

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.1210 of 2021

In

Civil Writ Jurisdiction Case No.4649 of 2019

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Yogendra Prasad Son of Late Rameshwar Prasad Resident of Kishori Enclave,
Flat no. 202, Mita Mandal Colony, Saket Bihar, District- Patna

... .. Petitioner/s

Versus

1. Prof. Rajendra Prasad the Vice Chancellor of Magadh University, Bodhgaya
2. Dr. Vijay Kumar the Registrar of Magadh University, Bodhgaya
3. Mr. Sanjay Kumar Principal Secretary, Education Department, Govt. of Bihar, Patna
4. The State of Bihar through the Principal Secretary, Education Department, Govt of Bihar, Patna

... .. Opposite Party/s

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with

Civil Writ Jurisdiction Case No. 4649 of 2019

=====

Yogendra Pd. S/o Late Rameshwar Pd. Resident of Village- Kishori Encleve
Mitra Mandal Colony Flat No. 202, Saket Vihar, District- Patna.

... .. Petitioner/s

Versus

1. The Magadh University and Ors Bodhgaya through the Registrar of the University.
2. The Vice Chancellor, Magadh University, Bodhgaya.
3. The Registrar, Magadh University, Bodhgaya.
4. The State of Bihar through the Principal Secretary, HRD Government of Bihar, Patna.

... .. Respondent/s

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with

CIVIL REVIEW No. 278 of 2022

In

Civil Writ Jurisdiction Case No.4649 of 2019

- =====
1. The State of Bihar through the Principal Secretary, HRD, Government of Bihar, Patna.
 2. The Magadh University Bodhgaya, through the Registrar of the University.
 3. The Vice Chancellor, Magadh University, Bodhgaya.
 4. The Registrar, Magadh University, Bodhgaya.



... .. Petitioner/s

Versus

Yogendra Prasad S/o Late Rameshwar Pd. Resident of Village- Kishori
Enclave Mitra Mandal Colony Flat No. 202, Saket Vihar, District- Patna.

... .. Opposite Party/s

Appearance :

(In Miscellaneous Jurisdiction Case No. 1210 of 2021)

For the Petitioner/s : Mr.Manoj Kumar Yadav

For the Opposite Party/s : Mr.Aag 15

(In Civil Writ Jurisdiction Case No. 4649 of 2019)

For the Petitioner/s : Mr.Raghav Prasad No.1

For the Respondent/s : Mr.Lalit Kishore (Ag)

(In CIVIL REVIEW No. 278 of 2022)

For the Petitioner/s : Mr.Anil Kumar (Ac To Gp 20)

For the Opposite Party/s : Mr.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

**HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 24-01-2024

The present Civil Review No. 278 of 2022 has been
filed on behalf of the State of Bihar to recall the order dated
20.12.2019 passed in CWJC No. 4649 of 2019.

2. Such review application has been filed on 14.10.2022
on the face of the record it is highly belated civil review. The
present review is by State in all fairness they should have followed
all the rules and regulations insofar as filing civil review belatedly
and supported by Interlocutory Application for condonation of
delay, till date there is no application for condonation of delay. On
this ground alone the Civil Review petition No. 278 of 2022 is
liable to be rejected.



3. The Hon'ble Supreme Court in the case of ***Sheo Raj Singh & Ors. vs. Union of India & Another*** reported in (2023) 10 SCC 531 to examine the delay issue in **Para 17 to 28**, which reads as under:-

“17. In Collector (LA) v. Katiji [Collector (LA) v. Katiji, (1987) 2 SCC 107] the relevant High Court did not condone the delay of 4 (four) days in presentation of an appeal by the Collector in a land acquisition matter for which the order rejecting the application under Section 5 of the Limitation Act was carried in appeal. This Court opined that legislature had conferred power under Section 5 in order to enable the courts to do substantial justice to the parties by disposing of matters on “merits”. It was further held that the expression “sufficient cause” employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice — that being the life-purpose for the existence of the institution of courts. Despite the liberal approach being adopted in such matters, which was termed justifiable, this Court lamented that the message had not percolated down to all the other courts in the hierarchy and, accordingly, emphasis was laid on the courts adopting a liberal and justice-oriented approach. The following passage from the decision is reflective of this Court's realisation that : (Katiji case [Collector (LA) v. Katiji, (1987) 2 SCC 107] , SCC p. 108, para 3)

“3. ... And such a liberal approach is adopted on principle as it is realised that:

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.



6. *It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so. ' "*

(emphasis supplied)

18. *State of Nagaland v. Lipok Ao* [*State of Nagaland v. Lipok Ao*, (2005) 3 SCC 752 : 2005 SCC (Cri) 906] arose out of an appeal where this Court condoned the State's delay of 57 days in applying for grant of leave to appeal before the High Court against acquittal of certain accused persons. This Court observed that in cases where substantial justice and a technical approach were pitted against each other, a pragmatic approach should be taken with the former being preferred. Further, this Court noted that what counted was indeed the sufficiency of the cause of delay, and not the length, where the shortness of delay would be considered when using extraordinary discretion to condone the same. This Court also went on to record that courts should attempt to decide a case on its merits, unless the same is hopelessly without merit. It was also observed therein that it would be improper to put the State on the same footing as an individual since it was an impersonal machinery operating through its officers.

19. *In Balwant Singh* [*Balwant Singh v. Jagdish Singh*, (2010) 8 SCC 685 : (2010) 3 SCC (Civ) 537] , this Court refused to condone the delay of 778 days in bringing on record the legal heirs of the petitioner therein through an application filed under Order 22 Rule 9 of the Code of Civil Procedure, 1908. It was observed that though sufficient cause should be construed in a liberal manner, the same could not be equated with doing injustice to the other party. For sufficient cause to receive liberal treatment, the same must fall within reasonable time and through proper conduct of the party concerned. The Court emphasised that for such an application for condonation to be seen in a positive light, the same should be bona fide, based on true and plausible explanations, and should reflect the normal conduct of a common prudent



person. Further, the explained delay should be clearly understood in contradistinction to inordinate unexplained delay to warrant a condonation.

20. Lanka Venkateswarlu v. State of A.P. [Lanka Venkateswarlu v. State of A.P., (2011) 4 SCC 363 : (2011) 2 SCC (Civ) 257] happened to be a case where this Court set aside the impugned judgment condoning both a delay of 883 days in filing the petition to set aside the dismissal order by the relevant High Court, along with a delay of 3703 days caused by the respondents in bringing on record the legal representative of the appellant. This Court observed that whilst the High Court admonished the Government Pleaders concerned for their negligence in prosecuting the appeal before it and not providing a sufficient cause for delay, it nonetheless proceeded to condone the delay despite holding the same to be unjustifiable.

21. In Postmaster General v. Living Media India Ltd. [Postmaster General v. Living Media India Ltd., (2012) 3 SCC 563 : (2012) 2 SCC (Civ) 327 : (2012) 2 SCC (Cri) 580 : (2012) 1 SCC (L&S) 649], this Court noted that in cases when there was no gross negligence, deliberate inaction, or lack of bona fides, a liberal concession ought to be adopted to render substantial justice but on the facts before the Court, the appellant could not take advantage of the earlier decisions of this Court. Further, merely because the State was involved, no different metric for condonation of delay could be applied to it. Importantly, it noted that the appellant department had offered no proper and cogent explanation before this Court for condonation of a huge delay of 427 days apart from simply mentioning various dates. The claim on account of impersonal machinery and inherited bureaucratic methodology of making file notes, it was held, not acceptable in view of the modern technologies being used and available. Also, holding that the law of limitation undoubtedly binds everybody, including the Government, this Court went on to reject the prayer for condonation.



22. This Court in Esha Bhattacharjee v. Raghunathpur Nafar Academy [Esha Bhattacharjee v. Raghunathpur Nafar Academy, (2013) 12 SCC 649 : (2014) 1 SCC (Civ) 713 : (2014) 4 SCC (Cri) 450 : (2014) 2 SCC (L&S) 595] , whilst referring to various precedents rejected the pleas of lack of knowledge and miscarriage of justice raised by the respondent/managing committee in challenging an interim order of a Single Judge of the High Court. It then proceeded to set aside the impugned judgment condoning a delay of 2449 days in challenging the said interim order based on lack of bona fides. Para 21 of the decision contains the principles culled out by this Court from the several precedents that it had considered in the process.

23. A Bench of three Hon'ble Judges of this Court in State of Manipur v. Koting Lamkang [State of Manipur v. Koting Lamkang, (2019) 10 SCC 408 : (2020) 1 SCC (Civ) 163] was faced with a delay of 312 days by the State in preferring its first appeal before the High Court. This Court, on grounds of public interest, the impersonal nature of governments, and the ramifications of individual errors on State interest, condoned the delay in filing the first appeal on payment of costs of Rs 50,000.

24. In University of Delhi [University of Delhi v. Union of India, (2020) 13 SCC 745] , another Bench of three Hon'ble Judges of this Court declined to condone the delay of 916 days by the appellant in challenging an order [University of Delhi v. Union of India, 2015 SCC OnLine Del 9009] of a Single Judge of the High Court. This Court, whilst distinguishing Katiji [Collector (LA) v. Katiji, (1987) 2 SCC 107] on facts, observed that the consideration to condone could only be made on presentation of a reasonable explanation, and the same could not be done simply because the appellant therein was a public body. It then went on to note the conduct of the appellant in demonstrating delay and laches not only in filing the appeal, but also the original writ petition before the High Court at the first instance. While refusing to condone the appellant's delay, it was specifically



noted that condonation of delay at that stage would be prejudicial to public interest as one of the respondents therein (Delhi Metro Rail Corporation) had received large amounts of money years ago to carry out development on the subject land in question.

25. We may profitably refer hereunder to some other decisions of this Court for the purpose of the present adjudication.

26. G. Ramegowda v. LAO [G. Ramegowda v. LAO, (1988) 2 SCC 142] , while summarising the position of law on “sufficient cause”, had the occasion to observe that the contours of the area of discretion of the courts in the matter of condonation of delays in filing appeals have been set out in a number of pronouncements of this Court. It was observed to be true that there is no general principle saving the party from all mistakes of its the counsel. Noting that there is no reason why the opposite side should be exposed to a time-barred appeal if there was negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its the counsel, it was further observed that each case will have to be considered on the particularities of its own special facts. However, this Court reiterated that the expression “sufficient cause” in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay. This was followed by these words : (SCC p. 148, paras 15 & 17)

“15. In litigations to which Government is a party there is yet another aspect which, perhaps, cannot be ignored. If appeals brought by Government are lost for such defaults, no person is individually affected; but what, in the ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals.



17. Therefore, in assessing what, in a particular case, constitutes “sufficient cause” for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the government. Governmental decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have “a little play at the joints”. Due recognition of these limitations on governmental functioning — of course, within reasonable limits — is necessary if the judicial approach is not to be rendered unrealistic. It would, perhaps, be unfair and unrealistic to put government and private parties on the same footing in all respects in such matters. Implicit in the very nature of governmental functioning is procedural delay incidental to the decision-making process.”

27. *Katiji [Collector (LA) v. Katiji, (1987) 2 SCC 107]* was also noticed by a Bench of three Hon'ble Judges of this Court in *State of Haryana v. Chandra Mani [State of Haryana v. Chandra Mani, (1996) 3 SCC 132]* where we find the following discussion : (*Chandra Mani case [State of Haryana v. Chandra Mani, (1996) 3 SCC 132]* , SCC p. 138, para 11)

“11. ... When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay — intentional or otherwise — is



a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process."

28. *This Court in Tehsildar (LA) v. K.V. Ayisumma [Tehsildar (LA) v. K.V. Ayisumma, (1996) 10 SCC 634] , had the occasion to observe that it would not be necessary for the State to provide a day-to-day explanation of delay while seeking condonation of the same. The relevant observations therein read as follows : (SCC p. 635, para 2)*

"2. It is now settled law that when the delay was occasioned at the behest of the Government, it would be very difficult to explain the day-to-day delay. The transaction of the business of the Government was being done leisurely by officers who had no or evince no personal interest at different levels. No one takes personal responsibility in processing the matters expeditiously. As a fact at several stages, they take their own time to reach a decision. Even in spite of pointing at the delay, they do not take expeditious action for ultimate decision in filing the appeal. This case is one of such instances. It is true that Section 5 of the Limitation Act envisages explanation of the delay to the satisfaction of the court and in matters of Limitation Act made no distinction between the State and the citizen. Nonetheless adoption of strict standard of proof leads to grave miscarriage of public justice. It would result in public mischief by skilful management of delay in the process of filing the appeal. The approach of the Court should be pragmatic but not pedantic. Under those circumstances, the Subordinate Judge has



rightly adopted correct approach and had condoned the delay without insisting upon explaining every day's delay in filing the review application in the light of the law laid down by this Court. The High Court was not right in setting aside the order. Delay was rightly condoned."

4. Having regard to the principle laid down by the Hon'ble Supreme Court delay and laches could have been examined, however in the absence of application for condonation of delay for these many years and conduct of the review petitioner in not filing I.A. for condonation of delay, these factual aspects of the matter, the present Civil Review No. 278 of 2022 is liable to be dismissed on the ground of delay as well as non-compliance of filing of Interlocutory Application for condonation of delay along with the Civil Review for the last about two years.

5. Accordingly, the present Civil Review No. 278 of 2022 stands dismissed with cost of Rs. 5000/- (Rupees Five Thousand Only). Cost shall be remitted in the Patna High Court Legal Services Committee within a period of two weeks from today.

6. Registry is hereby directed to de-link Civil Review No. 278 of 2022.



32: MJC No. 1210 of 2021

7. State respondents are hereby directed to file their show cause before the next date of hearing. Relist this matter on 07.02.2024.

32.1: CWJC No. 4649 of 2019

8. Registry is hereby directed not to list this case as it is already disposed of. It is hereby directed to place the file of CWJC No. 4649 of 2019 with MJC No. 1210 of 2021.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

abhishekk/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	31.01.2024
Transmission Date	NA

