

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

I.A. No.1 of 2019 in CMA. No.193 of 2019

I.A.No.1 of 2019 in CMA No.194 of 2019

I.A. No.1 of 2019 in CMA. No.195 of 2019

I.A. No.1 of 2019 in CMA. No.196 of 2019

And

CMA. Nos.193, 194, 195 and 196 of 2019

COMMON JUDGMENT:

These applications have been filed to condone the delay of 629, 627, 620 and 620 days respectively, in preferring these appeals under Section 23 of the Railway Claims Tribunal Act, 1987 challenging the orders passed by the Railway Claims Tribunal, Secunderabad Bench at Secunderabad on 10.03.2017 in O.A.A. No.67 of 2010, O.A.(IIU) no.195 of 2010, O.A. No.(II U) No.210 of 2015 and O.A. No.(ii) (u) 161 of 2014.

2. In the affidavit filed in support of these applications, it is contended that the Tribunal had passed common order in these four cases and several other cases on 10.03.2017; that the appellant is not liable to pay any compensation as awarded by the said Tribunal, since without applying it's mind to the facts of each case, judgment was delivered; that C.M.A. No.524 of 2017 and 534 of 2017, against two of the orders passed by the said Tribunal, were filed in this Court; but due to circumstances beyond control of the appellant no stay orders could be obtained in the said matters.

3. It is contended that at that point of time, the appellant was advised that in cases of this nature, Writ Petitions can be filed under Art.226 of the Constitution of India questioning the common order on the ground of violation of procedure and principles of natural justice; so the appellant then filed W.P. No.17478 of 2018 and batch in this Court and obtained orders of stay initially, but later, all the Writ Petitions were dismissed on 17.09.2018 holding that there was an effective alternative remedy under Section 23 of the Act; insofar as the orders impugned in these O.As. are concerned, W.P. Nos.17809, 17485, 17529 and 17523 of 2018 were filed which were part of the batch which were dismissed on 17.09.2018 by the Single bench; that one Writ Appeal was filed by the appellant, questioning orders passed in one of the Writ Petitions, which was dismissed along with the batch, and the said Writ Appeal was also dismissed on 21.01.2018; and thereafter, the appellant obtained advise, placed the matter before the Railway Board and then filed the instant appeals. It is contended that the delay in filing the appeals is neither willful nor wanton but only due to the above reasons.

4. Counsel for the appellant contended that the Tribunal had not applied to its mind to any of the cases in respect of which it had delivered the impugned common order in the various O.As on 10.03.2017 adverse to the appellant; that the actions of the appellant are *bona fide* and it had taken steps

with due diligence and therefore, the delay in filing these appeals be condoned.

5. Admittedly, the orders impugned in these appeals had been pronounced by the Railway Claims Tribunal on 10.03.2017 and the appeals have been filed on 26.02.2019 by the appellant.

6. W.P. Nos.17809 of 2018, 17485, 17529 and 17523 of 2018 were admittedly filed on 03.05.2018 and were dismissed on 17.09.2018.

7. Under Section 23(3) of the Railway Claims Tribunal Act, 1987, appeal shall be filed under Section 23(1) within a period of 90 days from the date of order appealed against.

8. In the instant case, the order was pronounced on 10.03.2017 and 90 day period for filing the appeal expired on 06.06.2017. These three appeals, as stated supra, presented on 26.03.2019 i.e. with a delay of more than 600 days, after securing order copies of the Tribunal, by filing copy of applications on 18.02.2019, and when order copies were issued on 19.02.2019. Thus, there is a delay of more than 600 days in filing each of these appeals.

9. If the period 134 days during which period the four Writ Petitions filed challenging the orders impugned in these

appeals, were pending, is excluded the period of delay in filing the appeals would be 486.

10. In these applications, no reason is assigned why these appeals were not filed at the same time when the CMA. No.524 of 2017 and 534 of 2017 which were filed by the appellant challenging similar orders of the Railway Claims Tribunal.

11. In **S.Ganesharaju (Dead) Through LRS and another Vs. Narasamma (Dead) through LRS and another**¹ cited by counsel for appellant, an application to condone delay of 53 days in seeking review of an order passed by the High Court in a Civil Appeal was dismissed by the High Court. The Supreme Court reversed the same, condoned the said delay and directed the High Court to decide the matter. The Supreme Court considered the expression 'sufficient cause' appearing in Section 5 of the Limitation Act, 1963 and held that it has to be given a liberal construction so as to advance substantial justice; unless the respondents are able to show *mala fide* in not approaching the Court within the period of limitation, generally as a normal rule, the delay should be condoned. It observed that the trend of the Courts tilted more towards condoning delay and directing the parties to contest the matter on merits and rules of limitation are not meant to destroy or foreclose the right of the parties and that they are meant to see that parties do not resort to dilatory tactics but

¹ (2013) 11 Supreme Court Cases 341

seek their remedy promptly. It observed that the only guiding principle to be seen is whether a party has acted with reasonable diligence and had not been negligent and callous in the prosecution of the matter.

12. In **GMG Engineering Industries and Others Vs. ISSA Green Power Solution and Others**² cited by the counsel for appellant, the Supreme Court held that when there is no negligence, inaction or want of *bona fide* imputable to the appellants, the delay has to be condoned and the discretion under Section 5 of the Limitation Act cannot be exercised in arbitrary, vague or fanciful manner and the true test is to see whether the applicant has acted with due diligence. In that case, application to condone the delay of 355 days and 382 days to set aside *ex parte* decrees in two suits were filed and the said delays were condoned on payment of Rs.1,50,00,000/- and Rs.10,00,000/- by the Trial Court and this was also confirmed by the High Court. The Supreme Court observed that onerous conditions cannot be imposed while setting aside the *ex parte* decree and that since satisfactory explanation was given for the delay the orders passed by the trial Court have to be set aside.

13. In **Executive Officer, Antiyur Town Panchayat Vs. G.Arumugam (Dead) by Legal Representatives**³ also cited by counsel for appellant the Supreme Court observed that where

² (2015) 15 Supreme Court Cases 659

³ (2015) 3 Supreme Court Cases 569

there is an attempt on the part of the Government officials to defeat justice by causing delay, the Court, in view of the larger public interest, should take a lenient view in such situations, and condone the delay, howsoever huge may be the delay, and decide the matter on merits. In that case, the delay of 1373 days in filing a Second Appeal was condoned.

14. But in unreported judgment delivered by the Supreme Court on 12.03.2019 in Civil Appeal Nos.5051, 5052 of 2009 in **Estate Officer, Haryana Urban Development Authority and another Vs. Gopi Chand Atreja**, cited by counsel for respondents, the Supreme Court refused to interfere with an order of the High court refusing condone the delay of 1942 days in filing a Second Appeal before it. It observed that the appellants failed to discharge their duty to file appeals promptly and with due diligence despite availability of all facilities and infrastructure. It refused to accept the plea of the appellants therein that their lawyer did not take timely steps to file the appeal and held that such a fact would not constitute sufficient cause within the meaning of Section 5 of the Limitation Act. It observed that it was the duty of the appellant Organization to see that the appeal was filed in time and if its lawyer did not take interest, then the appellant should have engaged another lawyer to ensure that the appeal is filed in time.

15. In **Brijesh Kumar and Others Vs. State of Haryana and Others**⁴ the Supreme Court held that limitation period is prescribed to initiate litigation and existence of sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay; and if the delay is not properly, satisfactorily and convincingly explained, Court cannot condone the delay on sympathetic ground alone.

16. In **B.Madhuri Goud Vs. B.Damodar Reddy**⁵, the Supreme Court reiterated that the explanation for the delay must be *bona fide* and only if there is no negligence on the part of the applicant for condonation of delay, then the delay has to be condoned.

17. In **Postmaster General and others Vs. Living Media India Limited and another**⁶ the Supreme Court criticized the lackadaisical attitude of Government departments in filing matters with delay. It observed at paragraphs 26 to 29 as follows:

“26. In spite of affording another opportunity to file better affidavit by placing adequate material, neither the Department nor the person-in-charge has filed any explanation for not applying the certified copy within the prescribed period. The other dates mentioned in the affidavit which we have already extracted, clearly show that there was delay at every stage and except mentioning the dates of receipt of the

⁴ 2014 (11) SCC 351

⁵ 2012 (12) SCC 693

⁶ (2012) 3 SCC 563

file and the decision taken, there is no explanation as to why such delay had occasioned. Though it was stated by the Department that the delay was due to unavoidable circumstances and genuine difficulties, the fact remains that from day one the Department or the person/persons concerned have not evinced diligence in prosecuting the matter to this Court by taking appropriate steps.

27. It is not in dispute that the persons(s) 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 this Court. They 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, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

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 bona fides, 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 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 the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.”

18. From the above decisions, it is clear that if a party has acted with reasonable diligence and was not negligent in the prosecution of a matter, the Court may consider condoning the delay. Therefore, there must be plausible and acceptable explanation offered for the delay in approaching the Court. In a mechanical manner delay cannot be condoned when there is negligence on the part of the applicant in filing matters with delay.

19. In the instant case, when the appellant is aware about the common orders impugned passed in the four CMAs on 10.03.2017, it ought to have preferred appeals under Section 23 of the Act by 06.06.2017. It however, failed to do so on the pretext that in two other CMA. Nos.524 of 2017 and 534 of 2017, filed by it against other judgments also rendered by the Tribunal on that day, no stay orders were obtained. As stated

above, the Writ Petitions were filed more than a year after 10.03.2017 when the impugned orders were passed i.e. 03.05.2018 and they were dismissed on 17.09.2018. Even after the dismissal of the same, the appeals were preferred only on 26.02.2019. There is no explanation on the part of the appellant for not taking steps to file the appeal between 06.06.2017 and 03.05.2018 or between 17.9.2018 and 26.2.2019.

20. In my considered opinion, the appellant has been negligent and its officers had not shown due diligence in taking steps to file these appeals within the time prescribed by law and the explanation offered by the appellant, i.e. in other cases there was no stay granted, and so it did not file the appeals in time, cannot be said to be 'sufficient cause' for filing these appeals with delay of more than 600 days. Therefore, I do not find any merit in these applications and they are accordingly, dismissed.

21. Consequent to dismissal of the said applications, these appeals are also dismissed. There shall be no order as to costs.

22. As a sequel, miscellaneous petitions, if any, pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 29.04.2019
LSK