

(1988) 10 KL CK 0017

In the High Court Of Kerala

Case No : C.M.P No. 23213 of 1988 in M.F.A. No. 663 of 1988

State of Kerala and Another

APPELLANT

Vs

V.P. Muralidharan Nair

RESPONDENT

Date of Decision : 17-10-1988

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (1988) 2 KLJ 637

Hon'ble Judges : K.T. Thomas, J

Bench : Single Bench

Advocate : M C. John Government Pleader, for the Appellant; M.A. George, Raju A. George and B. Kesavan Nair for Counter, for the Respondent

Final Decision : Allowed

Judgement

K.T. Thomas, J.—Should any distinction be observed between Government's functions and private individual's functions while exercising the discretion under Sec.5 of the Limitation Act, 1963 (for short "the Act"). The Act makes no distinction between the Government and a private individual for the application of Sec. 5. But learned Government Pleader made a strong plea that in exercise of the discretion contained in the Section, the fact cannot be overlooked that a private person has only himself to consider and he must be presumed to be familiar with every aspect of his case whereas a government have to consider public interest and cannot be presumed to know the details of different individual cases. According to learned government pleader, the delay of 105 days involved in filing (sic) this appeal at the instance of the State deserves condonation for the reasons set out in the affidavit sworn to by the Joint Secretary, Public Works & Transport Department. The appeal is against the decree and judgment passed in terms of an arbitration award. The Judgment was pronounced on 29-2-1988. The Joint Secretary, in his affidavit, has set out the following facts: The copy of the judgment was obtained on 23-3-1988 and the District Government Pleader forwarded it to the Superintending Engineer along with his opinion, who, in turn

and as per rules, sought for legal opinion of the Law Officer of the P.W.D. After obtaining the said legal opinion on 24-4-1983, the matter was referred to the Chief Engineer, National Highway on 12-5-1988 with the remarks and proposals collected from the Executive Engineer concerned. They were processed in the office of the Chief Engineer and he took a decision to recommend to the Government as to the course of action to be taken next. The letter prepared and approved by the Chief Engineer was forwarded to the Government on 15-6-1988. The Government referred it to the Law Department on 15-7-1988 and its opinion was obtained only on 22-8-1988. As the matter involves huge financial commitment, it was referred to the Finance Department on the next day. On 5-9-1988, the Government took a decision to file the appeal against the decree and sent back the records. The Superintending Engineer was directed to make all available records to the Advocate General's office on 23-9-1988. On the same day the appeal was prepared and filed.

2. In the counter affidavit filed by the respondent, it is stated that apart from narrating the delay at various levels no explanation has been offered for such delay. It is contended that without explaining the reasons for every day's delay, the Government is not entitled to get the delay condoned. Learned counsel referred me to the decision in Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd., in which two important considerations in this realm have been pointed out by the Supreme Court, The first is that the expiration of the period of limitation gives rise to a right in favour of the other party to treat the decree or order as binding between the parties and this legal right accrued by lapse of time should not be lightheartedly disturbed. The second is that if sufficient cause is shown, the court has the discretion, though the party is not entitled to condonation of delay as a matter of right. Proof of sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction. Learned counsel contended that if this appeal was to be presented by a private individual, the delay, accrued at various levels would have been treated as laches on his part and as the Government cannot have any preferential treatment in the matter of exercise of discretionary power, the same yardstick should be applied.

3. A Division Bench of this Court in John v. Mammukutty (1995 K.L.T.55) has held that the words "sufficient cause" in Sec. 5 of the Act should be liberally construed as to advance substantial justice unless the petitioner is guilty of contumacious conduct. No doubt that the statute makes no distinction between the Government and a private individual for the application of the Section. But law does not debar the court from drawing distinction between a private individual and the Government, though requirement of diligence in the case of Government cannot be different from a private individual. In a broad sense it can be stated that whatever is not considered as sufficient cause for a private person cannot be considered as sufficient cause for the State. But discretion conferred on courts under Sec. 5 cannot be crystallised into rigid rule of law. In determining different cases, it is permissible for the Court to notice distinction between functions of the State and private individual. A practical perspective

must be adopted in judging whether the delay is due to laches on the part of the petitioner who seeks condonation thereof. In the case of private individual, delay by itself can be considered as evidence of laches and it is for him to rebut the presumption. But in the case of State a presumption of laches, on account of mere delay, may not be drawn. Hence a satisfactory explanation of the delay commends acceptance by court without further proof that there was no laches. Such a practical approach is not repugnant law when dealing with a prayer for condonation at the instance of the government. It was pointed out in *Secretary of State v. Gurumukhdas* (AIR 1929 Sind 211) that a private person has only himself to consider and must be presumed to be familiar with every aspect of his case whereas a government have to consider the public interest and cannot be expected to know the facts of each individual case. "They require time for inquiry and consideration before taking action and must consult the local officers, to whom they cannot delegate their powers, it follows that a time which may be ample for a private litigant may be none too great for Government". In *K.R. Beri and Co. and Others Vs. Employees State Insurance Corporation*, Dua, J. speaking for the Division Bench has stated that the statute makes no distinction between government and private individual, but it does not necessarily follow that while considering the provisions which confer discretion on the court to condone delay in a given case for sufficient reason, the court is debarred, as a matter of law from drawing distinction between a private individual and government. In *State of Rajasthan v. Rikhabchand* (AIR 1956 Raj 213) it is observed that in practical application a distinction should be broadly observed, delay in the case of an individual is considered as evidence of laches and an individual litigant seeking to establish sufficient cause must rebut the presumption of laches while no such presumption should be drawn against the state. In a recent decision, the Supreme Court has cautioned against application of a rigid rule that all litigants including the State must be treated equally in the matter of exercise of discretion under Sec.5 of the Limitation Act. (In *Collector, land Acquisition, Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others*, . The following observations in the said decision are pertinent: "There is no warrant for according a step motherly treatment when the "State" is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one is in charge of the matter or is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note making, file pushing and passing-on-the buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant non grata status. The courts therefore have to be informed with the spirit and philosophy of the provision". In the course of interpreting the width of the expression "sufficient cause" the Supreme Court has indicated in clear terms in favour of adoption of a liberal approach. Their lordships further pointed out that since a litigant does not ordinarily stand to benefit by lodging an appeal late, refusal to condone delay can result in a meritorious matter being thrown out at the very threshold and

cause of justice being defeated. As against this, it is pointed out that, when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties. The need to make a pragmatic approach to the oft quoted principle that "every day"s delay must be explained" is stressed by the Supreme Court by putting the question, "why not every hour"s delay and every second"s delay," In the words of Their Lordships "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.

In the light of the above discussion and emerging position, I am inclined to hold that the government in this case have made out an explanation for the delay which can be accepted as sufficient cause, I therefore, allow this application and condone the delay.