(1990) 09 DEL CK 0036

In the Delhi High Court

Case No : Criminal M. No. 52 of 1990 In Criminal Appeal No. 13 of 1990

U.O.I. APPELLANT

Vs

M/s. Jyotsna Holdings (P) Ltd. RESPONDENT

Date of Decision : 28-09-1990

Acts Referred:

Citation : (1992) 73 CompCas 503 : (1991) CriLJ 1426 : (1990) 42 DLT 577 : (1991) RLR 23

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

Bench : Single Bench

Advocate : Ashok Desai, Solicitor General of India and Rajeev Nayyar, for the Appellant; M/s. F.S. Nariman, P.V. Kapur and Anil K. Sharma, for the Respondent

Judgement

1. 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 :-

Respondent, M/s. Jyotsna Holdings Pvt. Ltd. (hereinafter referred to as ''JH'') had been appointed to offer consultancy service to M/s. Somitomo Corporation Japan (hereinafter referred to as ''SC'') in the matter of supplies contemplated to be made by SC to M/s. Oil & Natural Gas Commission, Gas Authority of India Ltd. Two agreements dated 30th August 1984 and 5th November 1984 were executed between JH and SC. JH was entitled to receive consultancy fee from the SC. The agreement dated 30th August 1984, inter alia, provided that the consultant fee would be remitted in Japanese yens to the account of 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 reason other than the fault of SC, the consultant fee 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 Consultant fee hereunder constitutes full and sole compensation for all assistance, advise 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 correspondence etc.). Accordingly, SC will not be required to make any further payment of commission, fee or 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 3rd December 1984 and 24th October 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 (for short ''FERA'') was issued on 12th July 1988 to JH requiring it to furnish certain information/documents considered relevant for investigation under FERA. JH furnished certain information/documents by letter dated 26th July 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 of consultancy fees from SC; that this amount accrued to JH vide two agreements dated 5th November 1984 and 30th August 1984; that SC had remitted money in US dollars to BCCI for being credited in account of Eljay and that these amounts were repatriated to India through banking channels in September 1987. By another reply dated 12th August 1988 JH appears to have been furnished, inter alia, information/documents relating to their dealings with SC besides detail of remittances worth Rs. 5,75,35,870.40 and Rupees 86,64,955.85 received during September 1987 from SC being consultants fee in respect of agreements dated 30th August 1984 and 5th November 1984 respectively.

3. A show cause notice was issued to JH and its directors on 23rd September 1988 requiring them to show cause as to why adjudication proceedings as contemplated u/S. 50 of the FERA should not be held against them for contravening the provisions of Ss. 8(1), 14 and 47(1) and (2) of FERA involving acquisition and otherwise transfer of foreign exchange of Japanese Yen 90,60,43,915.00 and US $ 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 of evading the provisions of Ss. 8 and 14 of FERA. A reply dated 5th November 1988 was filed by JH to the said show cause notice wherein the charge was denied. After considering the reply to 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 6th January 1989 Sh. Krishan Kant, Special Director held that JH contravened the provisions of Ss. 8(1), 14 and 47 of FERA and imposed upon JH a penalty of Rs. 20 lakhs for contravention of Ss. 8(1) and 14 and penalty of

Rs. 10 lakhs for contravention of S. 47. In the order dated 6th January 1989, the contention put forth on behalf of JH, that its right to receive consultancy fee came into existence for the first time on 25th August 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 fee direct or in the account Eljay, JH were the original owners of the foreign exchange representing consultant fees and they acquired this ownership not on 25th August 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 rule out the possibility of the existence of means read or the ''guilty intention'' on the part of the JH or its directors. The special director concluded that charges contained in the show cause notice stood proved and imposed the penalties as noticed above. Similar orders were made in the case of M/s. R. R. Holding Pvt. Ltd. which is subject matter of Cr. A. No. 12/90. In that case the special director by order made on the same date imposed penalty of Rs. 12 lakhs for contravention of Ss. 8(1), 14 and 47 of the FERA.

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

6. U/S. 54 of FERA from any decision or order of the Appellate Board an 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 of 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 (Cr. Appeals Nos. 12 & 13/90) were filed in this court on 16th January 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 21st July 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 8th September 1989. It is then recited in the application that during the last session of Parliament the matter came up for discussion in Parliament in or about last week of December 1989 and the matter was reconsidered by the Government and it was decided on 28th December 1989 to obtain the advise of the Law Ministry and act accordingly. On the same day process of re-examining the matter was started and detailed reference was made to the Law Ministry on 4th January 1990 (30th and 31st December 1989 being holidays). Further details with regard to receipt of advise of the Law Ministry have also been so 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 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 legal or valid basis for undoing the decision taken by a competent person. According to respondent the application does not disclose any sufficient cause within the meaning of S. 54 of FERA. The points involved in this case and in the case of M/s. R.R. Holdings Pvt. Ltd. are similar. Rejoinder has been filed to the reply of M/s. R.R. Holding Pvt. Ltd. in connected Appeal No. 12/90. 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 makes out a case for approaching this court u/S. 54 as several important questions of law are involved. The appellant, inter alia, says that "From all the relevant aspects including the amount involved, the issues 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 of 27th December 1989. According to the appellant the debates disclose the following materials :

i) Jyotsana and R.R. Holdings are associated Companies of Mr. Lalit Suri. Jyotsana 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 Jyotsana with Sumitomo Corporation on behalf of ONGC by the Gas Authority of India for Saw Pipelines and seamless caning 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 Jyotsana and kept abroad by them and repatriated around September 1987.

iv) This also applied to interest to the amount. The earlier Government had assured in the Parliament that necessary inquiries would be made. But the previous Government had shown special favors to Jyotsana. For instance it was permitted to have trade relations with Morocco even when India broke diplomatic relations with that country.

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

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

vii) That Jyotsana 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 Jyotsana. 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 Court 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) That P.P. Holdings repatriated a sum of Rs. 1.83 crores from 7-8-1987 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 M/s. R.R. Holdings. This order in turn was reversed by the FERA 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 M/s. R.R. Holdings and Jyotsana 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 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 Mr. Nariman representing R. R. Holdings, at the outset, vehemently contended that the government had taken conscious decision on 8th September 1989, not to file the appeals and argued that change of decision or reconsideration of earlier decision, under no circumstances, can constitute sufficient cause and as such application seeking condensation of delay is not maintainable. Learned counsel have placed strong reliance on 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 victim, 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 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 bath is shown in the decision of not filing the appeal then the question whether 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 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 Supreme Court in the cited decision. It would be useful to notice that Ajit Singh''s case was also examined by Supreme Court on merits and no substance was found. In view of 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 man words, has not been taken. However, it has to be remembered that in the application 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 a 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 facts 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 in taking a fresh plea. An adversary is certainly entitled to an opportunity to meet a fresh plea if taken. In the present case, the respondent had sufficient opportunity to meet the pleas taken in the rejoinder. The respondent has even filed a sur 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 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 the full notice of the plea of the appellant taken in 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 facts, I may notice two decisions of Supreme Court relevant on the approach courts should adopt while considering applications seeking in 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, same for a private citizen as for the government authorities held that AIR 1988 SC 900 :

"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 purposes with it.

Therefore, in assessing what, in a particular case, constitutes ''sufficient cause'', for purposes of S. 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 limitation 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 that it was one of those cases where the mala fides of the officers should not be imputed to government. It relied upon and trusted its law officers. Lindley, M.R. In re National Bank of Wales Ltd. 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 subsequently delay over an 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 decision 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 a over cannot be said to be either bona fide or compelled by reasons beyond its control. This criticism is not without substance. Government could and ought to have moved with greater diligence and dispatch consistent with the urgency of the situation. The conduct of 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 an examination of their merits. The High Court noticed that the Government pleader who was 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 a Government Pleader. In a similar context where delay had been condoned by the High Court, this Court declined to interfere and observed : (SCC p. 472, para 5).

Having regard to the entirety of the circumstances, the High Court thought that the State should not be penalised for the lapses of some of its officer 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, Anantnag and Another Vs. Mst. Katiji and Others, the Supreme Court has opined that the power to condone delay has been conferred in order to enable the court 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 advance substantial Justice.

15. In recent years the 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 adopting a liberal approach the delay is liable to be condoned. I also agree that the term ''liberal approach'' used by Supreme Court in various decisions cannot be used as a magic wand to be applied in all cases and situations (Smt. Shanti Devi v. Sh. Bhan Raj 1988 (2) DL 27 : AIR 1987 Delhi 276.

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

aforesaid facts and from inferences drawn from debate in Parliament. The decision not to file appeal had been taken on 8th September 1989. According to the solicitor General the said decision is so unconvincing, absurd and perverse so 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 the 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 8th September 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 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, , E.P. Royappa Vs. State of Tamil Nadu and Another, and Kedar Nath Bahl Vs. The State of Punjab and Others, .

17. In Nambhiar''s case 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 establish that the government acted mala fide as there was no allegation against any particular officer of the Government of India that he 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, overall broad view of totality of circumstances is the determining factor.

18. Similarly, the observations in Royappa''s case that "secondly we must not over look 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 high order of creditability" cannot be applied here. In the Royappa''s case challenge was to an order according sanction to creation 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 need 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 the reliance on the observations made from Leila Krishna''s case that ''the creditability of public officer 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 totally different context while considering an election case. The objection being considered by the Supreme Court was whether the figure ''i'' 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 Behli''s case 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 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 respondents in the present controversy. In a way this case will support the appellant. Learned Solicitor General has put forth the plea of malice in law, on the facts and circumstances of the case, in support of application seeking condensation and had also sought support from parliamentary debate 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 are applicable to the present case and are helpful in resolving the point in issue. In none of these cases the question as to what constitutes sufficient cause for the purpose of considering condensation of delay came up for consideration. The standard of proof required in a case like the present one while considering the bad faith for the purposes of determining the existence or otherwise of the sufficient cause, cannot be same as may be required in an election case or a service case. In the cases approach has to be to advance the 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 totality of circumstances is to be seen to find out if the sufficient cause has been made out or not. Ordinarily a separate specific finding on each of the plea is not necessary to be given in these cases. As the strong proof as may be required in other branches of law like election cases or service cases need not be insisted upon. In Remegowda''s case (supra) the long delay of one year even after 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 the counsel for the respondents that even the Special Director found that there was no guilty intention on the part of the respondents is on merit of the appeal with which I am not concerned at this stage. The discrepancies pointed in the conclusion drawn from Parliament debate are minor and are of not much consequence. Taking into consideration totality of circumstances placed before this Court by learned Solicitor General as noticed hereinabove, the case cannot be thrown out without its examination on merits. On 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 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 merits of the appeal.

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

22. Application allowed.

