



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Wednesday, the Twenty Eighth day of July Two Thousand and Twenty One

WEB COPY

PRESENT

The Hon'ble Mr. Justice K.KALYANASUNDARAM
and
The Hon'ble Mr. Justice B.PUGALENDHI

CMP(MD) No.5194 of 2020 in
A.S.(MD) No.SR34667 of 2010

THE EXECUTIVE ENGINEER,
DINDIGUL NORTH,
TAMILNADU ELECTRICITY BOARD,
ANGU NAGAR, MEENAKSHINAYAKANPATTI,
ANGUNAGAR POST, DINDIGUL TOWN.

... PETITIONER/PETITIONER/
APPELLANT

Vs

1. M/S.VIJAYALAKSHMI PLASTICS COMPANY,
REP BY ITS PROPRIETOR,
P.SAGADEVAN (DIED) .

... 1st RESPONDENT/SOLE RESPONDENT/
SOLE RESPONDENT

2. VIJAYALAKSHMI
3. S.MAHESWARN
4. LALITHA
5. NANDHAKUMAR
6. SURESHBABU
7. BALAJI

... 2 to 7 PROPOSED RESPONDENTS OF
SOLE RESPONDENT

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to condone the delay of 1855 days in filing restoration petition against for non-payment of batta in MP(MD) NO. 2 of 2011 in AS(MD) No. SR 34667 of 2010.

PRAYER in A.S.(MD) No.SR34667 of 2010 :

To set aside the judgment and decree made in O.S.No.23/2005, dated 31.3.2009, on the file of Additional District, Fast Track Court, Dindigul.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mrs.S.SRIMATHY, Advocate for the petitioner and of Mrs.S.DEVASENA, Advocate on behalf of the respondents 2 to 7, the court made the following order:-

**[Order of the Court was made by B.PUGALENDHI, J]**

This civil miscellaneous petition has been filed for condoning the delay of 1855 days in filing the restoration petition against the order dated 14.08.2015 for non-payment of batta in M.P.(MD)No.2 of 2011 in A.S.(MD)No.SR34667 of 2010.

2. The petitioner / Executive Engineer, Dindigul North, Tamil Nadu Electricity Board is the appellant in the appeal suit and their case is that the first respondent company was involved in energy theft to the tune of 1,91,743 units, amounting to Rs.24,85,469/-. The assessment order dated 10.04.2000 passed by them was put into challenge by the first respondent by filing a suit in O.S.No.224 of 2000 and the same was dismissed on 18.03.2004. In the meantime, the Board has filed a suit in O.S.No.321 of 2000 and thereafter, renumbered as O.S.No.23 of 2005 praying for recovery of the assessed amount with interest. This suit was dismissed on 31.03.2009 and the same was intended to be challenged in the proposed appeal.

3. Mrs.S.Srimathy, learned Counsel for the petitioner / Board submitted that after the dismissal of the suit, a legal opinion was obtained from the then Standing Counsel on 15.07.2009, funds for filing charges were sanctioned on 19.10.2009 and a Demand Draft for a sum of Rs.2,12,528/- for payment of court fee was handed over to the then Standing Counsel. It was also informed by the then Counsel that A.S.(MD)No.SR43730 of 2009 was filed with a delay of 120 days. Therefore, a delay affidavit was prepared.

4. In the meantime, the printed copy of the judgment and decree in O.S.No.23 of 2005 was obtained on 24.05.2010 and the same was forwarded to the then Counsel. On receipt of the same, the then Counsel has filed a fresh appeal on 23.08.2010 and obtained new stamp register number in A.S.(MD)No.SR34667 of 2010. But it was not properly communicated to them. In the said appeal petition, there was a delay in paying the deficit Court fee as well as delay in re-presentation. The delay in re-presentation was allowed and notice was ordered in the petition to condone the delay in paying the deficit Court fee. But the then Standing Counsel failed to pay the batta in time and therefore, by order dated 14.08.2015, the petition was dismissed.

5. According to the petitioner / Board, the Counsel to represent them was changed in the year 2011 and when they queried about the status of the appeal, the status regarding A.S.(MD) No.SR43730 of 2009 alone was provided to them, that it is pending. Once again, in the year 2019, the Counsel to represent them was revised and then only, they came to know that their appeal papers are in A.S.(MD)No.SR34667 of 2010 and the same was dismissed for non-payment of batta on 14.08.2015. In the meantime, the first respondent died and therefore, by impleading the legal heirs of the first respondent, the present petition to condone the delay in filing the restoration petition was filed. Since the delay is



neither wilful nor wanton, the learned Counsel prayed for condoning the delay.

6. Mrs.S.Devasena, learned Counsel for the respondents 2 to 7 objected for condoning the delay.

WEB COPY

7. This Court feels it relevant to refer to the order passed by the the Hon'ble Supreme Court in **Post Master General and Others Vs. Living Media India Limited and another [(2012) 3 SCC 563]**, wherein while dealing with the application to condone the delay in filing the appeal, it has been held as follows:

"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. 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.

30. 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. Accordingly, the appeals are liable to be dismissed on the ground of delay."

8. Following the above cited decision, the Hon'ble Supreme Court in the case of **State of Madhya Pradesh and Others Vs Bherulal [SLP(C) Diary No.9217 of 2020, dated 15.10.2020]** has held as follows:

6. We are also of the view that the aforesaid approach is being adopted in what we have categorized earlier as



"certificate cases". The object appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed. We have on earlier occasions also strongly deprecated such a practice and process. There seems to be no improvement. The purpose of coming to this Court is not to obtain such certificates and if the Government suffers losses, it is time when the concerned officer responsible for the same bears the consequences. The irony is that in none of the cases any action is taken against the officers, who sit on the files and do nothing. It is presumed that this Court will condone the delay and even in making submissions, straight away counsels appear to address on merits without referring even to the aspect of limitation as happened in this case till we pointed out to the counsel that he must first address us on the question of limitation.

7. We are thus, constrained to send a signal and we propose to do in all matters today, where there are such inordinate delays that the Government or State authorities coming before us must pay for wastage of judicial time which has its own value. Such costs can be recovered from the officers responsible.

8. Looking to the period of delay and the casual manner in which the application has been worded, we consider appropriate to impose costs on the petitioner- State of Rs.25,000/- (Rupees twenty five thousand) to be deposited with the Mediation and Conciliation Project Committee. The amount be deposited in four weeks. The amount be recovered from the officers responsible for the delay in filing the special leave petition and a certificate of recovery of the said amount be also filed in this Court within the said period of time.

... ..

10. We make it clear that if the aforesaid order is not complied within time, we will be constrained to initiate contempt proceedings against the Chief Secretary."

9. In a condone delay application filed by the Government in **C.M.P. (MD) No.1519 of 2020 in W.A. (MD) No.SR6092 of 2020**, a Division Bench of this Court, wherein, Myself [Justice B.PUGALENDHI] was a party to the judgment, has held as follows:

"12. Most of the appeals by the Government are filed with enormous delay. It would expose the lack of follow up with the cases, which results in facing of contempt proceedings before the Court. Approximately there are 960 contempt petitions and 4232 contempt petitions pending before this Bench and the Principal Seat at Chennai respectively.



13. Most of the orders passed by the Court are not taken to the knowledge of the Heads of the Department deliberately or by oversight. The lack of follow up on the Court cases end up with facing of contempt proceedings and statutory notice. The valuable times of the Heads of the Department are wasted on account of these delays. The Heads of the Department must have a meeting at least once in a month and review the progress on the Court cases, which can ensure the compliance of the orders of the Court, wherever possible and if could not be complied with, appeals can be filed without any loss of time."

10. In yet another petition filed by the Government for condoning the delay in **C.M.P. (MD) No. 2892 of 2020 in W.A. (MD) No. SR67917 of 2019**, a Division Bench of this Court, wherein, Myself [Justice B.PUGALENDHI] was a party to the judgment, has held as follows:

"8. In fact, the trend of filing the appeal belatedly, now-a-days, has become a habit on the part of the officials for the reasons best known to them, even though the Government has to pay heavy costs in case the delay is condoned or to spend huge money by implementing the order passed by the Courts. Sometimes, contempt petitions are also filed and the order passed in the writ petition itself would not have been brought to the notice of the authority, who is required to comply with the order. Only at the eleventh hour, if the order is brought to the notice of the concerned authorities, who are required to comply with the same, at the stage of contempt, they would eventually comply with the order, fearing order in the contempt petition, even though the order requires a re-consideration in the appeal. It is learnt that a few unscrupulous corrupt elements, in the Department itself, by deliberate design with the connivance of the litigants, get the orders implemented, which are required to be assailed in the appeal, without filing the appeal in time and bringing to the notice of the higher officials only when orders in contempt petitions are to be passed.

9. Whenever orders are passed, it should be brought to the notice of the concerned authority, immediately, who is supposed to implement the order. Any staff, who is negligent in bringing the orders to the notice of the authority, who is supposed to implement the order, should be dealt with accordingly. Then only discipline can be inculcated in the minds of the staff. Otherwise, there will not be any discipline and the Courts will be flooded with 'n'-number of condone delay petitions and contempt petitions. To achieve such discipline and to maintain the same, this Court is of the view imposing costs as against the officers is necessary."



11. In the said decision, this Court has further held as follows:

"12. We are moving towards Digitalization. Getting an order copy manually is a day-old day practice and the orders are being uploaded in the official website of this Court, then and there. Within a few days, orders are being uploaded and the higher officials could very well verify in the website, as to whether any orders have been passed against them, so that they can take note of it and act accordingly. All daily orders and judgments, except the cases relating to matrimonial matters (Family Court), Juvenile Justice Act, Official Secrets Act, Intelligence Agencies, Domestic violence, Sexual offences against Women and Children, etc., are uploaded in the High Court's website. All the Departments can very well monitor the cases, through the High Court's website about the progress of the case.

13. In this regard, this Court feels it appropriate to refer to the order passed by a learned Single Judge of this Court in the case of **P.Gunasekara Senthil Vs The Assistant Electricity Engineer (Operation and Maintenance), TANGEDCO, Tiruppur** [W.P.No.5 of 2019, decided on 08.01.2019], wherein, the learned Single Judge has held as follows:

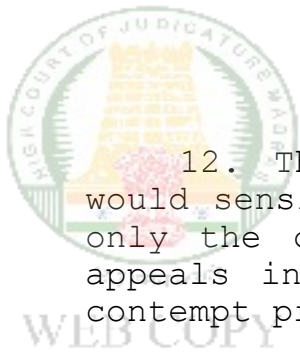
... ..

1. It is also brought to the notice of this Court that pursuant to the directions in **P.Gunasekara Senthil's** case (supra), the Chief Secretary to Government, has issued a Circular in No.5196/CCMS/2019-1, Public (CCMS) Department, dated 12.02.2019, directing all the Heads of the Department to scrupulously follow the directions of this Court in its letter and spirit.

2.

15. While appreciating the timely effort taken by the Chief Secretary by issuing the aforesaid circular, this Court is of the view that the higher officials have to sensitize the lower officials about the importance of filing appeals in time and to follow up the cases before the Courts, in addition to the importance of compliance of the Court orders."

11. In this case though there is a huge delay, considering the reasons adduced for the delay, this Court is inclined to condone the delay, however, with a cost of Rs.25,000/- [Rupees Twenty Five Thousand only] payable by the petitioner to "ROYAL VISION" - A school for children and individuals with different (physical and intellectual) abilities, [Account No. - 31868197294, IFSC Code - <https://www.civilservicecourts.org/> State Bank of India - Avaniapuram Branch, Madurai], within a period of two weeks from the date of receipt of a copy of this order.



12. This Court hopes and trusts that the higher authorities would sensitize the Officials concerned about the importance of not only the compliance of the Court orders, but also the filing of appeals in time, wherever necessary, in order to avoid facing of contempt proceedings.

In fine, this petition is ordered in the above terms.

sd/-
28/07/2021

/ TRUE COPY /

/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

THE JUDGE,
ADDITIONAL DISTRICT, FAST TRACK COURT,
DINDIGUL.

COPY TO :

THE OFFICER-INCHARGE,
"ROYAL VISION SPECIAL SCHOOL",
2/845, PARAMPUPATTI ROAD,
S N COLLEGE POST, PERUNGUDI,
TAMILNADU-625022.

ORDER
IN
CMP(MD) No.5194 of 2020 in
A.S.(MD) No.SR34667 of 2010
Date :28/07/2021

gk
USK/JM/SAR-I : 03/08/2021 : 7P/3C