

(1990) 09 DEL CK 0035

In the Delhi High Court

Case No : Criminal Miscellaneous No. 52 of 1990 in Criminal Appeal No. 13 of 1990

Union of India

APPELLANT

Vs

Jyotsna Holdings (P.) Ltd.

RESPONDENT

Date of Decision : 28-09-1990

Acts Referred:

Citation : (1992) 38 ECC 308

Hon'ble Judges : Y.K. Sabharwal, J

Bench : Single Bench

Advocate : Ashok Desai, for the Appellant; F.S. Nariman and K.K. Venugopal, for the Respondent

Judgement

Y.K. Sabharwal, J.—In this application seeking condensation of delay in filing the appeal, this court is not concerned with the merits of the case except for the limited purpose of deciding the plea of public interest put forth by the Government. Briefly, the facts are :

The respondent Jyotsna Holdings Pvt. Ltd. (hereinafter referred to as "JH"), had been appointed to offer consultancy services to Somitomo Corporation, Japan (hereinafter referred to as "SC") in the matter of applies contemplated to be made by SC of the Oil and Natural Gas Commission/Gas Authority of India Ltd. Two agreements dated August 30, 1984, and November 5, 1984, were executed between JH and SC was entitled to receive consultancy fees from SC. The agreement dated August 30, 1984, inter alia, provided that the consultancy fees would be remitted in Japanese yen to the account of the Bank of Credit and Commerce International (for short "BCCI"), London, on account of Eljay Consultants Incorporated (for short "Eljay"). The agreement also provides that, in case the contract is cancelled partially or totally due to reasons other than the fault of SC, the consultancy fees paid by SC to JH corresponding to the cancelled amount will be paid back by JH to SC. One of the terms of the agreement provides :

"The consultancy fee hereunder constitutes full and sole compensation for all assistance, advice and other services to be rendered by JH and also for all costs and expenses which JH may incur in performing this agreement (including but not limited to communication or travel expenses, compensation for local correspondent, etc.). Accordingly, SC will not be required to make any further payment of commission, fee compensation, whatsoever.

JH further agrees that it will not be entitled to any fee or compensation, if the firm contract for total quantity of pipes as mentioned in page 1 of this agreement is not awarded to SC for any reason."

2. Eljay was holding a major stake in JH. Between December 3, 1984, and October 24, 1986, Japanese yen 906,043,915 and US dollars 6,69,367.84 were deposited in the aforesaid account of Eljay. A directive u/s 33(2) of the Foreign Exchange Regulation Act, 1973, was issued on July 12, 1988, to JH requiring it to furnish certain information/documents considered relevant for investigation under the Foreign Exchange Regulation Act. JH furnished certain information/documents by letter dated July 26, 1988. Certain information appears to have been also furnished by the Income Tax Department showing that JH had, in its returns for the assessment years 1985-86, 1986-87 and 1987-88 disclosed income approximately to the tune of Rs. 6.35 crores earned by it by way to consultancy fees from SC; that this amount accrued to JH, vide two agreements dated November 5, 1984, and August 30, 1984; that SC had remitted money in US dollars to BCCI for being credited in the account of Eljay and that these amounts were repatriated to India through banking channels in September, 1987. By another reply dated August 12, 1988, JH appears to have furnished, inter alia, information/documents relating to their dealings with SC besides details of remittances worth Rs. 5,75,35,870.40 and Rs. 86,64,955.85 received during September, 1987, from SC being consultancy fees in respect of agreements dated August 30, 1984, and November 5, 1984, respectively.

3. A show-cause notice was issued to JH and its directors on September 23, 1988, requiring them to show-cause as to why adjudication proceedings as contemplated u/s 50 of the Foreign Exchange Regulation Act should not be held against them for contravening the provisions of section 8(1), 14 and 47(1) and (2) of the Foreign Exchange Regulation Act involving acquisition and otherwise transfer of foreign exchange of Japanese yen 90,60,43,915.00 and US dollars 6,69,367.84 and failure to surrender the said amounts to an authorised dealer within the stipulated period, besides entering into agreements with SC which have the effect to evading the provisions of sections 8 and 14 of the Foreign Exchange Regulation Act. A reply dated November 5, 1988, was filed by JH to the said show-cause notice wherein the charge was denied. After considering the reply to the show-cause notice, it was decided to hold adjudication proceedings. Accordingly, notice was issued and personal hearing was afforded to the parties.

4. By order dated January 6, 1989, Sh. Krishan Kant, Special Director, held that

JH had contravened the provisions of section 8(1), 14 and 47 of the Foreign Exchange Regulation Act and imposed upon JH a penalty of Rs. 20 lakhs for contravention of sections 8(1) and 14 and penalty of Rs. 20 lakhs for contravention of section 47. In the order dated January 6, 1989, the contention put forth on behalf of JH that its right to receive consultancy fees came into existence for the first time on August 25, 1987, when SC wrote a letter of the same date confirming that full and final settlement of payments in reference to the agreements have been made and agreements have been fulfilled was rejected. It was, inter alia, held that whether JH got the payments of consultancy fees directly or through the account of Eljay, JH were the original owners of the foreign exchange representing consultant fees and they acquired this ownership not on August 25, 1987, as contended by them but on the dates as and when SC remitted the amounts in the account of Eljay in BCCI. The special director observed that the circumstances did not rule out the possibility of the existence of means read or "guilty intention" on the part of JH or its directors. The special director concluded that charges contained in the show-cause notice stood proved and imposed the penalties as notices above. Similar orders were made in the case of R. R. Holding Pvt. Ltd. which is subject-matter of Criminal Appeal No. 12 of 1990. In that case, the special director, by order made on the same date, imposed a penalty of Rs. 12 lakhs for contravention of sections 8(1), 14 and 47 of the Foreign Exchange Regulation Act.

5. The appeals filed against the orders dated January 6, 1989, were allowed by the Foreign Exchange Regulation Appellate Board by orders dated July 17, 1989.

6. u/s 54 of the foreign Exchange Regulation Act, from any decision or order of the Appellate Board, and appeal lies to this court only on a question of law. The section also provides that this court shall not entertain any appeal if it is filed after the expiry of 60 days from the date of the communication of the decision or order of the Appellate Board, unless the High Court is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

7. Both the appeals (Criminal Appeals Nos. 12 and 13 of 1990) were filed in this court on January 16, 1990. As the appeals were filed beyond the period of 60 days, applications have been filed seeking condensation of delay in filing the appeals. Both the applications are similarly worded. It is claimed in the application that the order of the Appellate Board was received by the then Director of Enforcement on July 21, 1989. It was examined and the then Director of Enforcement was of the opinion that the impugned order did not involve any question of law and, Therefore, an appeal against the same does not lie and need not be filed. The said decision was taken on September 8, 1989. It is then recited in the application that, during the last session of Parliament, the matter came up for discussion in Parliament on or about the last week of December, 1989, and the matter was reconsidered by the Government and it was decided on December 28, 1989, to obtain the advice of the Law Ministry and act accordingly. On the same day the process of re-examining the matter was

started and a detailed reference was made to the Law Ministry on January 4, 1990 (30th and 31st December, 1989, being holidays). Further details with regard to receipt of advice of the Law Ministry have also been given in the application. It is averred that the matter is of great public importance; the questions involved are serious questions of law and involved matters which are essentially for the preservation of the foreign exchange resources of the country and thus it is claimed that the delay of 122 days in filing the appeal be condoned.

8. In reply, JH has raised various objections including that the appellant had taken a conscious decision not to prefer any appeal since no question of law arose from the Board's order. It has been claimed that a change of opinion by the new incumbent to an office in the Central Government can never be a legal or valid basis for undoing the decision taken by a competent person. According to the respondent the application does not disclose any sufficient cause within the meaning of section 54 of the Foreign Exchange Regulation Act. The points involved in this case and in the case of R. R. Holdings Pvt. Ltd. are similar. A rejoinder has been filed to the reply of R. R. Holdings Pvt. Ltd. in connected Appeal No. 12 of 1990. In the rejoinder, the appellant states that the total exchange involved in the matter is about Rs. 8.18 crores and the matter has features which clearly make out a case for approaching this court u/s 54 as several important question of law are involved. The appellant, inter alia, says that "From all the relevant aspects including the amounts involved, the issued of law raised and the devices used, the case is clearly a case where any reasonable body of men would have exercised the power u/s 54 and gone in appeal particularly when the Appellate Board had upset a decision. The respondents, however, wielded considerable influence on the persons in power in the earlier government specially through Mr. Lalit Suri. It is stated that the present government took charge in early December, 1989, and the matter was debated in Parliament on December 27, 1989. According to the appellant, the debates disclose the following materials :

"(i) Jyotsna and R. R. Holdings are associated companies of Mr. Lalit Suri Jyotsna has many activities from hotels to sugar, rice, electronics, ONGC pipelines and aircraft. It also imports phosphate and phosphoric acid from Morocco.

(ii) The contract of Jyotsna with Sumitomo Corporation on behalf of ONGC by the Gas Authority of India for sea-pipe lines and seamless canning pipes for a commission of 6.35 million dollars which came to light when the National Tax Administration of Japan sent information to India because of a Bilateral agreement.

(iii) The commission was received by Jyotsna and kept abroad by them and repatriated around September, 1987.

(iv) This also applied to interest on the amount. The earlier Government had assured in Parliament that necessary inquiries would be made. But the previous Government had shown special favors to Jyotsna. For instance, it was permitted

to have trade relation with Morocco even when India broke diplomatic relations with that country.

(v) The MMTC imported rock phosphate valued at US dollars 2.77 crores with Jyotsna acting as agents even though Jyotsna had no specialised knowledge or any experience for handling of fertiliser raw materials.

(vi) As early as December, 1984, Jyotsna entered into an agreement with OCP and started acting for OCP despite the fact that India did not have any diplomatic relations with Morocco.

(vii) That Jyotsna appeared suddenly on the scene in 1985 proximate to the earlier Prime Minister.

(viii) That the earlier Government had deliberately delayed giving other information about Jyotsna. For instance, the information about Mr. Bhalla was given only one day after the declaration of election results, i.e., on 27th November, 1989.

(ix) The above information was given on 30th April, 1987, to the CBDT but the Enforcement Directorate did not receive the said information from the taxation authorities till 10th August, 1987. Hence, show-cause notice could not be issued till 23rd September, 1988.

(x) The R. R. Holdings repatriated a sum of Rs. 1.83 crores from August 7, 1987, after the receipt of information in India from the National Tax Administration of Japan.

(xi) Within three weeks of issuance of show-cause notice, the Special Director of Enforcement gave a notice of hearing and a penalty of Rs. 12 lakhs was imposed on R. R. Holdings. This order in turn was reversed by the Foreign Exchange Regulation Appellate Board.

(xii) The aforesaid allegations were made in the debates in parliament on 27th December, 1989, on which the appellants will rely. The debate clearly suggested that R. R. Holdings and Jyotsna had committed fraud and caused loss to the nation, and that the previous Government had shown them continued favors and not pursued the matter against them from collateral reasons. The present Government took prompt action on getting this information.

(xiii) The present case involved foreign exchange of a large amount and it is in public interest that allegations against the aforesaid companies are looked into."

9. The inference drawn by the appellant from the aforesaid facts is that the refusal of the previous Government from taking recourse to the procedure established by law, namely, an appeal u/s 54 in a case like the present amounts to acting in bad faith and is in violation of obligations to protect public interest and, in any event, is contrary to public interest. It has been submitted that the reason for exercising the power of extending the time limit includes the protection of public interest and the vindication of law and justice and the

present case affords sufficient cause to entertain the appeal. It has been further submitted that the expression "sufficient cause" must include consideration of factors which are peculiar to a characteristic of the functioning of the Government. The aforesaid rejoinder is supported by an affidavit of Sh. T. George Joseph, Director of Enforcement. Along with the application for condensation of delay, the appellant had filed the affidavit of Sh. S. P. S. Pundir, Special Director of Enforcement. On objection being raised by counsel for the respondents to the non-filing of the affidavit of Sh. Pundir who had originally filed the affidavit as stated above, the appellant, during the course of the hearing, also filed the affidavit of Sh. Pundir in support of the aforesaid rejoinder.

10. Mr. Venugopal representing JH and and Mr. Nariman representing R. R. Holdings, at the outset, vehemently contended that the Government had taken a conscious decision on September 8, 1989, not to file the appeals argued that the change of decision or reconsideration of the earlier decision, under no circumstances, can constitute sufficient cause and as such an application seeking condensation of delay is not maintainable. Learned counsel have placed strong reliance on the decision in *Ajit Singh Thakur Singh and Another Vs. State of Gujarat*, . In that case, the State Government initially took a decision not to file an appeal and allowed the period of limitation to lapse. Subsequently, on certain observations made by the High Court while considering a revision petition by one of the victims that it was a fit case where the State Government should file an appeal, the appeal was filed by the State Government. That appeal was filed three months after the limitation had expired. The Supreme Court held that the appeal was filed only because the High Court had made the observations. The High Court condoned the delay. The Supreme Court held that the High Court erred in condoning the delay. According to learned counsel for the respondents, the position in the present case is almost similar. I do not agree. The cited decision has no applicability to the facts and circumstances of the present case. The Supreme Court was not considering the plea of bad faith as is being contended here. If bad faith is shown in the decision of not filing the appeal, then the question whether the earlier decision was conscious or not would be irrelevant. An act tainted with bad faith is no act in the eye of law. It cannot be held that because a conscious decision was taken not to file an appeal, the delay cannot be condoned under any circumstances. It would also be necessary to examine the aspect of public interest. That was not the point urged before the supreme Court in the cited decision. It would be useful to notice that *Ajit Singh Thakur Singh and Another Vs. State of Gujarat*, , was also examined by the Supreme Court on merits and no substance was found. In view of the above, the decision relied upon does not help the respondents.

11. Next, learned counsel for the respondents contended that the plea of bad faith was not taken in the application seeking condensation of delay and was taken in the rejoinder as an afterthought, because the appellant had no answer to the defense set up by the respondents in the reply and the said plea is, Therefore, mala fide and deserves outright rejection. It is correct that, in the

application, the plea of bad faith, in so many words, has not been taken. However, it has to be remembered that, in the application, a reference has been made to discussion in Parliament in December, 1989, and the reconsideration by the Government thereafter to file an appeal. In the rejoinder, details from the said Parliament discussion have been given and an inference has been drawn there from that the refusal of the last Government from taking recourse to file an appeal in case like the present one showed that it acted in bad faith and in violation of its obligation to protect public interest and, in any event, it is contrary to public interest. These details in the rejoinder, in my view, amount to only further elaborating the fact stated in the application and does not amount to taking a fresh plea as an afterthought as contended by counsel for the respondents. Assuming that it amounts to taking a fresh plea, then also, it is of no consequence as it is not possible to agree with the contention of the respondent that this plea was taken with mala fide intentions. A party would not be permitted to raise a plea if it is mala fide. There is no absolute bar to taking a fresh plea. An adversary is certainly entitled to an opportunity to meet a fresh plea taken. In the present case, the respondent had sufficient opportunity to meet the pleas taken in the rejoinder. The respondent has even filed a Sure-rejoinder by way of reply to the rejoinder of the appellant. No prejudice has been caused to the respondent assuming that the applicant had taken a fresh plea in the rejoinder. In *Sri-La-Sri Subramania Desika Gnanasambanda Pandarasannadhi Vs. State of Madras and Another*, , the Supreme Court held that the respondents had full notice of the plea of the appellant taken in the affidavit in rejoinder and the High court was in error in assuming that the ground in question had not been taken at any stage by the appellant before the matter was argued before the High Court. In this view of the matter, there is no substance in the contention of the respondent that the plea taken by the appellant in the rejoinder should not be considered.

12. Before reverting to the facts, I may notice two decisions of the Supreme Court relevant on the approach the courts should adopt while considering applications seeking condensation of delay in filing appeals. In *G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore*, , the Supreme Court, while opining that the law of limitation is, no doubt, the same for a private citizen as for the Government authorities, held that (pp. 900, 901 of AIR 1988 SC) :

"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. The law of limitation is, no doubt, the same for a private citizen as for governmental authorities. Government, like any other litigant, must take responsibility for the acts or omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case

where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross purpose with it.

Therefore, in assessing what, in a particular case, constitutes "sufficient cause" for purpose 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, not impermissible. It is rightly said that those who bear responsibility of Government must have "a little play at the joints". Due recognition of these limitations on Governmental functioning - of course, within reasonable limits - is necessary if the judicial approach is not to be rendered unrealistic. It would perhaps be unfair and unrealistic to put Government and private parties on the same footing in all respects in such matters. Implicit in the very nature of governmental functioning is procedural delay incidental to the decision making process. In the opinion of the High Court, the conduct of the law officers of the Government placed the government in a predicament and it was one of those cases where the mala fides of the officers should not be imputed to the Government. It relied upon and trusted its law officers. Lindley M.R. in *National Bank of Wales Ltd., In re* [1899] 2 Ch 629, 673, observed, though in a different context :

"Business cannot be carried on upon principles of distrust. Men in responsible positions must be trusted by those above them, as well as by those below them, until there is reason to distrust them."

In the opinion of the High Court, it took quite some time for the Government to realise that the law officers failed that trust."

13. In the aforesaid case, substantial delay had been condoned by the High Court. Dealing with the criticism of the appellant that Government was admittedly put on notice of the award and the decree passed in the cases which were challenged and the subsequent delay of over a year thereafter in preferring the appeals, the Supreme Court, while observing that the criticism is not without substance, the Government could and ought to have moved with greater diligence and dispatch consistent with the urgency of the situation, the conduct of the Government was close to such inaction as might perhaps have justified rejection of its prayer for condensation, held AIR 1988 SC 901 :

"While a private person can take instant decisions a "bureaucratic or democratic organ" it is said by a learned judge "hesitates and debates, consults and considers, speaks through paper, moves horizontally and vertically till at last it gravitates towards a conclusion, unmindful of time and impersonally." Now at the end, should we interfere with the discretion exercised by the High Court ? Shri Datar criticised that the delay on the part of the Government even after January 20, 1971, for over a year cannot be said to be either bona fide or compelled by

reasons beyond its control. This criticism is not without substance. The Government could and ought to have moved with greater diligence and dispatch consistent with the urgency of the situation. The conduct of the Government was perilously close to such inaction as might, perhaps, have justified rejection of its prayer for condensation. But as is implicit in the reasoning of the High Court, the unarticulated thought, perhaps was that in the interest of keeping the stream of justice pure and clean the awards under appeal should not be permitted to assume finality without and examination of their merits. The High Court noticed that the Government pleader who has in office till December 15, 1970, had applied for certified copies on July 20, 1970, but the application was allowed to be dismissed for default. In one case, however, he appears to have taken away the certified copy even after he ceased to be Government pleader. In a similar context where delay had been condoned by the High Court, this court declined to interfere and observed :

"Having regards to the entirety of the circumstances, the High Court thought that the State should not be penalised for the lapses of some of its officers and that in the particular circumstances there were sufficient grounds justifying the condensation of delay in filing the appeals. It was a matter for the discretion of the High Court. We are unable to say that the discretion was improperly exercised ...".

14. In *Collector, Land Acquisition v. Mst. Katiji* [1987] 62 Comp Cas 370, the Supreme Court has opined that the power to condone delay has been conferred in order to enable the courts to do substantial justice to the parties to dispose of matters on "merits". The expression "sufficient cause" employed by the Legislature is adequately elastic to enable courts to apply the law in a meaningful manner which subserves the ends of justice - that being the life-purpose for the existence of the institution of courts. Even in *Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd.*, , a decision cited by learned counsel for the respondents while holding that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favor of a decree-holder to treat the decree as binding between the parties, the Supreme Court opined that, on sufficient cause being shown, discretion is conferred on the court in order that judicial power and discretion should be exercised to advanced substantial justice.

15. In recent years, courts have been adopting a liberal approach while considering application for condensation of delay. I am not suggesting that, if sufficient cause is not made out even by adopting a liberal approach, the delay is liable to be condoned. I also agree that the term "liberal approach" used by the Supreme Court in various decisions cannot be used as a magic wand to be applied in all cases and situation (*Shanti Devi Vs. Bhan Raj and Others*,).

16. In the instant case, the learned Solicitor-General's plea for condensation of delay, to advance substantial justice in public interest, is based mainly on the fact that huge amounts of foreign exchange are involved and the case involves substantial questions of law. According to the learned Solicitor-General, the

undisputed features of this case are, that the exchange involved is over Rs. 8 crores; the amount of penalty imposed is over Rs. 50 lakhs; the decision of the appellate Board is that of reversal of the order of the Special Director; the appellant moved with considerable speed in filing the appeal after December, 1989, and, on these facts, this court is required to decide whether delay in filing the appeal is liable to be condoned or not. The plea of bad faith is mainly sought to be supported from the aforesaid facts and from inferences drawn from debates in Parliament. The decision not to file appeal had been taken on September 8, 1989. According to the Solicitor-General, the said decision is so unconvincing, absurd and perverse as to show bad faith. He argued that no reasonable person, in the facts and circumstances of the case, could have reached the conclusion that it is not a fit case for filing an appeal. It was vehemently urged that the matters involved are essentially for the preservation of foreign exchange resources of the country. Learned counsel for the respondents, on the other hand, contended that the appellant has miserably failed to show bad faith in the decision dated September 8, 1989. According to them, the decision to file the appeal in the present case was taken on account of political vendetta. It was vehemently contended on behalf of respondents that bad faith or mala fides are to be strictly proved and that the appellant has failed to prove it. In support of the contention, Mr. Venugopal relied on A.K.K. Nambiar Vs. Union of India (UOI) and Another, , E.P. Royappa Vs. State of Tamil Nadu and Another, , Lila Krishan Vs. Mani Ram Godara and Others, and Kedar Nath Bahl Vs. The State of Punjab and Others, .

17. In A.K.K. Nambiar Vs. Union of India (UOI) and Another, , while considering the challenge of the appellant to the order of suspension on the ground of mala fides, the Supreme Court held that the appellant had failed to established that the Government acted mala fide as there was no allegation against any particular officer of the Government of India that he had acted mala fide. In my opinion, from this dictum, it does not follow that, if the plea of bad faith is taken, in a case like the present one, some particular officer has necessarily to be named in the application and bad faith is required to be proved strictly as in a service matter. In the matter like the present one, an overall broad view of the totality of circumstances is the determining factor.

18. Similarly, the observations is E.P. Royappa Vs. State of Tamil Nadu and Another, , that "secondly, we must not overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility" cannot be applied here. In E.P. Royappa Vs. State of Tamil Nadu and Another, , the challenge was to an order according sanction to certain of a temporary post of Officer on Special Duty in the grade of Chief Secretary to Government for a period of one year from the date of appointment or till the deed for it ceased, whichever was earlier, and to the order transferring the petitioner and appointing him as an officer on Special Duty in the said sanctioned post. The petitioner had alleged mala fides against

the Chief Minister in support of his challenge to the impugned orders. While rejecting the said plea, the aforequoted observations were made.

19. Likewise, reliance on the observations made in *Lila Krishan Vs. Mani Ram Godara and Others*, , that "the credibility of public officers assigned a sacred trust should not be doubted on mere suspicion and without acceptable evidence." is also misconceived in the present context. The said observations were made in a totally different context while considering an election case. The objection being considered by the Supreme Court was whether the figure "1" was inserted in the nomination paper by the Returning Officer and in that context the observations as noticed above were made. The decision has no applicability to the instant case. *Kedar Nath Bahl Vs. The State of Punjab and Others*, , was again a service matter where the challenge was to the order of termination. On the allegations made in the petition, the Supreme Court came to the conclusion that "even as the allegations stood, what the appellant had to prove was not malice in its legal sense, for, that was not his case. He had, Therefore, to prove *malus animus* indicating that the respondent the State of Punjab was actuated either by spite or ill-will against him or by indirect or improper motives, but no such particulars were furnished by him." These observations are not helpful to the respondents in the present controversy. In a way, this case will support the appellant. The Learned Solicitor-General has put forth the plea of malice in law, on the facts and circumstances of the case, in support of the application seeking condensation and has also sought support from parliamentary debates and contended that no reasonable person could have decided not to file an appeal in a case like the present one.

20. In my opinion, none of these judgments is applicable to the present case and helpful in resolving the point in issue. In none of these cases, did the question as to what constitutes sufficient cause for the purpose of considering condensation of delay come up for consideration. The standard of proof required in a case like the present one while considering the allegation of bad faith for the purpose of determining the existence or otherwise of sufficient cause cannot be the same as may be required in an election case or a service case. In these cases, the approach has to be advance substantial justice by adopting a liberal approach while determining whether sufficient cause has been shown or not. The allegations are to be taken together and the totality of circumstances is to be seen to find out if sufficient cause has been made out or not. Ordinarily, a separate and specific finding on each of the pleas is not necessary to be given in these cases. Strong proof as may be required in other branches of law like election cases or service cases need not be insisted upon. In *G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore*, , the long delay of one year even after the Government was put on notice was condoned in public interest owing to the acts of fraud and bad faith on the part of the Government officers or agents so as to do substantial justice between the parties. The expression "sufficient cause" is adequately elastic and is to be applied in a meaningful manner to subserve the ends of justice. The contention of counsel for

the respondents that even the Special Director found that there was not guilty intention on the part of the respondents is on the merits of the appeal with which I am not concerned at this stage. The discrepancies pointed in the conclusion drawn from Parliament debates are minor and are of not much consequence. Taking into consideration the totality of circumstances placed before this court by the learned Solicitor-General as noticed hereinabove, the case cannot be thrown out without examination on the merits. On the facts, no negligence can be attributed to the appellants. There is nothing to substantiate the plea that the decision to file the appeal is actuated by personal vendetta. It is necessary in public interest to examine the case on the merits. On the facts and circumstances of the case, the appellant has made out sufficient cause and the delay of 120 days in filing the appeal is liable to be condoned. It is clarified that the observations made in this order shall not prejudice the contentions of the parties on the merits of the appeal.

21. The application is, accordingly, allowed and the delay in filing the appeal is condoned.