

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Harish Tandon

And

The Hon'ble Justice Prasenjit Biswas

MAT 1057 of 2024
With
CAN 1 of 2024, CAN 2 of 2024, CAN 3 of 2024, CAN 4 of 2024,
CAN 5 of 2024, CAN 6 of 2024

District Primary School Council, Malda & ors.

Vs.

Md. Asiruddin & ors.

With

MAT 1412 of 2024
With
CAN 1 of 2024, CAN 2 of 2024,

State of West Bengal & ors.

Vs.

Md. Asiruddin & ors

With

MAT 1489 of 2024
With
CAN 1 of 2024, CAN 2 of 2024

District Primary School Council, Malda & ors.

Vs.

Samiul Haque & ors

With

MAT 1490 of 2024
With
CAN 1 of 2024, CAN 2 of 2024,

District Primary School Council, Malda & ors.

Vs.

Md. Mobasserul Hoque & ors

With

MAT 1491 of 2024

With
CAN 1 of 2024, CAN 2 of 2024

District Primary School Council, Malda & ors.

Vs.

Maskura Khatun & ors

With

MAT 1492 of 2024

With

CAN 1 of 2024, CAN 2 of 2024,

District Primary School Council, Malda & ors.

Vs.

Rimpa Saha & ors

With

MAT 1494 of 2024

With

CAN 1 of 2024, CAN 2 of 2024

District Primary School Council, Malda & ors.

Vs.

Selim Khan & ors

With

MAT 1496 of 2024

With

CAN 1 of 2024, CAN 2 of 2024

District Primary School Council, Malda & ors.

Vs.

Priyanka Choudhury & ors

With

MAT 1497 of 2024

With

CAN 1 of 2024, CAN 2 of 2024

District Primary School Council, Malda & ors.

Vs.

Krishna Halder & ors

With

MAT 1498 of 2024

With

CAN 1 of 2024, CAN 2 of 2024,

District Primary School Council, Malda & ors.

Vs.

Jarina Khatun & ors

With

MAT 1560 of 2024

With
CAN 1 of 2024, CAN 2 of 2024

District Primary School Council, Malda & ors.
Vs.
Pranab Kr. Sharma & ors.

For the appellants : *Mr. Partha Sarathi Bhattacharyya*
Mr. Avishek Prasad
Mr. Sourodeep Singha

For the respondents in
MAT 1057 of 2024 : *Mr. Bikash Ranjan Bhattacharyya*
Mr. Sudipta Dasgupta
MAT 1492 of 2024 *Mr. Ali Ahsan Alamgir*
MAT 1494 of 2024 *Ms. Rabia Khatoon*
MAT 1498 of 2024 *Ms. Soma Mal*
Ms. Sutirtha Nayek

For the added : *Mr. Biswajit Tiwari*
respondent
in MAT 1057 of 2024

For the intervenors in
In MAT 1057 of 2024 : *Mr. Firdous Samim*
Ms. Gopa Biswas
Ms. Payel Shome

For the applicants : *Mr. Debasish Saha*
MAT 1057 of 2024 *Mr. N. Roy*
(CAN 4 of 2024)

For the added : *Mr. Amitava Chaudhuri*
respondents *Mr. Pradipta Siddhanta*
MAT 1057 of 2024

For the State : *Mr. Sirsanya Bandyopadhyaya*
MAT 1057 of 2024 *Mrs. Tapati Samata*

For the added respondent: *Mr. Debasish Saha*
in MAT 1412 of 2024 *Mr. Avirup Roy Sanyal*
Ms. Sucheta Paul

For the respondent DPSC : *Mr. Partha Sarathi Bhattacharya*

in MAT 1412 of 2024		<i>Mr. Avishek Prasad</i> <i>Mr. Sourodeep Sinha</i>
For the State in MAT 1412 of 2024	:	<i>Mr. Swapan Kr. Dutta</i> <i>Mr. Rajat Dutta</i>
For the respondent in MAT 1489 of 2024 & MAT 1496 of 2024	:	<i>Mr. Amitava Chowdhury</i> <i>Mr. Debasish Saha</i> <i>Mr. Avirup Roy Sanyal</i> <i>Ms. Sucheta Paul</i>
For the writ petitioner /respondent in MAT 1489 of 2024 & MAT 1496 of 2024	:	<i>Mr. Debasish Saha</i>
For the writ petitioner/ respondent in MAT 1490 of 2024 MAT 1491 of 2024	:	<i>Mr. Ali Ahsan Alamgir</i> <i>Ms. Rabia Khatoon</i> <i>Ms. Soma Mal</i> <i>Ms. June Modak</i>
For the writ petitioner/ respondent No. 1 in MAT 1490 of 2024 MAT 1491 of 2024	:	<i>Mr. Robiul Islam</i> <i>Mr. K.M. Hossain</i> <i>Ms. Asmita Mitra</i>
For the writ petitioner/ respondent in MAT 1497 of 2024	:	<i>Mr. Anindya Bose</i> <i>Mr. Golam Mohiuddin</i> <i>Mr. Mridul Biswas</i>
For the writ petitioner/ respondents in MAT 1560 of 2024	:	<i>Mr. Amitava Chaudhuri</i> <i>Mr. N. Roy</i> <i>Mr. Pradipta Siddhanta</i> <i>Ms. Sucheta Pal</i>
Heard on	:	31.07.2024, 08.08.2024, 29.08.2024
Judgment on	:	29 th August, 2024.

Harish Tandon , J:

Re: CAN 1 of 2024 (MAT 1412 of 2024)

By way of this application brought under Section 5 of the Indian Limitation Act, the present appellants have sought condonation of delay in preferring this instant appeal. It appears from the report submitted by the Additional Stamp Reporter that there are 51 days of delay in preferring this instant appeal challenging the impugned orders dated 26.04.2024 and 30.04.2024 passed by the learned Single Bench of this Court in connection with WPA 25712 of 2022.

It is stated by the appellants/petitioner that after passing the impugned order the Commissioner of School Education, West Bengal requested the learned Legal Remembrancer, Government of West Bengal to obtain certified photocopy of the impugned orders passed by the learned Single Bench. A proposal was placed by the Commissioner to the learned Legal Remembrancer on 15.05.2024 to accord approval in preferring the appeal. All the relevant documents except certified copy of the impugned orders were placed before the learned State Advocates who were engaged by the State to file the appeal against the impugned orders. Thereafter several reminders were sent to the learned Legal Remembrancer for obtaining the certified copy of the impugned orders and the certified copy of the impugned orders were obtained on 26.06.2024 after a few days of delay. It is stated by the appellants / petitioners that there was mistake on their part that they only applied for getting certified copy of the order dated 26.04.2024 instead of

combined orders dated 26.04.2024 and 30.04.2024 and as such a further application was made for obtaining the certified copy of the orders on 28.06.2024 and ultimately the same was obtained on 05.07.2024. It is stated by the appellants that as soon as they obtained the certified copy of the impugned orders the learned State advocates filed the instant appeal.

Learned Counsel appearing on behalf of the state submitted before us that there is a fair chance of success in the appeal and if the application praying for condonation of delay in preferring the instant appeal is not allowed, the Appellants will suffer irreparable loss and injury which cannot be compensated by any means.

We have anxiously considered the submission advanced by both the parties. Perused the grounds as stated by the appellants in the application for condonation of delay filed under Section 5 of the Limitation Act.

The general principle underlying the condonation of delay is that courts have discretionary power to extend the time limit in cases where the delay was due to genuine and valid reasons. The courts examine each case on its merits and consider factors such as the explanation for the delay, the sufficiency of the cause shown, the absence of negligence, and the potential prejudice caused to the other party. The term “sufficient cause” is not defined explicitly and varies on a case-to-case basis. The Court has a wide discretion in determining what

constitutes as sufficient cause, depending upon the facts and circumstances of each case.

Can a mere narration of facts showing the slow-paced manner in which the files move from one table to another in an administrative set-up be considered a sufficient explanation for breaching the limitation? Is it fair to take away a very valid ground for a counter-attack on the part of the private respondent merely because the state can provide an 'explanation' of how it may have caused an inordinate delay in making a filing? An 'explanation' is when all of the facts and layout of the cause are provided which helps to clarify the circumstances of a particular event to point out that something has happened due to no fault of the person seeking condonation. Insofar as the question as to condonation of delay by resorting to Section 5 of the Limitation Act is concerned, delay can be condoned if 'sufficient cause' is shown and the approach of the courts should be liberal guided by legal principles. At the same time, dilatory tactics, if borne out from materials, shall be treated sternly and liberal approach cannot be extended to those persons.

The State is to be treated at par with any other litigant and no special favour is to be bestowed on them while considering their petition for condonation of delay merely by virtue of the fact that they are the Government. The State Government as any other litigant is to explain what "sufficient cause" prompted them to require the indulgence of the Court to condone the delay, by exercising its discretion. The Court is also to consider if there was gross negligence,

deliberate inaction, or lack of bona fides on the part of the litigant or its Counsel, each case would have to be considered on the peculiarity of its own facts

It is true that the legislature has conferred the power to condone the delay by enacting Section 5 of the Indian Limitation Act in order to enable the Court to do substantial justice to the parties by disposing of the matter on merit but it is also equally true that by taking advantage of the said provision one cannot be allowed to deprive the other side and frustrate the very purpose of disposal of such type of cases within the stipulated period. Appellants have failed to show the sufficient cause in not preferring the appeal within the stipulated period. The appellant has not explained the delay by submitting cogent reasons. The explanation is very vague in nature and made in a casual manner.

We are of the view that the discretionary power is only to be exercised when sufficient cause is made out and compelling reasons are provided for condonation of delay. In the present case, one does not find any such reason provided which would enable this Court to condone the delay. In fact, it is crystal clear that the appellants have acted in a lackadaisical manner and filed this appeal belatedly.

There is no doubt that whether it is department of the Government or a private party, the provisions of law applicable are the same unless the statute itself makes any distinction. The Government Department cannot be treated differently. It is needless to point out that the expiration of the period of limitation prescribed by law for

making an appeal gives rise to a valuable right in favour of the parties in whose favour the order has been passed and such legal right should not be lightly disturbed. We are of the opinion that in the present case the appellant/ state is guilty of such inaction or negligence as would deprive it of the protection of Section 5 of the Limitation Act.

It is apparent from the record of the case that in the instant case, there is delay of 51 days in filing the present appeal and no sufficient cause for such delay, supported by relevant documents, has been established. In this case, it is difficult to fathom any logic or rationale which can impel this court to condone the delay after holding the same to be justifiable. Therefore, in the considered opinion of this Court, such delay cannot be condoned.

Hence, the application filed by the appellants/State under Section 5 of the Limitation Act being CAN 1 of 2024 is dismissed. Resultantly, the appeal filed by the appellants is also dismissed as time barred.

In Re: MAT 1057 of 2024

The appeal is filed at the behest of the DPSC, Malda assailing an order dated 26.04.2024 by which the writ petition was disposed of directing the authorities to publish the marks obtained by the writ petitioners and thereafter to accommodate them by giving a letter of appointments.

In course of the hearing, it transpires that the impugned order was passed on the basis of a consent given by all the parties and,

therefore, the question that fell for consideration whether an appeal lies in this regard. It would be apposite to Court that the observations made in paragraph 13 of the impugned order which runs thus:

“13. In the above circumstances, following the order dated 9th April, 2024 passed in WPA 3268 of 2015 (Sourav Naskar and Ors. Vs. State), for the reasons stated therein, in respect of the DPSC, Howrah, this Court by consent of all parties, is inclined to direct that all candidates who were called for interview in the aforesaid recruitment process of the year 2009 and have filed writ petitions until 25th April, 2024, shall be entitled to appointments against existing or future vacancies.”

Mr. Bhattacharyya, learned senior advocate appearing for the appellant submits that there was no consent given at the time of hearing of the writ petition by the counsel appearing for the DPSC. Such being the stand the question that arise for consideration whether the appeal is maintainable against an order apparently and/or evidently pass on the basis of a consent. The moment the party took a stand that there is wrong recording of an event happened at the time of hearing of the writ petition, it is open to the said party to approach the same Court or a Judge if available promptly before the events fades from his memory. The reliance can be placed upon the Judgment of the Apex Court in case of **State of Maharashtra vs. Ramdas Shrinivas Nayek & anr.** reported in **(1982)2 SCC 463** wherein in an identical situation the Apex Court held:

“4. When we drew the attention of the learned Attorney-General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. We are afraid that we

cannot launch into an enquiry as to what transpired in the High Court. It is simply not done. Public policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation." We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well-settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an appellate court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment."

In view of the above, it is not advisable to enter into the disputed arena whether the consent so recorded in the impugned order was in fact given or not at the appellate stage.

It is sought to be contended by Mr. Bhattacharyya, learned Senior advocate that a person cannot be rendered remediless. We are at one to the aforesaid submissions bearing in mind the legal maxim Ubi jus ibi remedium. Since the forum has already been discussed in the decision of the Apex Court as above, we do not find any justification that the appellant is remediless in this regard.

In such view of the matter, the appeal is dismissed. However, the dismissal shall not prevent the appellants to pursue the remedy in accordance with law.

In view of the dismissal of the present appeal being MAT 1057 of 2024, all connected appeals and applications are accordingly dismissed.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)