&M)

Date of Decision :18.04.2017

State of Punjab and others

....Appellants

Versus

M/s Roshan Lal Prem Chand and another

....Respondents

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE DR.SHEKHER DHAWAN**

....

Present: Ms.Reeta Kohli, Addl.AG, Punjab with
Mr. Hanspal Virk, AAG, Punjab
for the appellants.

....

MAHESH GROVER, J. (Oral)

This appeal is directed against the judgment of the learned Single Judge dated 30.10.2015 but filed after an inordinate delay of 298 days. The reasons for delay have been given in paras 3 and 4 of the application under Section 5 of the Limitation Act which we consider appropriate to extract herebelow :-

- “3. That the order was pronounced by the Ld.Single Judge on 30.10.2015 and was received in the office of District Food & Supplies Controller, Bathinda on 04.12.2015.
4. That the decision to file the present appeal took time at the office of the appellant because opinion of the

Advocate General, Punjab's Office was sought. The opinion for filing the appeal was received from the Office of Advocate General, Punjab vide their Memo No.A-7/4103-2015/21327 dated 5.8.2016 which was received in the office of Respondent No.3 on 23.8.2016.

Due to this, there is a delay of 298 days.”

On 25.01.2017, when this Court being dissatisfied with the aforesaid explanation intended not to interfere, the appellants made a prayer to file a proper affidavit indicating the reasons for delay, which has since been done by way of an additional affidavit accompanying C.M.No.1207-LPA of 2017 which is being extracted herebelow :-

- “a. 02-12-2015 Office of respondent no.1 received the certified copy of the said orders dated 30-10-2015 passed in CWP 1780 of 2013.
- b.08-12-2015 The branch concerned namely 'Food Distribution', which deals with the Fair Price Shops, then proposed to seek a legal opinion on the said order from the OSD(Litigation) of the department.
- c.10-12-2015 The said proposal was approved by the Joint Director concerned, accordingly the file was sent to the OSD (Litigation).
- d. 18-12-2015 In turn, the OSD (Litigation) had advised to comply with the orders of the High Court and make the payments as directed by High Court within stipulated period.

- e. 24-12-2015 The Joint Director sent the file to the Secretary Food & Supplies, Punjab i.e. respondent no.1, to refer the matter to the Department of Finance, Punjab as on commencement of Atta Dal Scheme in the year 2007, its costing sheet was prepared by the Department of Finance, Punjab.
- f. 29-12-2015 The Secretary Food & Supplies, Punjab i.e. respondent no.1, returned the file with following remarks 'Please speak urgently' to joint Director (Distribution).
- g. 07-01-2016 After discussing the case with Secretary Food & Supplies, Punjab, the Joint Director (Distribution) then presented the draft of speaking order as was ordered by the Secretary Food & Supplies, Punjab.
- h. 11-01-2016 The Secretary Food & Supplies, Punjab cleared the file, passing a speaking order stating therein that the Fair Price Shop Owners are now being paid the margin money on distribution of wheat under National Food Security Act, 2013, whereas, the transportation cost is being borne by the State.
- i. 19-01-2016 The orders passed by the Secretary Food & Supplies, Punjab, was issued vide endorsement no.3FD(1625)-16/112 dated 19.01.2016.
- j. 25-02-2016 The petitioner filed a representation vide which he requested to comply with the orders passed by the Hon'ble High Court in CWP No.1780 of 2013.
- k. 03-03-2016 The office of Director Food & Supplies, Punjab

directed the District Food & Supplies Controller, Bathinda, to ascertain the claim of the petitioner with regard to the margin money for the wheat distributed by him under Atta Dal Scheme in accordance with the costing sheet issued vide letter dated 18.11.2015.

- l. 21-04-2016 A legal notice under Contempt of Courts Act, 1971 was received from the petitioner through his counsel, for making payment on account of transportation charges as well as margin money in the light of judgment dated 30-10-2015, in the office of Director Food & Supplies, Punjab.
- m. 23-04-2016 Another copy of the notice (as referred above) was received in the office of Secretary Food & Supplies, Punjab, who ordered following on the said notice:

'examine carefully, OSD(L) to put up draft reply in 3 days'.
- n. 28-04-2016 As ordered by the Secretary Food & Supplies, Punjab, the Joint Director sent the file to the OSD (Litigation) for his opinion on the aforesaid legal notice.
- o. 02-05-2016 In turn, the OSD (Litigation) had advised to either comply with the directions of the High Court in total or to challenge the said direction by filing LPA.
- p. 05-05-2016 The respondent department then sought the advice

of the Ld.Advocate General, Punjab on the legal notice sent by the petitioner.

- q. 09-06-2016 A reminder letter was sent to the Advocate General, Punjab, as no advice/reply was received from them till that date.
- r. 16-08-2016 The respondent department received an opinion from the office of the Advocate General, Punjab, to the effect that it is a fit case for filing LPA and they have also mentioned the limitation period has already been expired.
- s. 26-08-2016 In the light of the opinion rendered by the Advocate General, Punjab, the OSD (Litigation) of the department advised to take immediate steps for filing LPA after getting necessary approval from competent authority.
- t. 29-08-2016 Orders were obtained from the Secretary Food & Supplies, Punjab to file the LPA against the order dated 30.10.2015 in CWP No.1780 of 2013.
- u. 01-09-2016 The District Food & Supplies Controller, Bathinda was directed to prepare the draft for LPA to be filed against the CWP No.1780 of 2013.
- v. 22-09-2016 The office of Director Food & Supplies, Punjab received the draft for filing LPA through e-mail from the District Food & Supplies Controller, Bathinda.
- w. 06-10-2016 After due approvals, the District Food & Supplies Controller, Bathinda was sent a copy of the draft

LPA along with a direction to immediately proceed for its filing.

- x. 07-10-2016 Office of Advocate General, Punjab sent the copy of the contempt petition bearing no.1228 of 2016, wherein it was mentioned that the petition is fixed for hearing on 18.10.2016.
- y. 12-10-2016 On the aforesaid contempt petition, the OSD (Litigation) had advised that since the competent authority has taken a definite decision to file LPA against the impugned judgment dated 30.10.2015, we should move the office of Advocate General, Punjab for filing of LPA and inform the Contempt Court about the same.
- z. 18-10-2016 The present LPA against the judgment dated 30.10.2015 was filed.”

The aforesaid detailed events would reveal that the impugned judgment was rendered on 30.10.2015 and the department received the certified copy of the same on 02.12.2015. Thereafter, they proposed to seek legal opinion from the OSD (Litigation) of the department. The OSD concerned did not give the legal opinion but advised the department to comply with the impugned orders and make the payments as per the orders of the Hon'ble High Court within the stipulated period. The opinion of the Advocate General, Punjab was sought on 5.5.2016, i.e. after a period of five months from the date of

receipt of certified copy of the impugned judgment, which also took a time of about three months in opining that it was a fit case for filing LPA and thereafter the department filed the LPA on 18.10.2016. There is absolutely no explanation why the file remained pending with the office of the Advocate General for more than three months and even after receiving the opinion from the office of the Advocate General the department consumed almost five months in preparing the grounds etc.

Even though some leeway can be given to the State to condone the delay on account of the lengthy procedure involved, yet the courts would be reluctant to interfere when absolutely no justification is offered as to why the file lingered on in a particular office for as long as three months, particularly in the Advocate General's office which is well equipped with legal acumen and expected to be aware of the law of limitation. In our opinion the State should not be treated any differently from a common litigant to hold out a longer rope to it than to an ordinary litigant approaching for redressal of his grievance.

All this goes to show complete apathy to the legal process. We cannot shut our eyes to such callousness and treat the State or its functionaries differently than a common litigant while dealing with matters of limitation to grant indulgence by overlooking such procedural delays and we would not be unjustified to expect some alertness at the hands of the State as a

litigant wishing to approach this Court in no matter what proceedings.

We are also constrained to observe that there is absolutely no justification manifesting itself from the contents of the application in seeking repeated legal opinions.

Furthermore, the Hon'ble Supreme Court in *Office of the Chief Post Master General & ors. v. Living Media India Ltd. & Anr.* **2012(2)S.C.T.269** has observed as under :

“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 bona fide 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. 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 for 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.

Keeping the aforesaid in view, we are of the opinion that the explanation for delay offered by the appellants is not worth acceptance.

Appeal dismissed on the ground of delay.

(MAHESH GROVER)
JUDGE

18.04.2017
dss

(SHEKHER DHAWAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No