

(2012) 10 GAU CK 0058
In the Gauhati High Court
Case No : MC (Rev. Pet.) No. 18 of 2011

State of Manipur	Vs	APPELLANT
Chingsubam Rajeshwor Singh		RESPONDENT

Date of Decision : 08-10-2012

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2013) 2 GLT 179

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Advocate : N. Kumarjit and Mr. Tamphamani, for the Appellant; Kh. Tarunkumar, for the Respondent

Final Decision : Dismissed

Judgement

T. Nandakumar Singh, J.—Heard Mr. N. Kumarjit, learned senior counsel assisted by Mr. Tamphamani, learned counsel for the Applicant and also Mr. Kh. Tarunkumar, learned counsel for the respondent/writ petitioner. By this application, the Applicant is praying for condoning delay of 1637 days in filing the accompanying review petition for reviewing the judgment and order dated 28.02.2007 passed in WP (C) No. 696 of 2006.

2. For deciding the question arises in this misc application as to whether there is sufficient cause for condoning the delay of 1637 days or/reasons for condonation of delay are plausible and there was no negligence on the part of the Applicant for the delay of 1637 days, a brief reference to the factual background would suffice:

The judgment and order of this court dated 28.02.2007 passed in WP (C) No. 696 of 2006 for which the accompanying review petition is filed along with this misc application for condonation of delay of 1637 days was passed in the presence of the learned Government Advocate appearing for the present petitioner and as such, the judgment and order dated 28.02.2007 was not an ex-

parte judgment and order.

3. The reasons for condonation of delay of 1637 days, supported by an affidavit sworn by one Dr. J. Suresh Babu, Principal Secretary, Education (S), Government of Manipur, excluding all the grounds taken for review which would be required to be considered at the time of hearing of the review petition, are quoted hereunder:

1. That by the instant application, the Applicant prays for condoning a delay of 1637 days in filing the review petition against the order dated 28.02.2007 passed in WP (C) No. 696 of 2006

2. That the Respondent filed WP (C) No. 696 of 2006 during the month of July, 2006. After issuance of notice, the Addl. Government Advocate (HC) vide letter dated 11.09.2006 requested the Commissioner, Education (S), Government of Manipur to furnish para-wise comment along with relevant records for defending the case. The Letter was received by the Office of the Commissioner Education (S), Government of Manipur on 15.09.2006.

3. That on receipt of the letter dated 11.09.2006, the Under Secretary, Education (S), Government of Manipur vide letter dated 18.11.2006 directed the Director of Education (S), Government of Manipur for furnishing the Para-wise Comment/briefs of the case to the Addl. Government Advocate (HC).

4. That however no information was furnished to the Secretariat, Education Department School Section, Government of Manipur in respect of the case. Accordingly, vide a subsequent letter dated 27.09.2009, the Deputy Secretary, Education (S), Government of Manipur directed the Director of Education (S), Government of Manipur to submit the details of the case including the explanation for issuing the order dated 25.04.2005 and 21.05.2004 which are the orders for granting retrospective regularization to the Respondent.

5. That in the meantime on 10.01.2011 the Commissioner, Education (S), Government of Manipur received a Notice/Summons dated 05.01.2011 in Contempt Case (C) No. 135 of 2010 (Ref: WP (C) No. 696 of 2006) directing the then Commissioner, Education (S), Government to appear before the Court on 19.01.2011.

6. That it is submitted that the Officer of the Commissioner. Education (S). Government of Manipur came to know the existence of the order dated 28.02.2007 passed in WP (C) No. 696 of 2006 only on 10.01.2011.

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15. That it is submitted that the respondent obtained the said judgment and order dated 28.02.2007 on the basis of the said fake & fabricated letter dated 30.04.2005. In the circumstances and as advice by the Law Department, Government of Manipur including the Learned Advocate General, Manipur, the Department of Law and Legislative Affairs approved the decision for filing a

review petition as proposed by the Department of Education (S). Government of Manipur on 05.10.2011.

16. That the Department of Education (S), Government of Manipur thereafter entrusted the relevant records to the concerned Advocate for filing the review petition on 06.10.2011 and the Advocate took some time in preparation of the review petition as well as the condonation application and in the circumstances there is delay of 1637 days in filing the review petition.

17. That there was no negligence on the part of the petitioner for not filing the review petition in time and the petitioner was unable to file the same because of the reasons and grounds stated above.

4. The respondent-writ petitioner filed affidavit in opposition to the present misc application, wherein the respondent-writ petitioner categorically denied that the Applicant/respondent in WP (C) No. 696 of 2006 who was represented by the learned GA at the time of passing the judgment and order dated 28.02.2007 in the WP (C) No. 696 of 2006, came to know the judgment and order dated 28.02.2007 for the first time only on 10.01.2011. The relevant portions of the affidavit in opposition filed by the respondent-writ petitioner read as follows:

3. That in reply to the contents of para No. 1 of the Misc Application the answering respondent begs to submit that the prayer of the applicant for condoning the delay of 1637 days in the filing the review petition is liable to be rejected because the applicant did not approach this Hon''ble High Court with clean hands. The reasons are stated in the following paragraphs.

7. That in reply to the contents of Paragraph No. 5 of the Misc Application, the answering respondent begs to submit that as his service pension has been stopped in view of the above said letter dated 13.10.2005, he approached this Hon''ble High Court by filing a writ petition being WP (C) No. 696 of 2006 challenging the legality of the said letter and also with a further prayer to direct the respondents therein to release his service pension as usual. The said writ petition was ultimately disposed of by the Hon''ble Court in presence of the learned Government Advocate who represents the department of Education (S), Govt. of Manipur. This Hon''ble Court directed the respondents therein to give service pension to him without further delay. Despite direction of this Hon''ble Court, the respondents failed to give his service pension. Being aggrieved, he filed a contempt petition being Contempt Case (C) No. 135 of 2010 before this Hon''ble Court for taking UP necessary action against the respondents.

8. That, in reply to the contents of the Para No. 6 of the Misc Application, the answering respondent begs to submit that the Statement made by the applicant i.e. the office of the Commissioner. Education (S), Govt. of Manipur came to know the existence of the order dated 28.2.2007 passed in WP (C) No. 696 of 2006 only on 10.1.2011 is absolutely wrong and false. After obtaining a certified copy of the above said order of this Court dated 28.2.2007, the answering respondent through his counsel served a notice upon the respondents including

the office of the Commissioner, Education (S), Govt. of Manipur on 27.3.2007 and the same was received by the said office on 27.3.2007 under its R.R. No. 462 dtd. 27.3.2007. Moreover, the above said writ petition was disposed of in presence of the learned Govt. Advocate who represented the department of Education (S), Govt. of Manipur. Moreover, after communicating the order of this Hon''ble Court dated 28.2.2007 passed in the above referred writ petition (WP (C)) No. 696 of 2006) to each of the respondents including the office of the applicant, the office of the Sr. Deputy Accountant General (A & E), Manipur wrote various letters to the department of Personnel and Administrative Reforms, Govt. of Manipur and Joint Secretary, Pension Cell, Govt. of Manipur on 18.4.2007, 30.8.2007, 27.4.2010, 3.12.2010 & 3.1.2011 etc in connection with the above said case. In all those communication letters, the office of the Commissioner, Education (S), Govt. of Manipur was served a copy of each of the said letters by mentioning the Commissioner (Education/S), Govt. of Manipur in the copy to column of each of the letters.

9. That, in reply to the contents of the para No. 7 of the Misc Application, the answering respondent beg to submit that after obtaining a certified copy of the above said order of this Hon''ble Court dated 28.2.2007 passed in WP (C) No. 696 of 2006, a legal notice was furnished to the office of the Commissioner. Education (S), Govt. of Manipur (present applicant) and same was received by the office of the applicant on 27.3.2007 under its R.R. No. 462. Therefore, the applicant can not say that his office does not have any re cord or relevant paper of the above said order of this Hon''ble Court. Hence, the content of the said para is denied.

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16. That, in reply to the contents of the para No. 14 of the Misc Application, the answering respondent begs to submit that in one of the affidavit in opposition dated 5.4.2011 filed by the applicant to the above said contempt petition, they have annexed the above said letter dated 30.4.2005 with file numbers as annexure R/2. And by taking an U turn, they have filed another affidavit in opposition dated 19.9.2009 by the same applicant wherein they have annexed a letter dated 30.4.2005 without file number. Therefore, it is humbly beg to submit that before filing the above said affidavit in opposition dated 19.9.2011 to the above said contempt petition, the applicant already have the knowledge that the above said letter dated 30.4.2005 bears its file number being 23/2/2005-Misc/DP. Hence, the content of the said para is denied.

5. It is well settled that proof by sufficient cause is a condition precedent for exercise of extraordinary jurisdiction vested in the court u/s 5 of the Limitation Act to condone the delay in filing appeal or/revision or/appeal etc. What counts is not the length of delay but the sufficiency of cause and shortness of the delay is one of the circumstances to be taken into account in exercising the discretion. What constitute sufficient cause cannot be laid down by any hard and fast rule. No doubt, the expression "sufficient cause" should be considered with

pragmatism in a justice oriented project rather than technical dictation of the sufficient cause for explaining every day's delay. The "sufficient cause", no doubt, should be considered liberally but in absence of plausible reasons and materials there cannot be question of construing the expression of "sufficient cause" liberally.

6. It is also equally well settled that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds. The court must record its satisfaction that the explanation for the delay was either reasonable or satisfactory. No explanation much less a reasonable or satisfactory explanation offered by the respondent-State for condonation of delay, is acceptable. Only for the obsolete comment in which that on account of impartial machinery inherited bureaucratic methodology imbued with the note making, file pushing and passing on 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 and are taken by the officers/agencies proverbially a slow pace and encumber process of pushing files from one table to another table.

7. When the law of limitation is to be applied with all its vigour equally to the Government, who is a party in the case, delay cannot be condoned merely on sympathetic grounds inasmuch as the satisfactory and convincing explanation for the delay is a condition precedent for invoking power vested to the Court u/s 5 of the Limitation Act. Delay cannot be condoned without assigning any reasonable, satisfactory, sufficient and proper reasons. Vague explanations cannot be the ground for the condonation of delay.

8. The Apex Court in *State of Rajasthan Vs. Nav Bharat Construction Co.*, held as under.

21. We have perused the impugned order whereby application seeking condonation of delay was rejected and the revision petition was dismissed as barred. The cause for the delay stated was long strike of government employees. In the application seeking condensation of delay there was no mention as to when the strike commenced and terminated. The application was completely vague and the High Court committed no error in rejecting it. We find no ground to interfere with the said order. Civil Appeal No. 8053 of 2011 is, therefore, dismissed.

9. As stated above, shortness of delay is one of the circumstances to be taken into account in using the discretion vested in the court for condonation of delay. The Apex Court in *State of Nagaland Vs. Lipok AO and Others*, , a case arising from the judgment and order of the learned single Judge of this Court, (Gauhati High Court), after taking into consideration of the promptness on the part of the officer in filing appeal and also the shortness of the delay, i.e. only 57 days, had condoned the delay. Para 8, 9, 10 and 11 of the SCC in *Lipok Ao's case* (supra)

read as follows:

8. The proof by sufficient cause is a condition precedent for exercise of the extraordinary restriction vested in the court. What counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. In *N. Balakrishnan Vs. M. Krishnamurthy*, it was held by this Court that Section 5 is to be construed liberally so as to do substantial justice to the parties. The provision contemplates that the Court has to go in the position of the person concerned and to find out if the delay can be said to have been resulted from the cause which he had adduced and whether the cause can be recorded in the peculiar circumstances of the case is sufficient. Although no special indulgence can be shown to the Government which, in similar circumstances, is not shown to an individual suitor, one cannot but take a practical view of the working of the Government without being unduly indulgent to the slow motion of its wheels.

9. What constitutes sufficient cause cannot be laid down by hard and fast rules. In *New India Insurance Co. Ltd. Vs. Smt. Shanti Misra, Adult*, this Court held that discretion given by Section 5 should not be defined or crystallized so as to convert a discretionary matter into a rigid rule of law. The expression "sufficient cause" should receive a liberal construction. In 22 CWN 169 (Privy Council) it was observed that true guide for a court to exercise the discretion u/s 5 is whether the appellant acted with reasonable diligence in prosecuting the appeal. In *Shakuntala Devi Jain Vs. Kuntal Kumari and Others*, a Bench of three Judges had held that unless want of bona fides of such inaction or negligence as would deprive a party of the protection of Section 5 is proved, the application must not be thrown out or any delay cannot be refused to be condoned.

10. In *Concord of India Insurance Co. Ltd. Vs. Smt. Nirmala Devi and Others*, which is a case of negligence of the counsel which misled a litigant into delayed pursuit of his remedy, the default in delay was condoned. In *Mata Din Vs. A. Narayanan*, , this Court had held that there is no general proposition that mistake of counsel by itself is always sufficient cause for condonation of delay. It is always a question whether the mistake was bona fide or was merely a device to cover an ulterior purpose. In that case it was held that the mistake committed by the counsel was bona fide and it was not tainted by any mala fide motive.

11. In *State of Kerala v. E.K. Kuriyipe and Ors.* , it was held that whether or not there is sufficient cause for condonation of delay is a question of fact dependant upon the facts and circumstances of the particular case. In *Milavi Devi v. Dina Nath*, (1982) 3 SCC 366 , it was held that the appellant had sufficient cause for not filing the appeal within the period of limitation. This Court under Article 136 can reassess the ground and in appropriate case set aside the order made by the High Court or the Tribunal and remit the matter for hearing on merits. It was accordingly allowed, delay was condoned and the case was remitted for decision on merits.

10. The incorrect statement to get rid of the period of limitation is sufficient to reject the application for condonation of delay without any further inquiry as to whether the averments made in the application reveals sufficient cause to condon the delay. The applicants may be Government, cannot take the advantage of his negligence after the lapse of a number of years. In the present case, it is vividly clear that the statement of the Applicant, supported by the affidavit sworn by Dr. J. Suresh Babu, that the Applicant, Principal Secretary Education (School Section), came to know the judgment and order of this court dated 28.02.2007 passed in WP (C) No. 696 of 2006 for the first time, only on 10.01.2011 is incorrect.

11. The Apex Court in *Pundlik Jalam Patil (D) by Lrs. Vs. Exe. Eng. Jalgaon Medium Project and Another*, held that the abuse of process of court/law/fraud on court by public authority, in its anxiety to get rid of the bar of limitation taking resort to a false plea is unwarranted. Para 11, 12, 13, 17, 21, 22 and 23 of the SCC in *Pundlik Jalam Patil's* case (*supra*) read as follows:

11. Whether the respondent made incorrect statement in the application seeking condonation of delay? There is no dispute whatsoever that the respondent being the beneficiary of the acquisition has been duly impleaded as a party respondent in the reference cases as is required in law. It not only appeared in the matter through a properly instructed counsel but also filed its written statement opposing the claim for enhancement of compensation but did not choose to lead any evidence whatsoever. In the application filed in the High Court the plea taken by the respondent is as under:

The applicant submits that, although the applicant being Acquiring Body, was arrayed as opponent in the said reference, the opponent no. 4 herein (Original Opponent 1) SLAO or his subordinate contested the said reference by filing written statement. Therefore, this applicant was unaware about the stand taken by SLAO as well as the impugned judgment and award.

(emphasis supplied)

This averment in the application on the face of it is totally incorrect.

12. The Law & Judiciary Department as early as on 13.4.2000 i.e. to say within the period of 15 days from the date of the award of the Reference Court communicated its decision to acquiesce in the decision of the Reference Court and communicated the same to all the concerned including the beneficiary of the acquisition. It is not the case that the Executive Engineer did not receive the said communication. Having received the said communication the respondent did not act in the matter and initiated any steps for filing the appeals if it was really aggrieved by the decision of the Reference Court. There is no doubt whatsoever in our mind that the respondent made totally incorrect statement in the application filed in the High Court. We express our reservation as to the manner in which a public authority conducted itself in its anxiety to somehow get the relief from the court. In our considered opinion incorrect statement made in the

application seeking condonation of delay itself is sufficient to reject the application without any further inquiry as to whether the averments made in the application reveal sufficient cause to condone the delay. That a party taking a false stand to get rid of the bar of limitation should not be encouraged to get any premium on the falsehood on his part by condoning delay. [See: Binod Bihari Singh Vs. Union of India,].

13. Whether the High Court properly exercised its discretion? The High Court in its order having noticed the relevant fact in categorical terms held that there was no substance in the plea that it was unaware about the judgment and award passed by the Reference Court since it was a party before the Reference Court and contested the matter. The High Court also found that the decision of the Joint Secretary to acquiesce was communicated to the beneficiary of the acquisition and therefore, its plea about the unawareness of the award and decision taken by the Government cannot be accepted. The High Court in its order emphatically rejected the ground raised by the respondent in that regard. In such view of the matter can it be said that the High Court properly exercised its jurisdiction?

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17. The applicant having set the machinery in motion cannot abandon it to resume it after number of years because the authority with whom it had entered into correspondence did not heed to its request to file appeals. The question is: Can the respondent/applicant in this case take advantage of its negligence, after lapse of number of years, of the decision of Government? It knew the exact grounds on which appeals could have been preferred. The law will presume that it knew of its right to file appeal against the award. Everybody is presumed to know law. It was its duty to prefer appeals before the court for consideration which it did not. There is no explanation forthcoming in this regard. The evidence on record suggest neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The court helps those who are vigilant and "do not slumber over their rights."

21. Shri Mohta, learned senior counsel relying on the decision of this court in N. Balakrishnan Vs. M. Krishnamurthy, submitted that length of delay is no matter, acceptability of explanation is the only criterion. It was submitted that if the explanation offered does not smack of mala fides or it is not put forth as part of dilatory tactics the court must show utmost consideration to the suitor. The very said decision upon which reliance has been placed holds that the law of limitation fixes a life span for every legal remedy for the redress of the legal injury suffered. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of Limitation is thus founded on public policy. The decision does not lay down that a lethargic litigant can leisurely choose his own time in preferring appeal or application as the case may be. On the other hand, in the said judgment it is said that court should not forget the

opposite party altogether. It is observed: (SCC p. 128, para 11)

.. .. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

22. In *Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd.*, , this court held that: (AIR pp. 363-65)

In construing Section 5 of the Limitation Act, it is relevant to bear in mind two important considerations. The first consideration is that the expiration of period of limitation prescribed for making an appeal gives rise to right in favour of the decree holder to treat the decree as binding between the parties and this legal right which has accrued to the decree holder by lapse of time should not be lightly disturbed. The other consideration which cannot be ignored is that if sufficient cause of excusing delay is shown discretion is given to the court to condone the delay and admit the appeal. It is further necessary to emphasize that even if the sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by section 5. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage the diligence of the party of its bona fides may fall for consideration.

(emphasis supplied)

23. On the facts and in the circumstances, we are of the opinion that the respondent beneficiary was not diligent in availing the remedy of appeal. The averments made in the application seeking condonation of delay in filing appeals do not show any acceptable cause much less sufficient cause to exercise courts' discretion in its favour.

12. The explanation for condonation of delay of 1367 days is so vague and so unreasonable, even no prudent person will consider those cryptic explanations are plausible, reasonable and rationale for the delay of 1367 days. The explanations for delay mentioned only few dates for movement of documents/file between the Education Department and the office concerned.

13. The Apex Court rejected the condonation for delay of 264 days in *C.W.T. v. Amateur Riders Club* wherein the explanation of delay mentioned only the dates of movement of documents between office concerned and the counsel. The affidavit filed by the Government in support of the application for condonation of delay is only a stereotyped affidavit. Para 2 and 3 of the SCC in *Commissioner of Wealth Tax, Bombay*'s case (*supra*) read as follows:

2. This SLP filed on November 16, 1993 is delayed by 264 days. For quite some time in the past, this Court has been making observations as to the grave

prejudice caused to public interest, by appeals brought on behalf of the Government being lost on the point of limitation. Such observations have been made for over a few years in the past. But there seems to be no conspicuous improvement as is apparent in the present petition which is filed in November 1993. The explanation for the delay, had better be set out in petitioner's own words:

(g) The Advocate-on-Record got the SLP drafted from the drafting Advocate and sent the same for approval to the Board on June 24, 1993 along with the case file.

(h) The Board returned the case file to the Advocate-on-Record on July 9, 1993 who resent the same to the Board on September 20, 1993 requesting that draft SLP was not approved by the Board. The Board after approving the draft SLP sent this file to CAS on October 1, 1993.

3. This explanation is incapable of furnishing a judicially acceptable ground for condonation of delay. After the earlier observations of this Court made in several cases in the past, we hoped that the matters might improve. There seems to be no visible support for this optimism. There is a point beyond which even the courts cannot help a litigant even if the litigant is Government which is itself under the shackles of bureaucratic indifference. Having regard to the law of limitation which binds everybody, we cannot find any way of granting relief. It is true that Government should not be treated as any other private litigant as, indeed, in the case of the former the decisions to present and prosecute appeals are not individual but are institutional decisions necessarily bogged down by the proverbial red-tape. But there are limits to this also. Even with all this latitude, the explanation offered for the delay in this case merely serves to aggravate the attitude of indifference of the Revenue in protecting its common interests. The affidavit is again one of the stereotyped affidavits making it susceptible to the criticism that the Revenue does not seem to attach any importance to the need for promptitude even where it affects its own interest.

14. The Apex Court in P.K. Ramachandran Vs. State of Kerala and Another, held that for condonation of delay there must be essential prerequisite of reasonable or satisfactory explanation offered by the State respondents and judgment of the High Court for condoning delay of 565 days in filing the first appeal was set aside as the High Court did not record reasons for its satisfaction for condonation of delay. Para 5 and 6 of the SCC in P.K. Ramachandran's case (supra) read as follows:

5. This can hardly be said to be a reasonable, satisfactory or even a proper explanation for seeking condonation of delay. In the reply filed to the application seeking condonation of delay by the appellant in the High Court, it is asserted that after the judgment and decree was pronounced by the learned Sub Judge, Kollam on 30.10.1993, the scope for filing of the appeal was examined by the District Government Pleader, Special Law Officer, Law Secretary and the Advocate

General and in accordance with their opinion, it was decided that there was no scope for filing the appeal but later on, despite the opinion referred to above, the appeal was filed as late as on 8.1.1996 without disclosing why it was being filed. The High Court does not appear to have examined the reply filed by the appellant as reference to the same is conspicuous by its absence from the order. We are not satisfied that in the facts and circumstances of this case, any explanation, much less a reasonable or satisfactory one had been offered by the respondent State for condonation of the inordinate delay of 565 days.

6. Law of limitation may harshly effect a particular party but it has to be applied with all its rigour when the statute so prescribe and the Courts have no power to extend the period of limitation on equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condonation of delay filed in the High Court would stand rejected and the Miscellaneous First Appeal shall stand dismissed as barred by time. No costs.

15. The Apex Court, recently in *Office of The Chief Post Master General and Others Vs. Living Media India Ltd. and Another*, , after taking into consideration of the earlier decisions of the Apex Court in a number of cases held that the department (Government) cannot take advantage of various earlier decisions of the Apex Court for condoning the delay on account of impersonal machinery and inherited bureaucratic methodology of making several notes in view of the modern technologies being used and available, and also law of limitation undoubtedly binds everybody including government; and government departments are under special obligation to ensure that they perform their duties with diligence and commitment. Para 11, 12, 13, 14, 15, 20, 22, 23, 24, 28, 29 and 30 of the SCC in *Postmaster General & Ors's* case (supra) read as follows:

11. Before going into the reasons furnished by the Department for the delay, let us consider various decisions of this Court relied on by Mr. Raval, learned ASG.

12. In *Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others*, , while considering "sufficient cause" in the light of Section 5 of the Limitation Act, 1963, this Court pointed out various principles for adopting liberal approach in condoning the delay in matters instituted in this Court.

13. Learned ASG heavily relied on the following principles: (*Katiji* case: (1987) 2 SCC 108, para 3)

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing 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 when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day's delay must be explained" does not mean that a pedantic

approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

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.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

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

By showing the above principles, learned ASG submitted that there is no warrant for according step-motherly treatment when the "State" is the applicant. It is relevant to mention that in this case, the delay was only for four days.

14. In *G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore*, the principles enunciated in paras 15 and 17 are heavily relied on by the learned ASG. They are: (SCC p. 148)

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.

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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.

Considering the peculiar facts, namely, the change of Government Pleader who had taken away the certified copy after he ceases to be in office, the High Court condoned the delay which was affirmed by this Court.

15. In *State of Haryana Vs. Chandra Mani and others*, while condoning the delay of 109 days in filing the LPA before the High Court, this Court has observed that certain amount of latitude within reasonable limits is permissible having regard to impersonal bureaucratic setup involving red-tapism. In the same decision, this Court directed the State to constitute legal cells to examine whether any legal principles are involved for decision by the courts or whether cases required

adjustment at governmental level.

20. In view of the stand taken by the Postal Department as to the reasons for the delay and the serious objections of the respondents, it is desirable to extract the entire statement as placed in the form of "better affidavit" by the officer of the appellant-Department:

I, Aparajeet Pattanayak presently posted as SSRM, Air Mail Sorting Division, New Delhi, do hereby solemnly affirm and state as under:

(1) In the official capacity mentioned above, I am acquainted with the facts of the case on the basis of the information derived from the record.

(2) On the last date of hearing i.e. 05.12.2011 this Hon''ble Court was pleased to allow the petitions to file better affidavit in support of the application for condonation of delay in filing Special Leave Petition.

(3) It is submitted that the delay is not intentional but is on account of the departmental/administrative procedures involved in for filing the petition for Special Leave Petition. It is submitted that unlike the private litigant the matters relating to government are required to be considered at various levels and then only a decision is taken.

(4) In the present case it would be evident from the following that delay has been caused due to unavoidable circumstances:

(5) It is submitted that it is evident from the foregoing reasons that the delay caused in filing the petition was result of all the necessary and unavoidable office formalities and was bonafide and not deliberate or intentional and the petitioner was prevented by sufficient cause from filing the petition within the period of limitation.

(6) It is further submitted that the petitioner humbly seeks leave to draw the kind attention of this Hon''ble Court to the views expressed by this Hon''ble Court that liberal approach may be adopted and that the Court should not take too strict and pedantic stand which will cause injustice while considering the application for condonation of delay, in terms of its judgments in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, and Bhag Singh and Others Vs. Major Daljit Singh and Others, . It is submitted that the principles for condonation of delay laid down in the above cited cases may therefore be adopted in the present case also.

(7) This Hon''ble Court in G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore, laid down that the expression "sufficient cause" in Section 5 of the Limitation Act, 1963 must receive a liberal construction so as to advance substantial justice where no gross negligence or deliberate inaction or lack of bonafide is imputable to the party seeking condonation of delay.

(8) In the matter of State of Haryana Vs. Chandra Mani and others, this Hon''ble Court observed and laid down as follows: (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 but 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 the 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.

(9) This Hon'ble Court in Union of India and Others Vs. Manager, M/s. Jain and Associates, decided on 06.02.2011 has held that delay ought to be condoned when sufficiently explained particularly where party seeking condonation is the Government. It is further submitted that the Hon'ble High Court ought to have condoned the delay in considering the public revenue involved and also because of the genuine difficulties and circumstances beyond the control of the petitioner, on account of which SLP could not be filed within the time.

22. In C.W.T. v. Amateur Riders Club , there is a delay of 264 days in filing the SLP by the Commissioner of Wealth Tax, Bombay. The explanation for the delay had been set out in petitioner's own words as under: (SCC p. 604, para 2)

2. ... (g) The Advocate-on-Record got the SLP drafted from the drafting Advocate and sent the same for approval to the Board on June 24, 1993 along with the case file.

(h) The Board returned the case file to the Advocate-on-Record on July 9, 1993 who re-sent the same to the Board on September 20, 1993 requesting that draft SLP was not approved by the Board. The Board after approving the draft SLP sent this file to CAS on 1.10.1993.

After incorporating the above explanation, this Court refused to condone the delay by observing thus: (SCC p. 604, para 3)

3. Having regard to the law of limitation which binds everybody, we cannot find any way of granting relief. It is true that Government should not be treated as any other private litigant as, indeed, in the case of the former the decisions to present and prosecute appeals are not individual but are institutional decisions necessarily bogged down by the proverbial red-tape. But there are limits to this also. Even with all this latitude, the explanation offered for the delay in this case merely serves to aggravate the attitude of indifference of the Revenue in

protecting its common interests. The affidavit is again one of the stereotyped affidavits making it susceptible to the criticism that the Revenue does not seem to attach any importance to the need for promptitude even where it affects its own interest.

[Emphasis supplied]

23. In *Pundlik Jalam Patil (D) by Lrs. Vs. Exe. Eng. Jalgaon Medium Project and Another*, , the question was whether the respondent-Executive Engineer, Jalgaon Medium Project had shown sufficient cause to condone the delay of 1724 days in filing appeals before the High Court. In para 17, this Court held: (SCC p. 455)

17.The evidence on record suggests neglect of its own right for long time in preferring appeals. The court cannot enquire into belated and stale claims; on the ground of equity. Delay defeats equity. The court helps those who are vigilant and "do not slumber over their rights."

24. After referring various earlier decisions, taking very lenient view in condoning the delay, particularly, on the part of the Government and Government Undertaking, this Court observed as under (*Pundlik Jalam case 2008*) 17 SCC 448, pp. 457-58 paras 29-30)

29. It needs no restatement at our hands that the object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.

30. Public interest undoubtedly is a paramount consideration in exercising the courts' discretion wherever conferred upon it by the relevant statutes. Pursuing stale claims and multiplicity of proceedings in no manner subserves public interest. Prompt and timely payment of compensation to the land losers facilitating their rehabilitation/resettlement is equally an integral part of public policy. Public interest demands that the State or the beneficiary of acquisition, as the case may be, should not be allowed to indulge in any act to unsettle the settled legal rights accrued in law by resorting to avoidable litigation unless the claimants are guilty of deriving benefit to which they are otherwise not entitled, in any fraudulent manner. One should not forget the basic fact that what is acquired is not the land but the livelihood of the land losers. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed u/s 5 of the Limitation Act. Dragging the land losers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. It serves no public interest.

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 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.

(emphasis supplied)

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 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.

(emphasis supplied)

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.

16. After consideration of the above decisions of the Apex Court, more particularly, in Pundlik Jalam Patil's case (supra) and Postmaster General & Ors's case (supra) this court is of considered view that the Government Departments require to remember that the Government Departments are under a special obligation to ensure that they perform their duties with due diligence and commitment and also that the condonation of delay is an exception and should not be treated as an anticipated benefit for the Government Departments.

17. For the reasons discussed in the above paras, the court is constrained to observe that filing this application for condonation of delay of 1367 days, on cryptic and vague reasons is an abuse of process of the court; for this the application for condonation of delay is dismissed with cost of Rs. 10,000/- which is to be paid by Dr. J. Suresh Babu, who sworn the affidavit in support of the present misc application.

Dr. J. Suresh Babu, Principal Secretary, Government of Manipur, shall deposit the said amount of Rs. 10,000/- to the Chief Minister's Relief Fund, within three weeks from the date of receipt of this judgment and order.

Learned counsel for the petitioner shall inform this order to Dr. J. Suresh Babu, Principal Secretary, Govt. of Manipur. It is made clear that the said amount of Rs.

10,000/- should be from the pay and allowance of Dr. J. Suresh Babu. The Chief Secretary, Manipur is directed to circulate this judgment and order to his subordinate officers of the rank of Secretary.

For the foregoing reasons, this misc application is dismissed with the cost indicated above and review petition shall stand dismissed as barred by time.