

2024:PHHC:027865-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.242-9

CM-2318-LPA-2020 in/and
LPA-835-2020 (O&M)
Date of decision: 30.01.2024

State of Haryana and another

....Appellants

Versus

Kirpal Singh @ Kirpal Singh Aulakh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MRS. JUSTICE DEEPAK MANCHANDA

Present: Mr. Dushyant Saharan, AAG, Haryana.

Mr. Anil Kumar Aggarwal, Advocate
for the respondents.

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DEEPAK SIBAL, J. (Oral)

1. The State of Haryana seeks condonation of delay of 428 days in filing of the instant intra court appeal. The reasons for the delay, as explained by the State, are that the impugned judgment is dated 13.13.2019 has been passed in terms of the judgment dated 13.12.2018 passed in an identical matter being CWP-1486-2018 – Kidar Nath Kohli and ors vs. State of Haryana and ors in which on 28.01.2019, a copy of the judgment dated 13.12.2018 was received in the office of the Director, Secondary Education, Haryana; on 04.02.2019, the matter was referred by the Director, Secondary Education, Haryana to the Finance Department of the State; on 26.02.2019, the Finance Department sought opinion from the Legal Remembrancer and Administrative Secretary, Haryana (for short – LR) as also the Advocate General, Haryana (for short – AG) as to whether an intra court appeal should be preferred against the judgment; even before such

reference, on 20.02.2019, the AG had already opined that the present case was not a fit one for filing an appeal; after the aforesaid reference dated 26.02.2019, the LR also opined that in the present case no appeal be filed; after receipt of the opinions by the AG and the LR, for the purpose of implementation of the judgment, the case was sent by the Education Department to the Finance Department; on 12.09.2019, the Finance Department made a recommendation to challenge the judgment; the matter was again placed before the LR who through his letter dated 05.12.2019 reiterated his earlier opinion; the matter then reached the AG who also reiterated his earlier opinion and that on 06.02.2020, the LR issued instructions for filing an appeal which was then drafted and filed on 06.08.2020.

2. Learned State counsel submits that the delay was procedural and therefore, be condoned. He relies on the following judgments of the Supreme Court:-

(1) **State of Nagaland vs. Lipok AO and others, (2005) 3 SCC 752.**

(2) **Sheo Raj Singh (Deceased) through Lrs. and others vs. Union of India and others, (2023) 10 SCC 531**

3. Per contra, Mr. A.K. Aggarwal, who appears for the respondents submits that the law of limitation applies equally to all; in the present times of technological advancement no special treatment is required to be given to the State; even while seeking condonation of delay on procedural grounds, huge gaps within the so called procedural delays remain unexplained; in the facts of the present case twice the LR and the

AG have opined against the filing of the instant appeal; therefore, the delay on the part of the State should not be condoned and that in spite of the aforesaid opinions given by the LR and the AG the instant appeal has been filed without giving any reason for the change in the opinions given earlier.

4. Mr. Aggarwal places reliance on the following judgments of the Supreme Court:-

- (1) **Office of the Chief Post Master General and others vs. Living Media India Ltd. and another, (2012) 3 SCC 563.**
- (2) **The State of Madhya Pradesh and others vs. Bherulal, (2020)10 SCC 654.**
- (3) **University of Delhi vs. Union of India and others, (2020)13 SCC 745.**
- (4) **The State of Odhisha and others vs. Sunanda Mahakuda, (2021)11 SCC 560.**
- (5) **Union of India vs. Central Tibetan Schools Administration and others, (2021)11 SCC 557.**

5. Learned counsel for the parties have been heard and with their able assistance the record of the case has also been perused.

6. **In Living Media India Limited's case (supra)**, the issue before the Supreme Court was as to whether the office of the Chief Post Master General had shown sufficient cause for condoning the delay of 427 days in filing of the Special Leave Petition. The Supreme Court observed that the officers of the State or its instrumentality were well aware of the prescribed period of limitation for filing of applications/petitions/appeals. There was no separate period of limitation for the State especially when competent persons familiar to court proceedings were serving the State. If the delay on

the part of the State was not satisfactorily explained, the same could not be condoned only because such delay is on the part of the State especially when condoning the delay would not advance any substantial justice. According to the Supreme Court the State playing the card of an impersonal litigant could not be accepted in the light of advancement in technology. The relevant observations by the Supreme Court in this regard read as under:-

“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.”

7. *In Bherulal's case (supra)*, the Supreme Court dismissed an application filed by the State of Madhya Pradesh seeking condonation of delay of 663 days in the filing of a Special Leave Petition. The Supreme Court was of the view that bureaucratic process given as an excuse by the State could not be taken as a ground to condone the delay and even if there was merit in the case the bar of limitation could come in the way of the State but of course that would depend on the facts of each case. The Supreme Court observed as follows:-

“2. We are constrained to pen down a detailed order as it appears that all our counseling to the Government and government authorities has fallen on deaf ears i.e., the Supreme Court of India cannot be a place for the Governments to walk in when they choose ignoring the period of limitation prescribed. We have raised the issue that if the government machinery is so inefficient and incapable of filing appeals/petitions in time, the solution may lie in requesting the legislature to expand the time period for filing limitation for government authorities because of their gross incompetence. That is not so. Till the statute subsists, the appeals/petitions have to be filed as per the statutes prescribed.

3. No doubt, some leeway is given for the Government inefficiencies but the sad part is that the authorities keep on relying on judicial pronouncements for a period of time when technology had not advanced and a greater

leeway was given to the Government. This position is more than elucidated by the judgment of this Court in Postmaster General v. Living Media (India) Ltd. wherein the Court observed as under:

“27. 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.

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. 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 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.”

4. A reading of the aforesaid application shows that the reason for such an inordinate delay is stated to be only “due to unavailability of the documents and the process of arranging the documents”. In paragraph 4, a reference has been made to “bureaucratic process works, it is inadvertent that delay occurs”.

5. A preposterous proposition is sought to be propounded that if there is some merit in the case, the period of delay is to be given a go-by. If a case is good on merits, it will succeed in any case. It is really a bar of limitation which can even shut out good cases. This does not, of course, take away the jurisdiction of the Court in an appropriate case to condone the delay.”

8. *In University of Delhi's case (supra)*, while considering a challenge to a judgment of a Division Bench of the Delhi High Court through which the Delhi High Court had declined to condone the delay of 916 days in the filing of an intra court appeal, the Supreme Court held that while considering the plea for condonation of delay, the Court should adopt a liberal approach and that at the time of such consideration the status of the party before the Court was immaterial. After examining the facts and circumstances of the case, the Court should determine as to whether sufficient cause has been shown by the party seeking condonation of delay and that condonation of delay could not be taken lightly as on the expiry of the prescribed period of limitation a right accrues in favour of the opposite party. In this regard the following observations by the Supreme Court may be usefully referred to:-

“23.From a consideration of the view taken by this Court through the decisions cited supra the position is clear that, by and large, a liberal approach is to be taken in the matter of condonation of delay. The consideration for condonation of delay would not depend on the status of the party, namely, the Government or the public bodies so as to apply a different yardstick but the ultimate consideration should be to render even-handed

justice to the parties. Even in such case the condonation of long delay should not be automatic since the accrued right or the adverse consequence to the opposite party is also to be kept in perspective. In that background while considering condonation of delay, the routine explanation would not be enough but it should be in the nature of indicating “sufficient cause” to justify the delay which will depend on the backdrop of each case and will have to be weighed carefully by the courts based on the fact situation. In Katiji the entire conspectus relating to condonation of delay has been kept in focus. However, what cannot also be lost sight of is that the consideration therein was in the background of dismissal of the application seeking condonation of delay in a case where there was delay of four days pitted against the consideration that was required to be made on merits regarding the upward revision of compensation amounting to 800 %.

24. As against the same, the delay in the instant facts in filing the LPA is 916 days and as such the consideration to condone can be made only if there is reasonable explanation and the condonation cannot be merely because the appellant is public body. The entire explanation noticed above, depicts the casual approach unmindful of the law of limitation despite being aware of the position of law. That apart when there is such a long delay and there is no proper explanation, laches would also come into play while noticing as to the manner in which a party has proceeded before filing an appeal. In addition in the instant facts not only the delay and laches in filing the appeal is contended on behalf of the respondents seeking dismissal of the instant appeal but it

is also contended that there was delay and laches in filing the writ petition itself at the first instance from which the present appeal had arisen. In that view, it would be necessary for us to advert to those aspects of the matter and notice the nature of consideration made in the writ petition as well as the LPA to arrive at a conclusion as to whether the High Court was justified.

31. In the matter of condonation of delay and laches, the well-accepted position is also that the accrued right of the opposite party cannot be lightly dealt with. In that regard, rather than taking note of the hardship that would be caused to the respondent No.13 as contended by the learned Senior Counsel, what is necessary to be taken note is the manner in which the Respondent No.11, DMRC has proceeded in the matter. The Respondent No.11, DMRC is engaged in providing the public transport and for the said purpose the Government through policy decision has granted approval to generate resources through property development and in that regard the development as earlier indicated, is taken up. Pursuant thereto the Respondent No.11 has received a sum of Rs.218.20 crores from Respondent No.13 as far back as in the year 2008. The said amount as indicated is used for its projects providing metro rail service to the commuting public. In such circumstance, if at this stage the inordinate delay is condoned unmindful of the lackadaisical manner in which the appellant has proceeded in the matter, it would also be contrary to public interest.”

9. Similar views were taken by the Supreme Court in **Sunanda Mahakuda's case (supra)** and **Central Tibetan Schools Administration's**

case (supra).

10. In Sheo Raj Singh's case (supra), the Supreme Court was dealing with a challenge to the order passed by a learned Single Judge of the Delhi High Court condoning delay of 479 days in presentation of an appeal filed against the decision of the reference court under Section 18 of the Land Acquisition Act, 1894. The Supreme Court held that while considering the prayer for condonation of delay the Court has to adopt a liberal view. However, the power to condone delay should be exercised only after examining the offered explanation for the delay and that at the time of exercising such discretion, the Court should lean towards substantial justice rather than adopt a technical approach. While giving certain leeway to the State, the Supreme Court reiterated that the discretion to be exercised by the Courts, at the time of condonation of the delay, should be justice oriented and pragmatic.

11. After going through the afore referred judgments of the Supreme Court the position of law that can be culled out is that while considering an application for condonation of delay in the filing of petitions/applications/appeals, the Court should adopt a liberal approach. At that time the discretion to be exercised by the Court should be justice oriented and that which would further substantial justice and/or public interest. However, the power of the Court to condone delay cannot be taken lightly as on the expiry of the prescribed period of limitation a right accrues in favour of the other party. The status of the applicant is immaterial but since the State machinery is impersonal, when the delay is on the part of the State some leeway may be given to the State. However, in the present times

of advancement in technology such leeway would only be marginal especially when the State is manned by competent officers who are well versed with the law of limitation.

12. In the present case, there is a delay of 428 days in the filing of the appeal. The State seeks to explain the delay by terming it as “procedural”. A closer scrutiny of the offered explanation shows that the delay in the filing of the appeal occurred due to the to and fro shuffling of the file of the case between the litigant, the finance and the legal departments of the State. Twice over the LR and the AG opined that the case was not a fit one for filing of an appeal. However, on the insistence of not the litigant department but the Finance Department of the State the appeal was preferred on an opinion by the LR. No reasons are available on the record as to why did the LR have a change of heart when on two earlier occasions he had opined to the contrary and this was in spite of the fact that even till date the opinion of the AG is not to file the instant appeal.

13. Several gaps are also found in the explanation offered by the State for condoning the inordinate delay of 428 days. Some of them go into months while some are spread over a few weeks. Illustratively, in February 2019, the AG as also the LR had opined that the present appeal would have no legs to stand, legally or factually. After about 07 months i.e. on 12.09.2019, the Finance Department of the State of Haryana sent the file back to the office of the AG. No worthwhile explanation is forthcoming for the delay of about 07 months in this regard. It is another matter that after such reference both the AG and the LR, through their opinions given for the second time on 23.10.2019 and 05.12.2019 respectively, opined that it

would be not worthwhile to test the judgment impugned through the appeal before a Division Bench.

14. In the light of the afore facts, we are not inclined to exercise our discretion to condone the delay of 428 days in the filing of the appeal as the explanation offered by the State for the delay contains several unexplained gaps and because in the light of the repeated opinions expressed by the office of the AG and the LR, condonation of the delay would neither further public interest nor the cause of substantial justice especially when no explanation is also found on the record as to why the LR reviewed his opinion given twice earlier. Resultantly, the application seeking condonation of the delay is dismissed and consequently, the accompanying appeal also meets the same fate as the application.

15. All pending miscellaneous application(s), if any, also stand disposed of.

(DEEPAK SIBAL)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

January 30, 2024
Jyoti 1

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No