

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

LPA No.1596 of 2017 (O&M)

Date of Decision : 06.09.2018

State of Haryana

....Appellant

Versus

Shri Diwan Shiksha Samiti and others

....Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Anil Mehta, DAG, Haryana.

MAHESH GROVER, J. (Oral)

This appeal is accompanied by an application for condonation of delay of 278 days. The impugned judgment was rendered on 04.07.2016 and the Deputy Advocate General opined it to be not a good case for filing the appeal, which opinion was then overturned by the Addl. Advocate General in his remarks on 20.09.2016. More than two months were therefore consumed by him in giving the opinion. After this it is stated in the affidavit that the file was received by the office of Advocate General, Haryana on 28.09.2016 to be referred to the office of Legal Remembrancer, Haryana, who concurred with the opinion of the Additional Advocate General vide his endorsement dated 05.10.2016.

Almost two weeks thereafter on 18.10.2016 a certified copy was applied to be delivered on 26.10.2016.

There is a clear default in this process as well. Subsequent thereto the file meandered from one department to another for the vetting of draft. It is stated that the department received it from the

Legal Cell on 25.11.2016 and then the draft was vetted by the Deputy District Attorney on 02.12.2016 and then submitted to the Secretary to the Government of Haryana, Industries and Commerce Department for approval and signatures, which was done on 17.12.2016. The file was then submitted to the office of Advocate General, Haryana for vetting but was returned by the dealing hand of the Advocate General's office on 09.01.2017 with an intimation that in such matters the grounds for filing of the LPA are to be prepared by the office of Advocate General, which was not done. Consequently, the file was again put up in the office of Advocate General, Haryana for preparation of draft. On 31.01.2017 grounds of appeal were prepared and forwarded to the department on 07.02.2017. Again a modified draft was prepared on 01.03.2017 and approved by the Director of Industries and Commerce-cum-Special Secretary to Government of Haryana on 14.03.2017. The process was finally concluded after various authorities approved and signed the noting. On 15.03.2017 the file was sent to the office of Advocate General, Haryana for vetting and then the dealing Assistant pointed out some discrepancies and suggested corrections in the format of index which were incorporated on 17.03.2017 and the file was returned to the office of Advocate General, who advised some more changes in the application for condonation of delay. On 20.03.2017, the office of Advocate General was contacted again who once again suggested some rectifications in the application for condonation of delay. Finally, the draft of the LPA was vetted on 21.03.2017 but on 22.03.2017 more

changes were suggested, which were complied with. On 27.03.2017 the draft reply was got vetted from the Addl. Advocate General and after approval/signatures and necessary attestations file was submitted to the Advocate General on 05.04.2017. This is how the present LPA was finally born.

The facts noted above as a justification for condonation of delay cannot be accepted. Most of the delay has either been caused in the office of Advocate General or in the department itself.

The State and its functionaries having ample legal assistance cannot be permitted such a laxity in approaching the Court. The State cannot be treated any differently from an ordinary litigant and rather the courts would lean sympathetically towards the ordinary litigant in the matters of condonation of delay rather than giving such an advantage to the State, who as noticed above is flush not only with legal personnel but resources as well.

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.”

There is another reason why we do not find the explanation offered in the application under Section 5 of the Limitation Act to be palatable. The judgments are now available on line and to formulate an opinion one does not have to wait for a certified copy. In this case, however, though this situation was not there and the opinion was not formulated on the basis of certified copy, yet the same was applied for belatedly. There is no explanation why the State woke up to apply for the certified copy after more than two months.

Taking into consideration all the facts, we are of the opinion that the delay is fatal to the cause of the State and consequently we dismiss the appeal on the ground of limitation.

(MAHESH GROVER)
JUDGE

06.09.2018
dss

(MAHABIR SINGH SINDHU)
JUDGE

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