

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

LPA No.1411 of 2017 (O&M)

Date of Decision : 11.12.2017

State of Haryana and another

....Appellants

Versus

Dr.K.L.Johar and others

....Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE RAJ SHEKHAR ATTRI

...

Present : Mr.Samrath Sagar, Addl.Advocate General,
Haryana.

...

MAHESH GROVER, J. (Oral)

CM-5167-LPA-2017 is allowed. Accompanying affidavit
is taken on record.

The appellants have filed this appeal against the judgment
of learned Single Judge dated 10.11.2016 but after a delay of 230
days.

On 04.08.2017, when this court found the reasons offered
for condonation of delay in the application under Section 5 of the
Limitation Act not justifiable, learned counsel for the appellants
sought time to file a better affidavit which has now been filed along
with CM-5167-LPA-2017 explaining the detailed reasons in paras 2
to 4, which are extracted here-below :-

“2. That the impugned order dated 10.11.2016 was
downloaded from the website of Hon'ble High
Court by the office of Ld. A.G. Haryana and vide

letter memo No.24/12-2011 C-II(2) dated 30.11.2016, the Ld. Advocate General Haryana was requested to tender its opinion whether this case is fit for further appeal and simultaneously requested to make available a certified copy of the order dated 10.11.2016. The certified copy of the order dated 10.11.2016 was received in the office of the deponent on 19.12.2016. A reminder was issued to the learned Advocate General, Haryana vide letter memo No.24/12-2011 C-II(2) dated 03.02.2017 to tender the legal opinion for further filing of appeal. The Learned Advocate General, Haryana vide its letter dated 18.02.2017 has opined that this is not a fit case for filing an appeal and Ld.L.R.Haryana also agreed with the opinion of the Ld.Advocate General, Haryana and intimated to the O/o the deponent vide letter dated 08.03.2017. After the received advice from the office of Ld.A.G. Haryana and Ld.L.R. Haryana the case was put up for implementing the order by the dealing Assistant on 08.03.2017 and the case was marked to the District Attorney O/o the Appellant for his comments on 10.03.2017 by the Deputy Director-II of this office. The District Attorney was on leave from 14.03.2017 to

23.03.2017 and tendered his opinion on 24.03.2017, if the department is of the view that it is a fit case for filing LPA then the case may be sent to Govt. for sanction under para 20.4(c) of the Law Department Manual for getting the necessary approval to file LPA. The case was again considered on 30.03.2017 by the dealing Assistant keeping in view of advice of LR Haryana and proposal was submitted to get the concurrence of the Finance Department Haryana so that the order of the Hon'ble High Court dated 10.11.2016 may be implemented and the Director of the office has approved the proposal on 06.04.2017.

3. That accordingly, the case was sent to Finance Department, Haryana vide single file system on 07.04.2017 for seeking its concurrence being a financial matter. The FD Haryana vide its U.O.No.60/22/2017-2FD-II/11698 dated 19.04.2017 has advised to the appellant to send the case for further opinion to the Ld.L.R., Haryana. Accordingly the case was again sent to the Ld.LR, Haryana on 01.05.2017 on single file with a request for further opinion. The matter was re-examined by the Ld.A.G, Haryana and tendered advice vide memo No.27385-86 dated 18.05.2017

that the department has already filed LPA No.1885 of 2011 in an identical case against the order dated 17.11.2010 passed by the Hon'ble High Court in CWP No.14507 of 2010 titled as T.C.Dogra and ors. Versus State of Haryana & others. In the said LPA the Hon'ble High Court had admitted LPA and an interim stay was granted against the operation of the order dated 17.11.2010.

4. That the re-considered opinion of Ld. Advocate General, Haryana for filing LPA has been received on 22.05.2017. After receipt the same, the draft C.M.of condonation delay, stay & LPA has been prepared without any further delay and same was submitted for vetting in the office of Ld.Advocate General, Haryana, which was provisionally checked on 14.06.2017. Accordingly again fair draft of LPA was submitted in the office of Ld.Advocate General, Haryana on 28.06.2017 which was approved on 28.06.2017. Thereafter fair draft LPA paper book prepared and submitted in the office of Ld.A.G.Haryana on 03.07.2017. As per information collected from the office of Ld.A.G.Haryana, LPA filed on 27.07.2017. It appears that from 03.07.2017 till 26.07.2017 due to rush of work on account of

opening after summer vacation in July, the delay in filing the appeal occurred till 26.07.2017.”

The aforesaid explanation offered by the appellants for condonation of delay would reveal that after the impugned judgment was passed on 10.11.2016, the office of Advocate General, Haryana downloaded the same from the website of the High Court on 30.11.2016 and on the request of the appellants the office of Advocate General, Haryana gave its opinion on 18.02.2017 that the case was not fit for filing LPA and the L.R. Haryana also agreed with the same. Thereafter the administrative department submitted the case to the District Attorney of their department for his comments on 10.03.2017 who gave his opinion to the effect that if the department is of the view that it is a fit case for filing LPA then the same may be sent to Govt. for sanction under para 20.4 (c) of the Law Department Manual for getting necessary approval. The case was reconsidered by the department in view of the advice of L.R., Haryana and proposal was submitted to the Finance Department to get its concurrence and after the approval of the said proposal on 06.04.2017 by the Director of the department the case was sent to Finance Department, Haryana on 07.04.2017 seeking its concurrence as it was a financial matter. The Finance Department vide its letter dated 19.04.2017 advised the department to send the case for further opinion to the L.R., Haryana and thereafter the case was again sent to L.R., Haryana on 01.05.2017 for further opinion. The office of Advocate General, Haryana also re-examined the matter and tendered its advice on 18.05.2017 that the

department has already filed LPA in some identical case which has been admitted and an interim stay has been granted. After the receipt of the opinion on 22.05.2017 of the Advocate General, Haryana, after reconsideration of the matter, the department prepared the draft of the appeal and applications for condonation of delay as well as stay and submitted the same to the office of Advocate General, Haryana for vetting. The fair draft of the appeal was approved by the office of Advocate General, Haryana on 28.06.2017. Once again fair draft of the appeal was prepared and submitted to the office of Advocate General, Haryana on 03.07.2017 and the instant appeal has been filed on 27.07.2017 with an inordinate delay of 230 days. Evidently, the file has meandered through various channels and repeated opinions have been obtained without there being any hint of urgency or even offering an insight of the minds of the Law Officers regarding the awareness of the Limitation Act. 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 a litigant who wishes to approach this Court in no matter what proceedings.

It is thus abundantly clear that there is no seriousness attached to the process and knowing fully well that the limitation for filing intra-court appeal is merely 30 days, the concerned department

showed no urgency. We cannot treat the Government Departments as novice and stranger to the concepts of law as they are well equipped with Law Officers as also the office of Advocate General. Rather, an ordinary litigant has to be given some indulgence in terms of relaxation but the State with numerous human resources and legal acumen at their command cannot escape the consequences of this brazen and laxity to the process.

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. Accordingly, the appeals are liable to be dismissed on the ground of delay.”

Keeping in view the aforesaid, we are of the view that the explanation for delay offered by the appellants is not worth acceptance. Besides, we have been informed that the appeals preferred against the same very impugned judgment have been dismissed and the impugned judgment has attained finality.

Consequently, the appeal is dismissed.

(MAHESH GROVER)
JUDGE

11.12.2017
dss

(RAJ SHEKHAR ATTRI)
JUDGE

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