

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T. SELVAM

AND

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

CMP.No.3897/2018
IN WA.SR.No.5947/2018

1.The State of Tamil Nadu
rep.by its Secretary, Higher Education
Department, Fort St George,
Chennai.

2.The Director of Collegiate Education
Chennai-6.

3.The Joint Director of Collegiate Education
Vellore Region, Vellore.

Petitioners /
Appellants in
WA.SR.No.5947/2018

सततमेव जयते
Versus

Melvisharam Muslim Educational Society
Regn.No.S-3/1926, rep.by its
General Secretary/Correspondent
Haji S.Z.Abrar Ahmed,
C.Abdul Hakeem College
Hakeem Nagar, Melvisharam-632509.
Vellore.

.. Respondent /
Writ Petitioner

Prayer:- Petition filed u/s.5 of Limitation Act, to condone the delay of 1860 days in filing the writ appeal against the order dated 20.11.2012 made in WP.No.30660/2012.

Prayer in Writ Appeal:- Appeal filed under Clause 15 of Letters Patent to set aside the order passed in WP.No.30660/2012 dated 20.11.2012.

For Petitioners : Ms.V.Annalakshmi, GA

ORDER

[Order of the Court was made by N.SATHISH KUMAR, J.]

The above miscellaneous petition in WA.SR.No.5947/2018 has been filed to condone the delay of 1860 days in filing the writ appeal against the order dated 20.11.2012 passed in WP.No.30660/2012.

2 Before issuing notice in this matter, we have heard the learned Government Advocate appearing for the petitioners / appellants. After perusing the order of the learned Single Judge dated 20.11.2012, we are of the view that the petition for condonation of delay can be disposed of today itself, without ordering any notice to the other side.

3 For easy understanding, we also felt that the order of the learned Single Judge, which is impugned in this appeal, also to be extracted. The brief facts leading to filing of the writ appeal are as follows:

[a] Originally, the writ petition was filed by the respondent

herein / writ petitioner seeking writ of Prohibition, prohibiting the respondents/petitioners herein/appellants in the writ appeal, from insisting the writ petitioner to seek declaration of its Minority character every year or once in five years for Abdul Hakeem College, Melvisharam, Vellore, run by the writ petitioner.

[b] The above writ petition came to be allowed by the learned Single Judge of this Court in view of the legal dictum laid down in the judgment reported in **2009 [6] CTC 579 [Asan Memorial Association Vs. The State of Tamil Nadu]** as well as the order passed in **WP.No.24606/2012 [The Secretary, Loyola College [Autonomous], Sterling Road, Nungambakkam, Chennai-34 Vs. The State of Tamil Nadu Rep.by its Secretary, Department of Higher Education, Chennai-6 and 2 others]** dated **17.09.2012**, as against which, the present appeal came to be filed by the respondents in the writ petition, along with an application to condone the delay of 1860 days.

4 It is the stand of the petitioners/appellants in this miscellaneous petition that the certified order copy of the order was received only on 21.12.2012. Therefore, after obtaining the opinion of the Government Pleader on 04.01.2013, they have forwarded the same

to the Government for obtaining sanction and hence, there was a delay of 1860 days in preferring the appeal. The reason assigned in the affidavit also is not convincing to this Court. Though the legal advice was received on 04.01.2013 and received by the Government Authorities on 10.01.2013, the Government has slept over the matter for more than 5 years. Now, they have come up with this appeal without any satisfactory explanation. Though the delay is condoned by the Court normally in a liberal manner, the said approach cannot be extended mechanically without any plausible explanation. What is pitted against an ordinary litigant is also pitted against the Government before Court of law to establish a particular fact. Though the word "sufficient cause" has to be given a liberal approach, to exercise discretion for such liberal approach, there must be necessary facts in the affidavit filed in support of the same. But, on a perusal of the affidavit, we do not find plausible explanation for such delay except stating that there is an administrative delay. Such vague and bald explanation cannot be accepted mechanically. When Courts are extending such liberal approach mechanically, it has become a routine affairs of the Government Departments to file the appeals against every order passed by the Court. The present day scenario in filing the appeal, challenging every order by the Government Departments, clearly exhibits shirking responsibility of the Department Heads. In

fact, now the tendency has developed among the Department Heads, not to take any risk and to avoid any question relate to the litigant and only in order to avoid any query, the administrative side files these types of appeals, though there is no merit in the appeal.

5 The Court, in exercising discretion, particularly in these types of petitions, has to see the conduct, behaviour and attitude of a party relating to its inaction or negligence. The above factors are relevant to be taken into consideration as the fundamental principle is that Courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go-by in the name of liberal approach. There is an increasing tendency to perceive delay even in a non-serious matter. Hence, the delay due to nonchalant attitude should be curbed at the initial stage itself.

6 Considering the above aspects and further the affidavit filed for condoning the delay, did not contain any details as to how the delay of 1860 days had occurred and that no plausible and proper explanation was assigned for each and every day's delay, we are of the view that it is a fit case where the discretion cannot be exercised for condonation of the delay.

C.T.SELVAM, J.,
AND
N.SATHISH KUMAR, J.,

AP
7 Accordingly, the miscellaneous petition seeking
 condonation of 1860 days delay in preferring the appeal is dismissed.
 Consequently, the writ appeal also stands dismissed.

[CTSJ] [NSKJ]
 09.03.2018

Internet : Yes
 AP
 To

- 1.The Secretary, State of Tamil Nadu
 Higher Education Department, Fort St George,
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