

IN THE HIGH COURT OF BOMBAY AT GOA

**MISCELLANEOUS CIVIL APPEAL NO.579 OF 2019
IN
STAMP NUMBER MAIN NO.4139/2018**

Union of India, Rep. by The Executive
Engineer, Margao. Applicant.

V/s.

K.S. Mamadapur and Bro, PWD
Contractors. Respondents.

Ms. Susan Linhares, the learned Additional Government Advocate for
the applicant.

Shri. Ashwin D. Bhobe, the learned Counsel for the respondent.

Coram : DAMA SESHADRI NAIDU, J.
Date : 5th December 2019.

P.C.:

The Government is the applicant and, as usual, it has filed the appeal before this Court with a delay of 108 days. To have that delay condoned, it has filed Civil Miscellaneous Application, and the respondent has resisted it.

2. The learned Additional Government Advocate has submitted that despite the State's diligent efforts, it could not file the appeal on time. It is said to be because of administrative delays. She has, indeed, has elaborated on the administrative difficulties the officials have faced in securing the permissions and so on, for their filing the appeal.

3. On the other hand the respondent's counsel has strenuously opposed the application. According to him, the applicant, though a State entity, enjoys no privilege, nor has it shown any valid ground for having the delay condoned. In this context, he has relied on the Supreme Court's *Postmaster General v. Living Media India Limited*¹.

4. Heard Ms. Susan Linhares, the learned Additional Government Advocate for the applicant and Shri. Ashwin D. Bhobe, the learned Counsel for the respondent.

5. True, the Courts have often held that neither the State in general nor its entities in particular enjoys any privilege before the Court of law, even on the question of delay condonation. The State, too, ought to explain each day's delay. If the delay was inordinate, the Court would not consider the State's request for condonation.

In *Living Media India*, the Supreme Court has noted that the persons concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in the Supreme Court. The officials cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, the Supreme Court posed a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before the Court.

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(2012) 3 SCC 563

Living Media India went onto observe that in a matter of condonation of delay, when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal approach has to be adopted, to advance the substantial justice. Then, it has held:

“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.

In *Living Media India*, the delay was 427 days—more than a year—and the Government put forward no plausible explanation for the delay condonation. Here, the delay is 108 days. And the applicant did explain the delay. The delay, to me, cannot be termed inordinate, and it stands sufficiently explained.

In these circumstances, I condone the delay of 108 days subject to the applicant’s paying ₹5,000/- as costs to the respondents. And the costs must be paid in two weeks after the Order is uploaded.

6. The Civil Miscellaneous Application is allowed.

Post the regular matter, after numbering, in the usual course.

DAMA SESHADRI NAIDU, J.

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