

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: October 04, 2018

Judgment delivered on: October 29, 2018

+ LPA 89/2018, CM Nos. 8651/2018, 8654/2018, 8655/2018,
26300/2018 & 41259/2018
UNIVERSITY OF DELHI

..... Appellant

Through: Mr. Ramji Srinivasan, Sr. Adv.
and Mr. Dayan Krishnan,
Sr. Adv. with Mr. Mohinder J.S.
Rupal, Mr. Anurag Ojha,
Mr. Prasanna S., Mr. Prang
Newmai, Ms. Slomita Rai and
Mr. Bunmeet Singh Grover,
Advs.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. P.S. Narsimha, ASG with
Mr. Tarun Johri, Mr. Ankur
Gupta and Mr. Ankit Saini,
Advs. for DMRC
Mr. Anil Dabas, Adv. for R-1 &
R-1A
Ms. Mini Pushkarna, SC with
Ms. Swagata Bhuyan, Ms. Shiva
Pandey & Ms. Neha Goel,
Advs. for NDMC/R-7
Mr. Arvind Nigam, Sr. Adv.
with Mr. Manish Srivastava,
Mr. Mikhil Sharda &
Mr. Mehtaab
Singh Sandhu, Advs. for R-12
Mr. Prashant Singh, Adv. for
Intervenor

Mr. Rajiv Bansal, Sr. Adv. with
Mr. Namit Suri, Ms. Fiza Saluja,
Ms. Aprajita Gupta, Mr. Saaket
Jain, Mr. Kunal Kumar &
Mr. Dipender Chauhan, Advs.
for DDA
Mr. Febin Mathew with
Mr. Dhiraj Philip, Advs. for
R-11/DUAC

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

CM No. 8654/2018 u/S 151 CPC (condonation of delay)

1. This is an application filed by the appellant seeking condonation of 916 days delay in filing the appeal. Replies to the application have been filed by the respondent No.3 / DDA, respondent No.10 / DMRC, respondent No.12 / Young Builders Pvt. Limited. Rejoinders to the replies filed by the aforesaid respondents have also been filed by the appellant University.

2. Mr. Ramji Srinivasan, learned Senior Counsel appearing for the appellant University submitted that the present appeal has been filed on March 01, 2018 to assail the judgment dated April 27, 2015 of the learned Single Judge in W.P. (C) 2743/2012 after a delay of 916 days which was principally due to the reasons as

explained in the application and the rejoinder to the reply to the application, albeit, the hour to hour-minutes to minutes cause is not pleaded but bona fide factum of situation beyond the appellant control has been delineated. According to him, the present appeal is different from other litigations preferred or contested by the appellant. It is only the case where the approval from the Executive Council of the University of Delhi was required to be taken and before such approval various deliberations preceded so as to apprise the Executive Council of the different shades of the subject matter. Being the statutory body and adherence to the just method of decision making requires consultation with effective department of the University itself and therefore, the final say in the matter rest with the Executive Council which includes the Senior most Deans, democratically elected representatives of Teachers, Chancellor's nominee, Visitor's nominee, Registrar, Treasurer, Director South Campus and Vice Chancellor. He stated that there is no negligence or deliberate inaction or red-tapism on the part of the appellant. He stated that it is a settled law qua the condonation of delay that it is not the degree of delay but the cause of delay which assumes significance. In other words, it is the sufficiency

of reason which is the bed rock for deciding the condonation. He in support of his application has narrated the following facts:

(a) The judgment of learned Single Judge dated April 27, 2015 was sent by the counsel representing the University quite late. It was then placed before the legal cell of the University for examining the matter and deciding the further course of action. After a detailed scrutiny which took time since the case filed comprising of approximately 1001 pages was required to be examined.

(b) After going through the voluminous paper book it was opined that the matter be referred to Vice Chancellor for consideration and pursuant thereto a meeting was held wherein it was decided that the matter needs to be dealt with holistically having regard to all the issues decided by the learned Single Judge.

(c) The issue could not be taken up for consideration as the post of Vice Chancellor had fallen vacant w.e.f. October 28, 2015 and the important issue could be taken up for consideration after the new Vice Chancellor had assumed office and taken stock of things.

(d) That the selection process of Vice Chancellor had taken

considerable time as there are specific procedures to be followed for the same.

(e) That on March 10, 2016 the new Vice Chancellor joined the office and in order to ensure democratic functioning of the University, it was decided by the newly appointed Vice Chancellor to constitute a Committee. The terms of reference of the five member committee was to recommend the course of action to the University in the light of the dismissal of the writ petition filed by the University.

(f) The Committee gave its report on November 11, 2016 which included the University to take appropriate legal professional opinion and guidance.

(g) That based on the report of the Committee it was decided that the subject matter be referred to the Executive Council for the final decision in the matter.

(h) The matter was placed before the Executive Council on February 28, 2017 when the subject matter was discussed. It was again discussed on March 07, 2017 where a decision was taken to prefer an appeal against the order of the learned Single Judge dated April 27, 2015. In the meanwhile, representations were received from differently abled students and Faculty in the light

of the proposed project by the private builder at the very main entrance of the University. Such representations were required to be considered and were accordingly forwarded to the Equal Opportunity cell for consideration.

(i) The said cell examined the issue in the context of the Disability Act 2016 and probable outcome which the project in contraction with the Master Plan will entail to the vulnerable section of society. The Equal Opportunity cell submitted its report on April 28, 2017. The same was placed before the Competent Authority for a decision regarding the future course of action. The report of the equal opportunity cell was considered at various levels of the University which process entailed a period of five to six months before a considered opinion could be generated by the University of Delhi. The representations and the reports could be finally considered by the University of Delhi during the end of the year 2017.

(j) In the interregnum an accident occurred at Chattra Marg which led to the preparation of a report by the office of the Proctor of the University dated February 05, 2018 wherein it was recommended that the area be declared as accident prone. A reference is made about the filing of a PIL by differently abled

persons and the order passed therein.

(k) A legal opinion was sought, draft petition was prepared which thereafter got vetted and settled by the Senior Counsel. The finalized appeal was considered at the highest level of the University for taking a final decision which entailed sometime resulting in the filing of the appeal on March 01, 2018.

3. Mr. Ramji Srinivasan endeavor was to highlight that the aforesaid facts cannot be said to be accentuated by any inaction much less the deliberate one, in the delay. He also submitted the aforesaid facts suggest that all the authorities and bodies, who have taken part in the decision making process have exercised their independent mind after going through the files which approximately consisted of 1001 pages. He relied upon the judgment of the Supreme Court in the case of *Collector, Land Acquisition, Anantnag vs. Katiji*, AIR 1987 Supreme Court 1353 to contend that the provision of Section 5 of the Limitation Act has been enacted by the legislature in order to enable the Courts to do substantial justice to the parties by disposing of the matters on merits. According to him, the expression “*sufficient cause*” employed by the legislature is adequately elastic to enable the Courts to apply law in a meaningful manner which subserves

the ends of justice.

4. It was also the submission of Mr. Ramji Srinivasan that no prejudice is caused to respondent No.12 M/s Young Builders Pvt. Limited inasmuch as no rights of the said respondent are frustrated if the delay is condoned. Even after elapse of 3 years 19 days of the impugned judgment of the learned Single Judge, not a single brick is laid for construction at the project site in question and when the repercussion for the proposed construction is violation of certain rights of public at large in addition to specific bars contained in MPD-2021, it is essential that the matter is heard on merits. He also stated that the appellant University being in public service, any relief to the appellant will benefit public at large and neither any explanation was offered by the respondent No.12 justifying the public purpose for which the land in question was acquired from the Ministry of Defence and subsequently used for parking nor disclosed the identities of the members of the Group Housing Society for whose benefit the respondents have sought to prevail over the vital interest of the appellant and beneficiaries of its perpetual service.

5. In substance it is his submission that important question affecting public interest cannot be defeated on technical

objections raised by the builder who has not laid even a single brick till date. According to him, the site in question, given the vast traffic congestion in the nearby area, was used for parking and it has been stopped for no reason thus causing an unbearable disservice to society. He also stated that the site in question was originally owned by the Ministry of Defence and the site was acquired for “*public purpose*” at “*public expense*” but it has fallen into the hands of a private builder through a dubious and illegal process.

6. Finally, it is his submission that the cause of delay was unintentional due to the appellant’s limitation being public body to ensure a fair decision making process through Executive Council and the absence of Vice Chancellor both fall beyond the control of the University and shall not deprive a better cause to be lost on mere technicalities when no prejudice let alone the disadvantage suffered by the private builder as they themselves have allowed the time period “*free from any pending lis*” to be wasted for the reasons best known to them.

7. On the other hand, Mr. Arvind Nigam, learned Senior Counsel appearing for the respondent No.12 has drawn our attention to the reply filed by the said respondent to the

application and submitted that the present application for condonation of delay is liable to be dismissed on the sole ground that no justification, let alone “*sufficient cause*” whatsoever is offered by the appellant herein for delay of more than 1,013 days in filing the present appeal as the statutory period of the 30 days expired on May 26, 2015 itself under clause 4 of Part A(a) of Chapter 1, Volume V of the Delhi High Court Rules.

8. According to him, the reasons given for delay in filing the appeal are not only vague and lacks in material particulars but are also incorrect. The appellant is seeking condonation of delay more than 1000 days on the ground that the Apex Body of the appellant could not convene a meeting to decide on the appeal and hence, due to the said reason approval for filing the appeal could not be taken. It is submitted that the public institutions / government bodies such as Delhi University are under a special obligation to ensure that they perform their duties with diligence and commitment. The bureaucratic delay and inactions cannot be a ground to seek condonation of delay. A perusal of the application would reveal that there was no bona fide effort on part of the appellant to file the present appeal and explanation that the file was kept pending for several months / years due to

considerable degree of procedural red-tapism and approval cannot be ground for condonation of delay in filing appeal.

9. It is also submitted that apart from above, the falsity of stand of appellant is evident from the fact that during the period 2015 till December 2017, appellant has filed at least 27 writ petitions and 11 Letters Patent Appeals before this Court as per official website of this Court. In addition to the above, 392 cases were filed against the appellant and the same were defended by the appellant before this Court, which is evident from print out of website of this Court i.e. Annexure-R-1 of reply filed by the respondent No.12.

10. He stated that similarly, during said period, at least 31 number of cases were either filed by the Delhi University before the Supreme Court or defended by it. Hence, to allege that due to non-availability of Vice Chancellor or non-convening of meeting appeal could not be filed is incorrect and in fact a deliberate false statement. Further, if contention of the appellant is taken to be correct, it appears that no proceeding or work or decision has been taken by the appellant during the period, for which condonation of delay is sought. Even as per admissions in the application by appellant, there has been gross negligence and

deliberate inaction as well as lack of bona fides on part of the appellant University.

11. It is submitted that in Para 3(F) of application, even as per best case of the appellant, the appellant got alleged approval on February 28, 2017 / March 07, 2017 for filing appeal but there is no explanation as to why the said appeal was not filed immediately thereafter and was filed after more than a year (approx.363 days) from said alleged approval, which was filed only on March 01, 2018. The appellant is under obligation to explain each and every day of the delay but in the present case, there is no explanation at all. It is submitted that on this ground alone, application for condonation of delay is liable to be dismissed. He also stated that it is settled law that the condonation of delay cannot be a matter of course and that the State / Public bodies like Delhi University cannot claim any preferential or special treatment. 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 department. He would rely upon the judgments of the Supreme Court in *Post Master General & Ors. vs. Living*

Media India Ltd. & Anr. (2012) 3 SCC 563; Basawaraj & Anr. vs. The Spl. Land Acquisition Officer AIR 2014 SC 746 and Union of India & Ors. vs. Prithwi Singh & Ors. Diary No.8754 of 2018 to contend that the alleged justification of the appellant on account of inherited bureaucratic methodology of making several notes, transferring files, passing resolutions, convening meetings cannot be accepted, which binds everybody, including appellant University.

12. According to him, the present application is nothing but an abuse of process of law and a dilatory tactics. It is important to mention that even the writ petition was also filed by the appellant with delay of more than 7-8 years. In fact, the learned Single Judge has also taken note of the said fact and dismissed the writ petition also on the ground of delay and laches. A perusal of contents of the application would reveal that even as per their own admission appellant not only acted in negligent manner but also there is not a single explanation for delay in filing the present appeal, which can be said to be sufficient cause or reason, which was beyond control of the appellant. He seeks the dismissal of the application and also the appeal.

13. The DMRC has also filed reply to the application through

its counsel Mr. Tarun Johri. It is the case of the DMRC that the appeal filed after a delay of 1006 days does not explain the reasons which actually led to the delay in filing the appeal. It is stated that only vague averments in the application for condonation of delay have been made without submitting documentary proof of the same which are not admissible in the eyes of law. The DMRC seeks the dismissal of the application.

14. Mr. Rajiv Bansal, learned Senior Counsel appearing for the respondent No.3 DDA submitted that no justification, let alone sufficient cause has been offered by the appellant University for delay of more than 1000 days in filing the Appeal. He seeks the dismissal of the application on the sole ground that the reasons given for delay in filing the appeal are vague and the same also demonstrate lackadaisical approach of the appellant and even otherwise it is a settled proposition of law that departmental delay on account of non moving file from one department / officer to another cannot be a sufficient cause for condoning abnormal delay of more than 1000 days. According to Mr. Bansal the condonation of delay cannot be allowed as matter of routine and that the State / Public bodies like Delhi University cannot claim any preferential or special treatment. They are

under obligation to ensure that they performed their duties with due diligence and commitment.

15. Reference is made to the judgment of the Supreme Court in the case of *Post Master General & Ors.(supra)* and *Basawaraj & Anr.(supra)*. In the end the DDA seeks the dismissal of the application resultantly the appeal as well.

16. Having heard the learned counsel for the parties, suffice to state in substance the reasons given by the University for the delay is because of the due procedure followed in the matter and the time taken by the democratically elected Executive Council for taking a decision for final course of action after consulting all the stakeholders as such the delay is neither willful nor deliberate nor intentional.

17. From the facts stated above, it is a conceded position that the copy of the impugned judgment dated April 27, 2015 was received by the University in the month of May 2015. A plea has been taken that the position of the Vice Chancellor had become vacant on October 28, 2015 which is after five months of the receipt of the judgment from the Counsel. But much before that the limitation period had expired. Surely, the University consisting of a Law Department, and battery of Lawyers, was

aware of the limitation period, for filing an appeal. When the judgment was received, the Vice Chancellor was in place, so also the Executive Council but still no action was taken. The plea that a case file comprising of 1000 pages was required to be examined is also an excuse as it cannot be denied that the writ petition itself was filed by the University to which counter affidavits have been filed by the parties which would have been duly examined by the University before filing the rejoinders. Further, the writ petition must have been argued by the Counsel after due deliberations with the officers of the University. It cannot be said that the case file was examined for the first time after the impugned judgment had come.

18. So the plea that in the absence of Vice Chancellor the decision to file appeal could not have been taken cannot be accepted.

19. Even after the appointment of the new Vice Chancellor in October 2018, the plea that he had constituted a committee for proposing the line of action and further consideration of the issue by the Executive Council and further consultation with the other stakeholders including the consideration of representations by the Equal Opportunity cell is a process which is unheard of more

particularly for taking a decision to file an appeal. It is only a ploy to justify the delay.

20. The application for condonation of delay and the written submissions does not refer to the dates on which representations have been received from the individuals as well as groups of the University which were forwarded to the Equal Opportunity cell for consideration. In any case, the Equal Opportunity cell gave its report on April 28, 2017 and whereas the appeal was filed on March 01, 2018. The explanation given by the University justifying this period does not inspire confidence.

21. The submission of Mr. Nigam that between the period 2015 till December 2017 the appellant University had filed at least 27 Writ Petitions and 11 LPAs before this Court as seen from the official website, is appealing. In addition, the submission of Mr. Nigam that 392 cases were filed against the appellant University which have been defended by the appellant University before this Court and at least 31 number of cases were either filed by the Delhi University before the Supreme Court or defended by it, is also appealing.

22. The aforesaid has not been denied by the appellant University in its rejoinder which suggest that the plea of non

availability of Vice Chancellor because of which decision could not been taken for filing an appeal is an incorrect stand taken by the appellant University. So the reasons given by the University being not bonafide and do not inspire confidence, the same cannot be accepted.

23. Mr. Nigam is justified in relying upon the judgment of the Supreme Court in the case of Post master General & Ors. (supra) wherein in Paras 28 ad 29 the supreme Court has held as under:

“28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

29. 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 bonafide 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.”

24. Similarly in the case of Basawaraj & Anr. (supra) the Supreme Court in Paras 12 and 15 held as under:

“12. The Court has no power to extend the period of limitation on equitable grounds. “A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation.” The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim “dura lex sed lex” which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a

statute.

15. The law on the issue can be summarized to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamount to showing utter disregard to the legislature.”

25. The reliance placed by Mr. Srinivasan on the judgment of the Supreme Court in the case of ***Collector, Land Acquisition***

Anantnag (supra) is concerned, the facts are that an appeal preferred by the State of Jammu & Kashmir arising out of a decision enhancing compensation in respect of acquisition of land for a public purpose to the extent of Rs.14 lakhs by making an upward revision to the tune of 800%, which also raised important question as regards principles of valuation, was dismissed as time barred being four days beyond time. The application for condonation of delay was allowed upon satisfaction of the Court that sufficient cause existed, that too of four days. The said judgment shall not be applicable in the facts of this case, which according to us does not inspire confidence as such not bonafide, to hold that sufficient cause has been shown by the University seeking condonation of delay.

26. That apart, we also note that the learned Single Judge had also rejected the writ petition on the ground of delay and laches. Even the other respondents like DMRC / DDA have sought dismissal of the application as the same does not depict sufficient cause for the appellant University to approach after almost 900 days i.e. after more than two and a half years.

27. In view of above discussion, we do not see any reason to condone the delay of 916 days in filing the appeal. The

application is dismissed. Resultantly, the appeal as well as connected applications are also dismissed.

V. KAMESWAR RAO, J

CHIEF JUSTICE

OCTOBER 29, 2018/aky

