

223-2

**IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH**

LPA-1828-2019 (O&M)  
**Date of decision: 28.02.2023**

**STATE OF HARYANA & OTHERS**

**... Appellants**

**Versus**

**VIKAS KUMAR GUPTA AND ANOTHER**

**... Respondents**

**CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO,  
HON'BLE MRS. JUSTICE SUKHVINDER KAUR.**

**Present:** Ms. Shruti Goyal Jain, DAG, Haryana.

Mr. N.R. Dahiya, Advocate for the respondents.

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**M.S. RAMACHANDRA RAO, J. (ORAL)**

**CM-4115-LPA-2019**

This is an application for condonation of delay of 58 days in re-filing of the appeal.

For the reasons assigned in the application, the same is allowed and the delay of 58 days in re-filing of the appeal is hereby condoned.

CM stands disposed of.

**CM-4116-LPA-2019 and**

**LPA-1828-2019 (O&M)**

This Letter Patent Appeal is preferred by the State challenging order dated 27.06.2017 passed in CWP-14004 of 2017 by the learned Single Judge of this Court.

This appeal has been preferred on 04.06.2019 and an application CM-4116-LPA-2019 has been filed to condone the delay of 707 days in filing the said appeal.

It is stated in the application for condonation of delay that the learned Single Judge had allowed the writ petition relying upon the decision in CWP-9711-2012 decided on 19.05.2017 against which LPA No.1119 of 2019 had been preferred by the State; that after the CWP-14004 of 2017 was allowed on 27.06.2017, Learned counsel for the respondents in appeal/writ petitioners had served a legal notice on 30.07.2017 seeking compliance of the said order passed by the learned Single Judge; that the matter remained under consideration at the Head Office Level and in the meantime petitioner No.1 had moved an application through the Sub-Divisional Engineer No.2, Panipat to promote him to the post of Junior Engineer in terms of the order passed by the Learned Single Judge.

It is contended that the Sub-Divisional Engineer of Public Health Engineering sub-Division No.2, Panipat referred the matter vide Memo No.118 dated 01.02.2018 to the Executive Engineer Public Health Engineering Division-I, Panipat, and also referred the matter vide memo No. 901 dated 01.02.20218 to the Superintending Engineer, Karnal, and thereafter, Superintending Engineer, Karnal referred the matter to the Engineer-in-Chief vide No.1219 dated 06.02.2018.

It is further stated that the respondent-petitioner No.2 also submitted a representation on 15.02.2018 to the Engineer-in-Chief, Public Health Engineering Department for compliance with the order of the learned Single Judge; and in view of the several representations received by employees seeking promotion to the Post of Junior Engineer on the basis of Diploma passed by the from JRN, Rajasthan Vidyapeeth University through distance education mode, the appellant Department had decided to seek advice of the Chief Secretary, Haryana and the matter was then referred to Chief Secretary to Government of

It is stated that the Chief Secretary gave advice on 22.02.2018 and the appellant then considered the claim of the respondents-petitioners and rejected it on 09.03.2018 and 22.03.2018.

It is contended that thereafter the respondents/petitioners filed COCP No.929 of 2018 alleging non-compliance of the order dated 27.06.2017 passed by the learned Single Judge of this Court.

It is further contended that CWP No. 14004 of 2017, out of which this LPA arises, had been disposed of on the basis of orders passed in CWP-9711 of 2012 decided on 19.05.2017, that a Review Application No. 406 of 2017 was filed by the appellant in CWP No. 9711 of 2012, that the said Review Application was dismissed on 08.04. 2019.

It is also stated that the appellants then referred the matter with the advice of the Advocate General, Haryana on 16.05.2019 and the Advocate General gave opinion on 23.05.2019 to file this appeal and thus this appeal came to be filed on 04.06.2019.

It is stated that the delay of 707 days in filing the appeal is not intentional but due to administrative exigencies.

Learned counsel for the State has placed reliance on the decision of the Supreme Court in ***Oriental Aroma Chemical Industries Ltd. Vs. Gujrat Industrial Development Corporation and Another<sup>1</sup>***.

In the reply filed by the respondents to the said application, it is contended that in terms of Article 117 of the Limitation Act, 1963 time period for filing of appeal from a decree or order of any High Court to the same Court is 30 days from the date of decree or order; and the delay of 707 days in the instant case is more than 23 times the period of limitation prescribed in the said Article.

It is stated that the said delay is shocking and abnormally large is not liable to be condoned because the Government does not suffer from any disability and has the whole machinery of the State at its disposal and it would not be difficult for the State Government to act within the specified time. It is contended that the State Government is not entitled for any special treatment which cannot be granted to a common man. It is stated that inspite of issuance of legal notice to the appellants by the Advocate for the respondents/writ petitioners, intentionally the appellants had ignored the judgment of the High Court, and that they moved this appeal only after the learned Single Judge in the Contempt case directed compliance of the order passed by him.

It is stated that the Court has only to see whether the applicant seeking condonation of delay had acted with due diligence and since the same is absent in the instant case the delay is not liable to be condoned.

In ***Oriental Aroma Case*** (1 Supra), the Supreme Court observed in Para 8 as under:-

*"The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate -*

*Balakrishnan v. M. Krishnamurthy, 1999(2) RCR (Civil) 578 : (1998) 7 SCC 123 and Vedabai v. Shantaram Baburao Patil, 2001(3) RCR (Civil) 831: (2001)9 SCC 106. In dealing with the applications for condonation of delay filed on behalf of the State and its agencies/instrumentalities this Court has, while emphasising that same yardstick should be applied for deciding the applications for condonation of delay filed by private individuals and the State, observed that certain amount of latitude is not impermissible in the latter case because the State represents collective cause of the community and the decisions are taken by the officers/agencies at a slow pace and encumbered process of pushing the files from table to table consumes considerable time causing delay – G. Ramegowda v. Spl. Land Acquisition Officer, 1988(1) R.R.R. 555: (1988) 2 SCC 142, State of Haryana v. Chandra Mani, 1996(2) R.R.R. 82 : (1996) 3 SCC 132, State of U.P. v. Harish Chandra, 1996(2) S.C.T. 712 : (1996) 9 SCC 309, State of Bihar v. Ratan Lal Sahu (1996) 10 SCC 635, State of Nagaland v. Lipok Ao, 2005(2) RCR (Criminal) 414 : 2005(2) RCR (Civi) 375: 2005(2) Apex Criminal 75: (2005) 3 SCC 752, and State (NCT of Delhi) v. Ahmed Jaan, 2008(4) RCR (Criminal) 119 : 2008(4) RCR (Civil) 126: 2008(4) S.C.T. 25: 2008(2) RCR (Rent) 234 : 2008(5) R.A.J. 214 : (2008) 14 SCC 582. ”*

As per the ratio in the above judgment certain latitude can be considered in the case of the State since decisions are taken by Officers/Agencies at slow pace and encumbered process of pushing files from table to table consumes considerable time causing delay.

In the instant case, the State was aware of the judgment dt.26.07.2017 of the learned single Judge in CWP-14004-2017 since legal notice had been served by the respondent's counsel on 30.07.2017 itself. For the first time, there was some action initiated on the issue only on 01.02.2018, 5 months later. It was referred to the office of the Advocate General only on 16.05.2019, more than a year and 3 months later; and after the Advocate General gave opinion on 23.5.2009, the LPA was filed on 4.6.2009.

No sufficient cause is thus shown for the laxity on part of appellants in taking steps to challenge the impugned order of the learned single Judge.

The view taken in ***Oriental Aroma Case*** (1 Supra) has been revisited by the Supreme Court in the decision reported in ***Office of the Chief Post Master General Vs. Living Media India Limited***<sup>2</sup>.

In ***Office of the Chief Post Master General*** (2 supra) the Supreme Court has held no doubt some laxity is given for Government's inefficiency but with the technological advancement now the Judicial view prevalent earlier when such facilities were not available has been overtaken. It held:

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

The said decision in the ***Office of the Chief Post Master General and Others*** (2 Supra) has been recently reiterated in ***The State of Odisha and Others Vs. Sunanda Mahakuda***<sup>3</sup>. In para 6 of the said judgment, it is observed as under:-

*“The object of such cases appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say nothing could be done because the highest Court has dismissed the appeal. It is mere completion of formality to give a quietus to the litigation and save the skin of the officers who may be at fault by not taking action in prescribed time. If the state government feels that they have suffered losses, then it must fix responsibility on concerned officers for their inaction but that ironically never happens. These matters are preferred on a presumption as if this Court will condone the delay in every case, if the State Government is able to say something on merits.”*

Thus the State cannot be allowed to proceed on a presumption that there is a chance of the delay being condoned in every case if the State Government is able to say something on merits.

In the instant case, we have noticed that the order of the learned Single Judge had been pronounced on 27.06.2017 and a legal notice was sent immediately by the counsel for the respondents/writ petitioners on 30.07.2017. Requests were also made for implementation of the order of learned Single Judge by the respondents/petitioners No.1 and 2 and they have even filed COCP No.929 of 2018 before this Court alleging non-compliance of the order dated 27.06.2017 passed by the learned Single Judge.

It is only after the learned Single Judge in the COCP had directed compliance of this order that this appeal came to be filed. The plea of administrative delay in the circumstances cannot be raised by the State since the

officials of the State were aware of the order passed by the learned Single Judge and yet did nothing to challenge the order of the learned Single Judge till 04.06.2019. This inefficiency on the part of the State cannot be condoned having regard to the technological advancement available now.

Therefore, we do not find any merit in the application for condonation of delay, it is accordingly dismissed.

Consequently, the appeal is also dismissed.

All pending CMs, if any, shall stand disposed of.

**(M.S. RAMACHANDRA RAO)**  
**JUDGE**

**(SUKHVINDER KAUR)**  
**JUDGE**

**28.02.2023**  
Sonia

|                           |   |        |
|---------------------------|---|--------|
| Whether speaking/reasoned | : | Yes/No |
| Whether reportable        | : | Yes/No |