

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 183 of 2020**

1. State Of Chhattisgarh Through Its Secretary, Public Works Department, D K S, Bhawan, Raipur, Chhattisgarh (Now Mahanadi Bhawan, Atal Nagar, Nawa Raipur, Chhattisgarh)
2. The Engineer - In - Engineer, Public Works Department, O/o Public Works Department, Raipur, Chhattisgarh.
3. The Chief Engineer, Public Works Department, Raipur, Chhattisgarh.

---- Appellants**Versus**

- Divya Kishore Tandi S/o Kumar Tandi Aged About 49 Years Working As Driver O/o E N C Public Works Department, Sirpur Bhawan, Raipur, Chhattisgarh R/o Vinoba Bhawe Nagar Near Shanti Nagar Girls High School Raipur District Raipur, Chhattisgarh

---- Respondent**&****WA No. 201 of 2020**

1. State Of Chhattisgarh Through Its Secretary, Public Works Department, Dks Bhawan, Raipur Chhattisgarh Now Mahanadi Bhawan, Atal Nagar, Nawa Raipur Chhattisgarh, District : Raipur, Chhattisgarh
2. The Engineer-In-Engineer Public Works Department, O/o Public Works Department, Raipur, Chhattisgarh
3. The Chief Engineer Public Works Department, Raipur Chhattisgarh

---- Appellants**Versus**

- Mohan Singh Thakur S/o Late Kesar Singh Thakur Aged About 49 Years Working As Driver O/o Enc Public Works Department, Sirpur Bhawan, Raipur, Chhattisgarh R/o Q. No. I-10, P. W. D. Colony, Bairan, Bazaar, Raipur District Raipur Chhattisgarh

---- Respondent

For Appellant / State : Shri Gagan Tiwari, Dy.G.A.

For Respondents : None

**D.B.:- Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor**

Order On Board

14/09/2021

Heard on prayer for condonation of delay.

Learned counsel for the appellant / State would submit that the appeals are barred by 302 days which has been duly explained. He submits that as it is a matter of regularization of the employee in the department at different stages, certain time was consumed because of unavoidable circumstances and it is not that the authorities were sleeping over the matter.

2. The delay is sought to be explained as below -

“a. On 22/02/2019- The impugned order was passed by the Hon'ble High Court.

b. On 11/06/2019 – After receipt of the order under challenge, the department has gone through the order passed by the Hon'ble Court and thought it appropriate to assail the order under challenge before the Hon'ble Division Bench and accordingly, a proposal seeking permission for filing of writ appeal and appointment of Officer In Charge of the case was forwarded to the Department, by the Engineer-in-Charge, PWD, Atal Nagar, Raipur (CG).

c. On 29/06/2019 – Acting upon the aforesaid proposal the Executive Engineer, PWD, E/M Division, Raipur (CG) has been appointed as Officer In Charge of the case with direction to contact the office of the Advocate General for filing of appeal against the order under appeal.

d. On 11/07/2019 – The said OIC in turn approached the office of the Advocate General, Bilaspur for filing of appeal and in turn, he was asked for production of permission for filing of appeal from the department of Law and Legislative Affairs upon which a request for obtaining the permission from the Law Department was made to the Department.

e. On 27/08/2019 – The said OIC requested to the Engineer-in-Chief, PWD, Raipur to provide the opinion, if any given by the office

of the Advocate General for filing of appeal against the order under appeal before the Hon'ble Division Bench of the Hon'ble High Court of Chhattisgarh.

f. On 31/08/2019 – The OIC was directed to immediately obtain the opinion from the office of the Advocate General, Bilaspur for filing of appeal against the order under appeal.

g. On 07/09/2019 – Opinion was sought from the office of the Advocate General, Bilaspur on the order dated 22/02/2019 passed by the Hon'ble Court in W.P.(S) No.1312/2012 as to whether the said order could be assailed before the Hon'ble Division Bench or not.

h. On 16-17/09/2019 – Opinion was given by the office of the Advocate General stating therein that the order of the Hon'ble Single Bench can be assailed before the Hon'ble Division Bench in writ appeal.

i. On 23/12/2019 – Permission for filing writ appeal against the order under appeal has been granted by the Department of Law and Legislative Affairs.

j. On 06/01/2020 – The present Officer-in-Charge has immediately approached the office of the Advocate General and in turn, he was directed to bring the relevant records of the case.

k. That, after collecting the relevant records pertaining to the case, today the present Officer In Charge has again contacted the office of the Advocate General for filing of the instant appeal and the appeal has been drafted today itself and is being filed today without any further delay.”

3. The reading of the aforesaid reasons and the development with which the files moved from one office to another, we do not find that the appellant acted with promptitude but it only reflects that the authorities were proceeding with snails pace. The recent judicial pronouncement of the Hon'ble Supreme Court in at least two decisions have clearly spelt out that such administrative lethargy cannot be accepted as sufficient cause, so as to condone delay.

4. Recent judicial pronouncement of the Hon'ble Supreme Court while dealing with such aspect of inordinate delay in filing proceeding before the Court have been dealt with iron hands and it has been held that such delay cannot be condoned mechanically unless sufficient cause is shown for condonation of delay. The total period of delay is more than 200 days.

5. In the case of **State of Madhya Pradesh & Ors. V. Bherulal, 2020 SCC Online SC 849**, it was found that the appeal filed by the State was with delay of 663 days. The cause shown for inordinate delay in that case was due to unavailability of documents and the process of arranging documents and also a reference to bureaucratic process works. In the aforesaid factual context, Their Lordships of the Supreme Court, referring to its earlier decision, observed as below-

“3. No doubt, some leeway is given for the Government inefficiencies but the sad part is that the authorities keep on relying on judicial pronouncements for a period of time when technology had not advanced and a greater leeway was given to the Government (Collector, Land Acquisition, Anantnag & Anr vs. Mst. Katiji & Ors. (1987) 2 SCC 107). This position is more than elucidated by the judgment of this Court in Office of the Chief Post Master General & Ors. v. Living Media India Ltd. & Anr. (2012) 3 SCC 563 where the Court observed as under:

“12) It is not in dispute that the person(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.

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.

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 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 redtape 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.” Eight years hence the judgment is still unheeded! “

6. In another decision, in the case of **Government of Maharashtra (Water Resources Department) V. M/s. Borse Brothers Engineers and Contractors Pvt. Ltd., 2021 SCC Online SC 233** also, in the factual context of long delay of 75 days, the explanation was found to be short of any sufficient cause. The explanation in the aforesaid case was noted in para 65 of the said judgment as below -

“65. That apart, on the facts of this appeal, there is a long delay of 75 days beyond the period of 60 days provided by the Commercial Courts Act. Despite the fact that a certified copy of the District Court’s judgment was obtained by the respondent on 27.04.2019, the appeal was filed only on 09.09.2019, the explanation for delay being:

“2. That, the certified copy of the order dated 01/04/2013 was received by the appellant on 27/04/2019. Thereafter the matter was placed before the CGM purchase MPPKVCL for the compliance of the order. The same was then sent to the law officer, MPPKVCL for opinion.

3. That after taking opinion for appeal, and approval of the

concerned authorities, the officer-in-charge was appointed vide order dated 23/07/2019.

4. That, thereafter due to bulky records of the case and for procurement of the necessary documents some delay has been caused however, the appeal has been prepared and filed to pursuant to the same and further delay.

5. That due to the aforesaid procedural approval and since the appellant is a public entity formed under the Energy department of the State Government, the delay caused in filing the appeal is bonafide and which deserve[s] to be condoned.”

However, the Hon'ble Supreme Court was not satisfied with the cause shown on the above lines and it was held as below :

“66. This explanation falls woefully short of making out any sufficient cause. This appeal is therefore allowed and the condonation of delay is set aside on this score also.”

Thus, the principles laid down in the aforesaid decisions applied to the facts and circumstances of the present case and cause shown to seek condonation of delay, we find unable to condone the delay.

It is not a case where the dispute is of such a nature that this Court would be inclined to invoke its jurisdiction under Article 226 of the Constitution of India and condone the delay in filing appeal. The appeals are, accordingly, dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge