

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2021

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THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.A.No.SR69382 of 2020
and C.M.P.No.6960 of 2021

1. The Managing Director,
Tamil Nadu Water Supply and
Drainage Board,
No.31, Kamarajar Salai,
Chepauk, Chennai-600 005.
2. S.Venkatesan,
Deputy Chief Engineer,
Tamilnadu Water Supply and
Drainage Board,
Office of the Chief Engineer,
Northern Region, Vellore-6. .. Appellants/Respondents

Vs.

G.Sivaprakasam,
Work Inspector Grade-I,
Tamil Nadu Water Supply and
Drainage Board, RWS Division,
Arni-632 301. .. Petitioner/Respondent

* * *

W.A.No.SR69382 of 2020 : Writ Appeal filed under Clause 15 of
the Letters Patent against the order dated 24.04.2018 in
W.P.No.26108 of 2003.

Prayer in C.M.P.No.6960 of 2021 : Miscellaneous Petition filed under Section 5 of the Limitation Act to condone the delay of 665 days in filing the Writ Appeal.

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For Petitioners/ : Mr.S.Eraskine Leo
Appellants

For Respondent : Mr.G.P.Arivuchudar
for M/s.Law Square

J U D G E M E N T

PUSHPA SATHYANARAYANA, J.

The Tamil Nadu Water Supply and Drainage Board filed Writ Appeal No.SR69382 of 2020, questioning the order dated 24.04.2018 passed in W.P.No.26108 of 2003 along with the Miscellaneous Petition seeking to condone the delay of 665 days in filing the appeal.

2. The learned Counsel appearing for the appellants contended that the respondent was proceeded with departmentally on the imputations of misconduct and misbehaviour, which was questioned by him in W.P.No.26108 of 2003 and this Court vide order dated 24.04.2018 quashed the charge memo holding that the invocation of the provisions of the TWAD Board Employees (Discipline and Appeal) Regulations, 1972 was not wrong and the

appellants ought to have invoked the standing Orders of the Board to do so. Holding so, this Court, while quashing the charge memo, gave liberty to the respondent to issue fresh charge memo invoking the standing order. The learned counsel contended that the Standing Orders are not adopted by the appellants Board and thus, the learned Single Judge ought not to have quashed the charge memo. The learned counsel also contended that the appellants in the process of getting legal opinion, consumed sometime, and when they were about to file the writ appeal, COVID-19 lockdown was imposed by the State, which caused the delay in filing the appeal, which is neither willful nor wanton and prayed to condone the delay.

3. Heard the learned counsel for the respondent on the above submissions and perused the counter-affidavit of the respondent.

4. The only reason assigned in the affidavit filed by the appellants to canvass the condonation of delay application is that the process of obtaining legal opinion to file the appeal took sometime and before filing the appeal, COVID-19 lockdown was

imposed by the State, and thus, there was a delay of 665 days in filing the appeal.

5. At this juncture, it is apposite to quote the judgment of the Hon'ble Supreme Court in **Esha Battacharjee V. Management Committee of Raghunathpur Nafar Academy, 2013(12) SCC 649**, wherein, the Hon'ble Apex Court culled out certain guidelines, by referring a catena of earlier decisions, while dealing with the application for condonation of delay and the excerpts of the same would run thus:

"21.From the aforesaid authorities the principles that can broadly be culled out are:

(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the

counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the

paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude."

6. In the said judgment, the Hon'ble Apex Court also added the following guidelines :

"16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters."

7. Applying the above guidelines, we are of the view that the appellants did not assign convincing reasons to condone the inordinate delay of 665 days in filing the appeal and the condonation of delay application deserves to be dismissed.

8. Accordingly, C.M.P.No.6960 of 2021 is dismissed and the writ appeal is rejected at the S.R. stage. No costs.

(P.S.N., J.) (K.R., J.)
02.08.2021

Index : Yes / No
Internet: Yes
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