

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

LPA No.746 of 2017 (O&M)

Date of Decision : 07.12.2017

The State of Haryana and others

....Appellants

Versus

Amarjeet Singh Bhatia

....Respondent

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-4943-LPA-2017 is allowed. Accompanying affidavit
is taken on record.

The appellants have filed this appeal against the judgment
of learned Single Judge dated 24.10.2016 but after a delay of 169
days.

On 03.08.2017, when this court found the reasons for
delay incorporated 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-4943-LPA-2017 explaining the detailed reasons in paras 1(I)
to 1(XXIV) which are extracted herebelow :-

“(I) That the uncertified copy of the judgment dated
24.10.2016 was received in the office of deponent

on 20.12.2016 from the office of Assistant Registrar (Writs) of Punjab and Haryana High Court, Chandigarh.

- (II) That as per facts collected from the office of A.G.Haryana the Law Officer tendered opinion on 16.11.2016 opining it not a fit case for filing LPA to which Ld. Additional Advocate General agreed on 29.11.2016 as further agreed by Ld.AG Haryana 01.12.2016. Opinion of Advocate General Haryana, “that it is not a fit case for filing LPA” was received in the office of the deponent on 23.12.2016 to which office of L.R.also agreed on 03.01.2017.
- (III) That in view of the opinion of office of Advocate General Haryana the case was submitted by the dealing hand to Deputy Director Higher Education for further action on 04.01.2017. Deputy Director forwarded the case to the Legal Cell of the department for opinion on 04.01.2017 itself.
- (IV) The Legal Cell of the department tendered its opinion on 06.01.2017 “that it is a fit case for filing LPA” but approval of the W/PSHE will be required under para 20.4 (c) of the LDM, since the A.G. Office has declared the case unfit for filing L.P.A. In view of above, the case was submitted to

the Principal Secretary to Government Haryana, Higher Education Department for their approval on 07.01.2017. Principal Secretary to Government Haryana Higher Education Department has given its approval on 13.01.2017 & the file was received in the concerned branch on 18.01.2017.

(V) The draft of grounds of LPA and other related affidavit were prepared & submitted by the branch in the legal cell of the department for vetting on 25.01.2017 which was marked on 27.01.2017 and on 01.02.2017, dealing assistant discussed the matter with D.A., who in turn on 23.01.2017 advised that before vetting of LPA be sent to the office of Ld.AG Haryana a letter be written to the L.R.Haryana & copy of AG Haryana for filing LPA. File returned on 02.02.2017 to L.R.Haryana & copy to AG Haryana. Again on 02.02.2017 file again submitted to Legal Cell of the department's office on 06.02.2017 the file was marked to Legal Consultant by D.A., who in turn vetted with some amendments.

(VI) That the District Attorney of the Department vetted the draft of LPA after due discussion with concerned Supdt. and Assistant on 09.02.2017 and vetted and received by the branch on 13.02.2017.

- (VII) That the draft of grounds of LPA & other affidavit was submitted for approval of Director Higher Education Haryana on 15.02.2017 for further approval from the office of Advocate General Haryana. The Director Higher Education Haryana gave its approval on 20.02.2017.
- (VIII) That the office of Advocate General Haryana was requested for vetting the grounds of LPA & affidavits of delay vide letter dated 22.02.2017 and 23.02.2017 the dealing assistant gave a note that a letter be written to L.R.Haryana for issuance of a sanction to AG Haryana for filing LPA on behalf of State Government on public expenses.
- (IX) That a request for sanction to defend the LPA on public expenses was written to the Legal Remembrancer & Secretary to Government Haryana, Law & Legislative Department, Haryana on 23.02.2017.
- (X) That on 02.03.2017 the dealing hand gave a note that in this case, as per orders LPA is to be filed, however the draft LPA is under vetting process with the office of Advocate General Haryana. The LPA shall be vetted by the office of Advocate General Haryana after receipt of instructions from the office of LR Haryana. We are in personal

contact with the office of LR Haryana for getting above instructions issued at the earliest. He has further mentioned that meanwhile Sh.Amarjeet Singh Bhatia has requested to implement the judgment dated 24.10.2016. His request can not be accepted at this stage and we may ignore his request at the stage. The said proposal was approved by Director Higher Education on 04.03.2017 and file was received in the branch on 06.03.2017.

- XI) The Legal Remembrancer & Administrative Secretary to Government Haryana, Law & Legislative Department issued instructions to the Advocate General Haryana for filing LPA vide letter dated 07.03.2017 on behalf of the State of Haryana against the order dated 24.10.2016.
- XII) That on 08.03.2017 the draft affidavit of LPA was submitted for signature of Deputy Secretary Higher Education for vetting of the same from the office of Advocate General Haryana. The file was received back on 09.03.2017.
- (XIII) That on 11.03.2017 to 13.03.2017 being gazetted and Saturday, Sunday holiday. On 17.03.2017 dealing hand gave a note that LPA is under vetting process. The application, affidavits and grounds

for LPA have been prepared and retyped as corrected by Sh.R.D.Sharma Deputy Advocate General Haryana. He further mentioned that retyped affidavits/applications are submitted for signature of Deputy Secretary Higher Education before getting it vetted from the office of Advocate General, Haryana. The file was received back in the branch on the same day.

(XIV) That on 21.03.2017 the dealing hand gave a note that in this case affidavits as vetted by the Law Officer Sh.R.D.Sharma are submitted for signature of Deputy Secretary Higher Education. The file was received back in the branch on 22.03.2017. In fact on 09.03.2017 Sh.R.D.Sharma vetted only draft affidavits of stay & exemption application and raised objection qua draft of condonation of delay as there was no explanation of delay after 22.02.2017 as the draft for vetting for the first time put up in A.G.office on 09.03.2017 & returned on 10.03.2017. It appears from the record the then dealing gave a wrong note regarding vetting of condonation of delay affidavit and the deponent believed the note of the dealing assistant qua vetting of all the affidavits.

(XV) That on 22.03.2017 a letter was written to the

Advocate General Haryana that as vetted/corrected fair affidavit duly signed by competent authority and other material for filing LPA is sent herewith for taking further necessary action at an early date.

(XVI) That on 24.03.2017 the dealing hand of office of Advocate General Haryana returned the original affidavits and other documents of LPA with a remarks "Returned in original with the remarks that Index be completed".

(XVII) That on 25& 26.03.2017 were the Saturday, Sunday holidays. On 30.03.2017 the dealing hand gave a note that all the papers for filing LPA have been prepared and the same are to be submitted to the office of Advocate General Haryana. However, the dealing hand of the office of Advocate General Haryana verbally told to submit the original signed affidavit in duplicate. As such one more set of Affidavits are submitted for signature of Deputy Secretary Higher Education. The file was received back on the same day.

(XVIII) That on the same day i.e. 30.03.2017 a letter was written to the Advocate General Haryana that as vetted and corrected affidavits and other related documents for filing LPA are sent herewith and deposited in the office of Advocate General

Haryana personally on 30.03.2017, however, as per record of the office of Advocate General, Haryana no such letter was ever received in their office.

(XIX) That on 01.05.2017 a telephonic message was received from the office of Advocate General Haryana that an affidavit regarding Sr.No.8 i.e. Letters Patent Appeal in CWP No.16957 of 1998 may also be supplied.

(XX) The requisite affidavit was submitted in the office of Advocate General Haryana on 03.05.2017. The dealing hand office of Advocate General Haryana verbally told that all the affidavits have to be signed by the same officer.

(XXI) That on 04.05.2017 all the affidavits were again prepared for the signature of present Additional Secretary to Higher Education as the then Deputy Secretary Higher Education has been transferred.

(XXII) That on 04.05.2017 Superintendent College-V personally submit all the affidavits/other related documents to the dealing hand of the office of Advocate General Haryana and LPA filed on 06.05.2017, thus there is a delay of 169 days in filing LPA upto 06.05.2017.

(XXIII) That on 09.05.2017 a telephonic message was

received to Sh.Raj Kumar Clerk that in the documents of LPA in place of Principal Secretary to Government Haryana Higher Education the designation may be mentioned as Financial Commissioner to Government Haryana, Higher Education Department may be mentioned.

(XXIV) That on 10.05.2017 a letter was returned to the office of Advocate General Haryana mentioning that as directed by the concerned official of your office the necessary amendment in the documents have been made and the fair copy of documents for filing LPA the matter is sent herewith. They are further requested to file the LPA in the matter immediately to avoid the future litigation and accordingly after removing the objections LPA again filed on 11.05.2017.”

The aforesaid would reveal that after the judgment was rendered on 24.10.2016, the office of Advocate General, Haryana gave its opinion on 16.11.2016 that the case was not fit for filing LPA and the L.R.Haryana was also in agreement with the same. Thereafter the administrative department submitted the case to its Legal Cell on 04.01.2017 which tendered its opinion on 06.01.2017 declaring it a fit case for filing LPA but solicited approval of the W/PSHE under para 20.4 (c) of the LDM. Then the case was submitted to the Principal Secretary to Government Haryana, Higher

Education Department for approval on 07.01.2017. The said officer granted approval on 13.01.2017 and the file was received in the concerned branch of the department on 18.01.2017. Thereafter the draft of grounds of LPA and other related documents was prepared and submitted to the Legal Cell for vetting on 25.01.2017. The instant appeal was ultimately filed on 11.05.2017 after removal of objections raised by various authorities and getting the same vetted from the office of Advocate General, Haryana with an inordinate delay of 169 days. Evidently, the file has meandered through various channels 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.

Appeal dismissed on the ground of delay.

(MAHESH GROVER)
JUDGE

07.12.2017
dss

(RAJ SHEKHAR ATTRI)
JUDGE

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