A STATE OF HARYANA

v

CHANDRA MANI AND ORS.

JANUARY 30, 1996

B [K. RAMASWAMY, S. SAGHIR AHMAD AND G.B. PATTANAIK, JJ.]

Limitation Act, 1963 :

C *S.5—Delay—Condonation of—Appeals by State—Sufficient cause—To be considered with pragmatism in justice—Oriented approach rather than technical detection—Factors peculiar and characteristic of functioning of Government—Courts to be cognizant of—Separate standards to determine the cause laid by State vis-a-vis private litigant—Cannot be laid down to prove strict standards of sufficient cause—State cannot be put on the same footing* D *as an individual.*

Suggestions: Government at appropriate levels to constitute legal cells to examine whether legal principles are involved—Officers in such legal cells to be authorised to take decision or give appropriate permission for settle- E *ment—Prompt action to be pursued by the officer responsible to file the appeal and should be made responsible for lapses.*

Ramlal, Motilal & Chotelal **v.** *Rewa Coalfields Ltd.*, **[1962] 2 SCR 762;** *New India Insurance Co. Ltd.* **v.** *Smt. Shanti Misra*, **AIR (1976) SC 237;** *Inder Singh* **v.** *Kanshi Ram*, **AIR (1917) PC 156;** *Shakuntala Devi Jain* **v.** *Kuntal* F *Kumari & Ors.*, **[1969] 1 SCR 1006;** *Smt. Milavi Devi* **v.** *Dina Nath*, **[1982] 3 SCR 366;** *O.P. Kathpalia* **v.** *Lakhmir Singh (dead) & Ors.*, **[1984] 4 SCC 66;** *Collector, Land Acquisition, Anantnag & Anr.* **v.** *Mst. Katiji & Ors.*, **[1987] 2 SCC 107;** *Smt. Prabha* **v.** *Ram Parkash Kalra*, **[1987] Supp. SCC 338;** *G. Ramegowda, Major & Ors.* **v.** *Spl. Land Acquisition Officer, Bangalore*, G **[1988] 2 SCC 142 and** *M/s. Shakambari & Co.* **v.** *Union of India*, **[1993] Supp. 1 SCC 487, relied on.**

Concord of India Insurance Co. Ltd. **v.** *Nirmala Devi & Ors.*, **[1979] 3 SCR 694;** *Lala Mata Din* **v.** *A. Narayanan*, **[1970] 2 SCR 90;** *State of Kerala* **v.** *E.K. Kuriyipe & Ors.*, **[1981] Supp. SCC 72;** *Scheduled Caste Coop. Land* H *Owning Society Ltd. Bhatinda* **v.** *Union of India & Ors.*, **[1991] 1 SCC 174;**

Binod Bihari Singh v. *Union of India*, [1993] 1 SCC 572; *Ram Kishan & Anr.* v. *U.P. State Roadways Transport Corpn. & Anr.*, **[1994] Supp. 2 SCC 507 and** *Warlu* v. *Gangotribai & Anr.*, **[1995] Supp. 1 SCC 37, referred to.** A

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4118-19 of 1996.

B

From the Judgment and Order dated 3.11.92 of the Punjab & Haryana High Court in L.P.A. Nos. 1249-50 of 1992.

Ms. Suruchi Agarwal for Ms. Indu Malhotra, for the Appellant.

Ms. Amita Gupta for the Respondent No. 2-6. C

Mahabir Singh for the Respondent No. 1.

The following Order of the Court was delivered :

Leave granted. D

We have heard the counsel on both sides. We decline to express any opinion on merits. The Division Bench of the High Court refused to condone the delay of 109 days in filing the Letters Patent Appeal. We have perused the reasons given for the delay in filing the Letters Patent Appeal. E

Section 5 of the Limitation Act 1963 (for short, the 'Act') extends prescribed period of limitation in filing an application or an appeal except under the provisions of Order 21 of Civil Procedure Code, 1908 (for short, the 'Code') and gives power to the Court to admit the appeal or application after the prescribed period. The only condition is that the applicant/appellant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period. In *Ramlal, Motilal & Chhotellal* v. *Rewa Coalfields Ltd.*, [1962] 2 SCR 762, it was laid down that in showing sufficient cause to condone the delay, it is not necessary that the applicant/appellant has to explain whole of the period between the date of the judgment till the date of filing the appeal. It is sufficient that the applicant/appellant would explain the delay caused by the period between the last of the dates of limitation and the date on which the appeal/application is actually filed. F G

What constitute sufficient cause cannot be laid down by hard and H

A fast rules. In *New India Insurance Co. Ltd.* v. *Smt. Shanti Misra*, AIR (1976) SC 237, this Court held that discretion given by Section 5 should not be defined or crystallised so as to convert a discretionary matter into a rigid rule of law. The expression "sufficient cause" should received a liberal construction. In *Inder Singh* v. *Kanshi Ram*, AIR (1917) PC 156 it was observed that true guide for a court to exercise the discretion under Section B 5 is whether the appellant acted with reasonable diligence in prosecuting the appeal. In *Shakuntala Devi Jain* v. *Kuntal Kumar & Ors.*, [1969] 1 SCR 1006, 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 C cannot be refused to be condoned.

In *Concord of India Insurance Co. Ltd.* v. *Nirmala Devi & Ors.*, [1979] 3 SCR 694, 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 *Lala Mata Din* v. *A. Narayanan*, [1970] 2 SCR 90, this Court had D 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 devise 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.

E

In *State of Kerala* v. *E.K. Kuriyipe & Ors.*, [1981] Supp. SCC 72, it was held that whether or not there is sufficient cause for condonation of delay is a question of fact dependent upon the facts and circumstances of the particular case. In *Smt. Milavi Devi* v. *Dina Nath*, [1982] 3 SCR 366, it was F held that the appellant had sufficient cause for not filing the appeal within the period of limitation. This Court under Art. 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 case was remitted for decision on merits.

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In *O.P. Kathpalia* v. *Lakhmir Singh (Dead) & Ors.*, [1984] 4 SCC 66, a Bench of three Judges had held that if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay. Delay was accordingly condoned. In *Collector, Land Acquisition, Anantnag & Anr.* v. *Mst. Katiji & Ors.*, [1987] 2 SCC 107, a Bench of two H

Judges considered the question of the limitation in an appeal filed by the State and held that Section 5 was enacted in order to enable the court to do substantial justice to the parties by disposing of matters on merits. The expression "sufficient cause" is adequately elastic to enable the court to apply the law in a meaningful manner which subserves the ends of the justice-that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. This Court reiterated that the expression "every day's delay must be explained" does not mean that a pedantic approach should be made. The doctrine must be applied in a rational common sense pragmatic manner. 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. 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. Judiciary is not respected on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so. Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the State which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the State is the applicant. The delay was accordingly condoned.

A B C D E F

Experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. The State which represent collective cause of the community, does not deserve a litigant-non-grata status. The courts, therefore, have to be informed with the spirit and philosophy of the provisions in the course of the interpretation of the expression of sufficient cause. Merit is

G H

A preferred to scuttle a decision on merits in turning down the case on technicalities of delay in presenting the appeal. Delay was accordingly condoned, the order was set aside and the matter was remitted to the High Court for disposal on merits after affording opportunity of hearing to the parties. In *Smt. Prabha* v. *Ram Parkash Kalra*, [1987] Supp. SCC 338, this
B Court had held that the court should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. The appeal was allowed, the delay was condoned and the matter was remitted for expeditious disposal in accordance with law.

In *G. Ramegowda, Major & Ors.* v. *Spl. Land Acquisition Officer,*
C *Bangalore*, [1988] 2 SCC 142, it was held that no general principle saving the party from all mistakes of it counsel could be laid. The expression "sufficient cause" must receive a liberal construction so as to advance substantial justice and generally delays in preferring the appeals are required to be condoned in the interest of justice where no gross negligence
D or deliberate inaction or lack of *bona fides* is imputable to the party seeking condonation of delay. 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
E the characteristics of decision 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
F 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. It was, therefore, held that in assessing what constitutes sufficient cause for purposes of Section 5, it might, perhaps, be somewhat unrealistic to exclude from the consideration that go into the judicial verdict, these factors which are peculiar to and characteristic of the
G functioning of the Government. Government decisions are proverbially slow encumbered, as they are, by a considerable degree of procedural red tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have 'a little play at the joints'. Due recognition
H 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. The delay of over one year was accordingly condoned.

In *Scheduled Caste Coop. Land Owning Society Ltd., Bhatinda* v. *Union of India & Ors.*, [1991] 1 SCC 174, a Bench of three Judges of this Court held that the *bona fides* of the parties are to be tested on merits and the delay of 1146 to 1079 days was not condoned on the ground that the parties approached the court after decision on merits was allowed in other cases by this Court. Therefore, it was held that it did not furnish a ground for condonation of delay under Section 5. In Binod Bihari Singh v. *Union of India*, [1993] 1 SCC 572, it was held that it is not at all a fit case where in the anxiety to render justice to a party so that a just cause is not defeated, a pragmatic view should be taken by the court in considering sufficient cause for condonation of the delay under Section 5. It was held that when the party has come with a false plea to get rid of the bar of limitation, the court should not encourage such person by condoning the delay and result in the bar of limitation pleaded by the opposite party. This Court, therefore, refused to condone the delay in favour of the party who came forward with false plea. In *M/s. Shakambari & Co.* v. *Union of India*, [1993] Supp. 1 SCC 487, a Bench of three Judges held that delay caused in filing the appeal due to fluctuation in laying down the law was held to be a sufficient cause and delay of 14 days was condoned. In *Ram Kishan & Anr.* v. *U.P. State Roadways Transport Corpn. & Anr.*, [1994] Supp. 2 SCC 507, this Court had held that although the story put forward by the applicant for not filing the application for compensation under the Motor Vehicles Act within the period of limitation was not found convincing but keeping in view the facts and circumstances and cause of justice, the delay was condoned and the appeal was set aside and the matter was remitted to the Tribunal to dispose it on merits. In *Warlu* v. *Gangotribai & Anr.*, [1995] Supp. 1 SCC 37 a three-Judge Bench condoned delay of 11 years in filing the special leave petition.

It is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court-be it by private party or the

A State-are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an even-handed manner. When the State is an applicant, B 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 though more difficult to approve, but the State represents collective cause of the Com- C munity. 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 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. There fore, D 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. The factors which are peculiar to E and characteristic of the functioning of the Governmental conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The Court should decide the matters on merit unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove strict F standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the case whether any legal principles are involved for decision by the cours or whether cases require adjustment and should authorise the officers take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action G should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while H State is an impersonal machinery working through its officers or servants.

Considered from this perspective, it must be held that the delay of 109 days in this case has been explained and that it is fit case for condonation of the delay. A

On the facts and circumstances of the case, we are of the opinion that it is a fit case for condoning the delay. The delay is accordingly condoned. The High Court is requested to dispose of the appeal as expeditiously as possible. B

The appeal is accordingly allowed. No costs.

G.N. Appeal allowed.