

HIGH COURT OF CHHATTISGARH, BILASPUR

ARBA No.5 of 2020

1. South Eastern Coalfields Limited Through - The Chairman Cum Managing Director, SECL Bhavan, Seepat Road, Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh
2. The General Manager(Civil) South Eastern Coalfields Limited, SECL Bhavan, Seepat Road, Bilaspur Chhattisgarh
3. The Staff Officer(Civil) SECL Seepat Road, Bilaspur Chhattisgarh

---- Appellants

Versus

M/s Gulab Chand Jain Civil Contractors, Parshwa Apartments, Choubey Colony Raipur Chhattisgarh, Through Its Partner Shri Pukhraj Parakh, Aged About 50 Years,R/o Choubey Colony, Raipur Chhattisgarh **---- Respondent**

For Appellants	:	Shri Vaibhav Shukla, Advocate
For Respondent	:	Shri Vidyanand Mishra, Advocate

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava

Hon'ble Smt. Justice Vimla Singh Kapoor

Order On Board

03/08/2021

Heard.

1. There is an application for condonation of delay in filing this appeal which is barred by 204 days.
2. The contents of the application for condonation of delay says that the appellant was not aware about the award order passed by the Commercial Court from 14.03.2019 to 15.09.2019 which occasioned delay.
3. This statement made in the application is not reflected from any of the communications and note-sheets which have been filed by the appellant in support of their application for condonation of delay. It has been stated that the matter was not communicated to the appellant by its counsel. This is being raised for the first time while filing this application. The communications and note-sheets which have

been placed on record nowhere contained this fact that the lawyer did not communicate the order to the appellant. All that it says that one Branch of the office of the appellant swung into action after expiry of six months. The appellant have to blame themselves for such kind of lethargic action. The allegation of non-communication from the lawyer is bereft of merits and appears to be more an afterthought. There is nothing in the record to show that any letter was sent to the lawyer for not sending the copy of the order of the Commercial Court and not informing the matter to the appellant.

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 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." 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.”

7. In view of the above, no sufficient cause is shown for condonation of delay. Therefore, the application for condonation of delay is rejected and appeal is dismissed as barred by limitation.

Sd/-

(Manindra Mohan Shrivastava)

Judge

Sd/-

(Vimla Singh Kapoor)

Judge