

LPA No.2453 of 2016 (O&M) -1-

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

LPA No.2453 of 2016 (O&M)

Date of Decision :23.05.2017

The Chief Conservator Officer and another
.....Appellants
Versus

Gurnam Singh and another
.....Respondents

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

**Present: Mr. Gagandeep S.Wasu, Addl.AG, Haryana
for the appellants.
....**

MAHESH GROVER, J. (Oral)

This appeal is directed against the judgment of the learned Single Judge dated 15.05.2015 but filed after an inordinate delay of 527 days. The reasons for delay have been given in paras 3 and 4 of the application under Section 5 of the Limitation Act supported by an affidavit and we consider appropriate to extract the said paras herebelow :-

“3. That the appellant applied on dated 20.05.2015 for the certified copy of order passed by this Hon'ble Court and the same was received by the office of Advocate General, Haryana at Chandigarh on dated 09.06.2015. Thereafter the Advocate General, Haryana on dated 21.10.2015 has opined that it is not fit case for filing

L.P.A. against the order passed by this Hon'ble Single Bench and sent the case to Legal Remembrancer & Secy. to Government of Haryana for further necessary action. On this Legal Remembrancer & Secy. to Government of Haryana did not agree with opinion of Ld. Advocate General, Haryana and issued instruction vide letter dated 10.11.2015 to the Advocate General, Haryana for filing of LPA on behalf of State of Haryana in the above-mentioned case. Thereafter the appeal was prepared on 14.12.2015 after collecting all the relevant record of the case.

4. That the present L.P.A.is being filed after a delay of 527 days. The delay in filing the L.P.A. has caused due to official procedure, which is not intentional or deliberate.”

When this Court found the explanation furnished in the affidavit filed along with the application for condonation of delay inappropriate on 21.12.2016, the appellants made a prayer to file a better affidavit indicating the reasons for delay, which has since been done by way of affidavit accompanying C.M.No.1860-LPA of 2017 which is being extracted herebelow :-

- “3. That the appellant applied for certified copy of the order passed by this Hon'ble Court on 20.05.2015 and the same was received by the office of Advocate General, Haryana at Chandigarh on 09.06.2015. Thereafter, the Advocate General, Haryana on

21.10.2015 opined that it is not fit case for filing LPA against the order passed by the Hon'ble Judge and sent the case to Legal Remembrancer & Secretary to Government of Haryana for further necessary action. Thereafter, the Legal Remembrancer & Secretary to Government of Haryana did not agree with opinion of Ld.Advocate General, Haryana and issued instruction vide letter dated 10.11.2015 to the Advocate General, Haryana for filing of LPA on behalf of the State of Haryana in the above mentioned case. Thereafter, the appeal was prepared on 14.12.2015 after collecting all the relevant record of the case. The Courts, thereafter, closed for winter holidays and the appeal was got vetted on 07.01.2016. In the meantime, the dealing hand had been changed and a new dealing hand Sh.Sunil Kumar was not fully aware of the facts of the case and was not having the requisite knowledge about the formalities & procedural know how involved. Due to the serious health problems, he remained on leave from 09.04.2016 to 02.05.2016, 07.05.2016 to 03.06.2016, 13.06.2016 to 20.06.2016, 22.06.2016 to 30.06.2016, 04.07.2016 to 08.07.2016, 03.08.2016 to 15.08.2016 and as soon as he recovered to some extent he got the appeal prepared and complied with the requisite formalities, so the appeal was submitted in the office of Ld.Advocate General, Haryana on 22.08.2016 and the LPA was filed on 17.12.2016.

4. That it is pertinent to mention here that during the illness of the dealing hand as there was shortage of staff, as a result of which the additional charge was also looked after by Sh.Mahinder Singh, Deputy Supdt., but on account of a heavy workload, the present case did not come to the knowledge of the aforementioned. Thereafter, a new dealing hand was appointed & he made all the efforts to clear the pending work of the seat, then this case came to the knowledge of the new dealing hand and immediately the file was completed in all respects and the same was submitted to the office of Ld.Advocate General, Haryana in the month of August 2016.
5. That after submission of the file for further necessary action in the office of Ld.Advocate General, Haryana, a further delay of 117 days has occurred in filing the present LPA. For the said delay of 117 days, an explanation was sought from the concerned dealing hand of the office by the concerned Law Officer who had argued the case on the previous dates. The said delay has been, thus, explained by Smt. Rajni Bala, Assistant, Office of the Advocate General, Haryana the relevant extract of which is being reproduced as under :-

“In this connection, it is submitted that the case for filing LPA in CWP No.21198 of 2012 was received from the Forest Department Ambala on

22.08.2016. Due to rush of work and lack of knowledge of filing, I could not file the case upto 11.09.2016 being new seat since I posted on the LPA filing seat on 23.05.2016. Thereafter, I had on Child Care Leave w.e.f. 12.09.2016 to 03.10.2016. After joining the duty there is lot of rush of work of my seat for filing LPA/CWP and opinion/grounds of appeal and other misc.work since nobody was deputed on filing branch during my leave. The case was filed on 17.12.2016 in which LPA No.2453 of 2016 was allotted which is at Flag 'B'.

In view of the position as explained above, due to rush of work and lack of knowledge of filing, the delay of 102 days in filing of LPA has occurred on my part. I shall be careful in future.

Submitted please.
Sd/- Rajni Bala, Asstt.
23/03/2017

When the said matter was brought to the notice of the Ld. Advocate General, Haryana, upon reading the explanation rendered by Smt. Rajni Bala, it has been ordered to initiate proceedings under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules against Smt. Rajni Bala

6. That the present LPA is being filed after a delay of 527 days. The delay in filing the LPA was caused on account of the reasons mentioned herein above and the

lapse, if any, on the part of the concerned officials for which the necessary action is being taken against them, thus, the delay is not intentional or deliberate. In so far as the delay caused on account of the office of the Advocate General, Haryana, is concerned, appropriate action has already been ordered to be initiated as detailed in paragraph 5 above.”.”

The aforesaid detailed events would reveal that the impugned judgment was rendered on 15.05.2015 and the office of Advocate General, Haryana received the certified copy thereof on 09.06.2015 and gave its opinion on 21.10.2015 i.e. after a period of about four months from the date of receipt of certified copy of the impugned judgment that it was not a fit case for filing LPA. When the Legal Remembrancer, Government of Haryana did not agree with this opinion and issued instructions on 10.11.2015 to Advocate General, Haryana for filing of LPA, it consumed more than one year in filing the appeal on 17.12.2016 with a delay of 527 days explaining it because of change/illness of dealing hand and shortage of staff etc.

Even though some leverage 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 months together, 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 afford it a longer rope than to an ordinary litigant approaching for redressal of his grievance.

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 a litigant who wishes to approach this Court in no matter what proceedings.

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

23.05.2017
dss

(SHEKHER DHAWAN)
JUDGE

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