

## PRINT JUDGMENT

**2012 SCeJ 006**

**SUPREME COURT OF INDIA**

Before : Justice P. Sathasivam, Justice J. Chelameswar, J )

OFFICE OF THE CHIEF POST MASTER GENERAL AND OTHERS — Appellant

*versus.*

LIVING MEDIA INDIA LTD. AND ANOTHER — Respondent

Civil Appeal No. 2474-2475 of 2012 (Arising out of SLP (C) No's. 7595-96 of 2011)

24.02.2012

- Constitution of India, 1950 - Article 136
- Limitation Act, 1963 - Section 5

*"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 bona fide 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 the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.*

*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. Accordingly, the appeals are liable to be dismissed on the ground of delay."*

Cases referred to: [Collector Land Acquisition Anantnag v. Mst. Katiji](#), [G. Ramegowda Major v. Special Land Acquisition Officer Bangalore](#), [State of Haryana v. Chandra Mani](#), [State of Nagaland v. Lipok AO](#), [State of U. P. v. Harish Chandra](#), [Union of India v. Manager M/s. Jain and Associates](#)

*H.P. Raval, ASG, Anoop G. Choudhary, Ashok K. Srivastava, B.K. Prasad and Arvind Kumar Sharma, for the Appellant; Soli J. Sorabji Darpan Wadhwa, M.R. Shamshad, Ahmad S.A. and Jaishree Shukla, for the Respondent*

### **Judgement**

**P. Sathasivam, J.**— Leave granted.

2. The following issues arise for consideration:

(a) Whether the office of the Chief Postmaster General has shown sufficient cause for condoning the delay of 427 days in filing SLPs before this Court.

Depending on the outcome of the above issue, other issues to be considered are:

(b) Whether the impugned advertisement inserted in the Reader's Digest issue of December 2005 is in conformity with the requirement of law.

(c) Whether the Department has made out a case for interference under Article 136 of the Constitution of *India* to reopen concurrent findings of fact rendered by the High Court.

3. These appeals have been filed against the common final judgment and order dated 11-9-2009 passed by the High Court of Delhi at New Delhi in Office of the Chief Postmaster *v. Living Media India Ltd.* 2009 8 AD 201 Del whereby the Division Bench while upholding the judgment and order dated 28-3-2007 passed by the learned Single Judge of the same High Court in *Living Media India Ltd. v. Office of the Chief Postmaster General* 2007 140 DLT 228 dismissed the appeals filed by the appellants herein.<sup>1</sup>

Brief Facts<sup>1</sup>

4. *Living Media India Ltd.*, Respondent 1 is a company incorporated under the Companies Act, 1956 which publishes the magazines Reader's Digest and *India Today*. These magazines are registered newspapers vide Registration Nos. DL 11077/03-05 and DL 11021/01-05 respectively, issued by the Department of Posts, Office of the Chief Postmaster General, Delhi Circle, New Delhi (in short "the Postal Department"), the appellant herein under the provisions of the Post Office Act, 1898 (in short "the Act") read with the Post Office Rules, 1933 (in short "the Rules") and the Post Office Guide and are entitled for transmission by post under concessional rate of postage.

5. On 14-10-2005, the Manager (Circulation), *Living Media India Ltd.*, submitted an application to the Postal Department seeking permission to post December 2005 issue of Reader's Digest magazine containing the advertisement of Toyota Motor Corporation in the form of a booklet with calendar for the year 2006 at concessional rates in New Delhi. By letter dated 8-11-2005, the Postal Department denied the grant of permission for mailing the said issue at concessional rates on the ground that the booklet containing advertisement with calendar is neither a supplement nor a part and parcel of the publication. On 17-11-2005, the Director (Publishing), *Living Media India Ltd.* once again submitted an application seeking the same permission which was also denied by the Postal Department by letter dated 21-11-2005.

6. In the same way, the Postal Department also refused to grant concessional rate of postage to post the issue dated 26-12-2005 of *India Today* magazine containing a booklet of Amway *India* Enterprises titled Amway vide their letters dated 18-2-2006 and 17-3-2006

stating that the said magazine was also not entitled to avail the benefit of concessional rate available to registered newspapers.

7. Respondent 1, being aggrieved by the decision of the Postal Department filed Writ Petitions (C) Nos. 22679-80 of 2005 and Writ Petition (C) No. 4985 of 2006 before the High Court. The learned Single Judge of the High Court, by order dated 28-3-2007 allowed both the petitions filed by Respondent 1 herein.<sup>2</sup>

8. Being aggrieved, the Postal Department filed LPAs Nos. 418 and 1006 of 2007 before the High Court. The Division Bench of the High Court, vide common final judgment and order dated 11-9-2009, while upholding the judgment of the learned Single Judge, dismissed both the appeals. Challenging the said order, the Postal Department has preferred these appeals by way of special leave before this Court.

9. Heard Mr H.P Raval, learned Additional Solicitor General for the appellant Department of Posts and Mr Soli J. Sorabjee, learned Senior Counsel for the respondents.

Delay in filing the SLPs

10. Since the learned Senior Counsel for the respondents seriously objected to the conduct of the appellants in approaching this Court after enormous and inordinate delay of 427 days in filing the above appeals, we intend to find out whether there is any "sufficient cause" for the condonation of such a huge delay. In view of the fact that the application for condonation of delay in filing the SLPs dated 10-2-2011 does not contain acceptable and plausible reasons, we permitted the appellant Postal Department to file a better affidavit explaining the reasons for the same. Pursuant to the same, an affidavit has been filed on 26-12-2011. After taking us through the same, the learned Additional Solicitor General submitted that in view of series of decisions of this Court and the appellant being a government department, delay may be condoned and an opportunity may be given to put forth their stand as to the impugned judgment of the High Court.

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.<sup>2</sup>

12. In *Collector (LA) v. Katiji* 1987 2 SCC 107 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. The learned Additional Solicitor General heavily relied on the following principles: (*Katiji* case, SCC p. 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 legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

By showing the above principles, the 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 that case, the delay was only of four days.

14. In *G. Ramegowda v. Land Acquisition Officer* 1988 2 SCC 142 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.

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 v. Chandra Mani* 1996 3 SCC 132 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 set-up 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.

16. In *State of U.P v. Harish Chandra* 1996 9 SCC 309 by giving similar reasons, as mentioned in *Chandra Mani* case, this Court condoned the delay of 480 days in filing the SLP.

17. In *National Insurance Co. Ltd. v. Giga Ram* 2002 10 SCC 176 this Court, after finding that the High Court was not justified in taking too technical a view of the facts and refusing to condone the delay, accepted the case of the appellant insurance company by protecting the interest of the claimant and condoned the delay. It is relevant to point out that while accepting the stand of the insurance company for the delay, this Court has safeguarded the interest of the claimant also.

18. In *State of Nagaland v. Lipok Ao* 2005 3 SCC 752 this Court, while reiterating the principle that latitude be given to the Government's litigation, allowed the appeal filed by the State of Nagaland. It is also relevant to note here that this matter relates to criminal jurisdiction and delay in filing the SLP was only 57 days.

19. Though the learned ASG heavily relied on the abovesaid decisions and the principles laid down, on going through all the factual details, we are of the view that there is no quarrel about the propositions inferred therein. However, considering the peculiar facts and circumstances of each case, this Court either condoned the delay or upheld the order of the High Court condoning the delay in filing appeal by the State. While keeping those principles in mind, let us consider the reasonings placed by the Postal Department with regard to the same.

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 5-12-2011 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 the special leave petition.

(3) It is submitted that the delay is not intentional but is on account of the departmental/administrative procedures involved in filing the petition for special leave. It is submitted that unlike the private litigant the matters relating to the 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:

11-9-2009 Date of judgment in LPAs Nos. 418 and 1006 of 2007. 29-10-2009 Certified copy

of the judgment not received from the government counsel and hence copy of the judgment was downloaded from the website of the Delhi High Court and office note was put by ASP (Court) proposing to refer the matter to the Postal Directorate for opinion and further course of action for approval of the Chief Postmaster General, Delhi. 12-11-2009 The Chief Postmaster General, Delhi approved to refer the matter to the Directorate. 16-12-2009 The Directorate desired to submit legal opinion and certified copy of the judgment. 8-1-2010 The counsel appearing on behalf of the petitioner had applied for the certified copy of the impugned judgment and order and the same was received by the Department on 8-1-2010. 11-1-2010 The desired documents supplied to the Directorate. 25-1-2010 The Directorate desired to submit the copies of original writ petition filed by the party, counter-affidavit thereto, copies of appeals filed by the Department of Posts and counter-reply thereto. 12-2-2010 The desired documents supplied to the Directorate. 17-2-2010 The Directorate desired to send an official/officer well-conversant with the case. 15-3-2010 The Directorate asked to depute an officer well-conversant with the case to collect the UO note along with other documents to pursue the matter with Mr Suresh Chandra, Additional Legal Advisor. 6-4-2010 Shri Suresh Chandra, Additional Legal Advisor was contacted on 6-4-2010 and the matter was briefed thoroughly by ASP (Court). 25-6-2010 Case file collected from the Directorate and handed over to the Central Agency Section on 25-6-2010 under Diary No. 1865 of 2010 dated 25-6-2010 as per advice of the Additional Legal Advisor. 26-6-2010 to 30-6-2010 The Central Agency Section sent the file back to the Postal Department with directions to send the same through the Ministry of Law and Justice. 1-7-2010 to 10-9-2010 After receiving the file through proper channel, the Central Agency Section sent the file to the learned ASG for his considered opinion and the learned Additional Solicitor General opined that it is a fit case for filing the special leave petition. 11-9-2010 to 30-9-2010 On receiving the opinion of the learned ASG the file was sent to the Central Agency for drafting the special leave petition. 1-10-2010 The Directorate informed that the ASG had considered the case and found it fit for a special leave petition. 15-11-2010 The panel counsel prepared the draft of the special leave petition and submitted the draft of the special leave petition with file to the Central Agency Section for further steps. The draft special leave petition was forwarded to the Department by the Central Agency Section for vetting. After factual verification, the draft special leave petition was returned to the Central Agency Section for typing and preparation of paper book which also took some time. 4-1-2011 The special leave petition remained pending due to non-availability of disputed magazines of Reader's Digest and *India Today*. Hence, the ASG was requested to intervene and direct Shri Akash Pratap who handled the case to provide the magazines. 14-1-2011 Shri A.K Sharma was requested to arrange to collect the above magazines from the record of the Delhi High Court. 31-1-2011 The SSRM, Delhi Sorting Division was authorised to sign the affidavit on behalf of the respondent. 10-2-2011 The special leave petition filed in the Supreme Court.

(5) It is submitted that it is evident from the foregoing reasons that the delay caused in filing the petition was the result of all the necessary and unavoidable office formalities and was bona fide 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 Collector (LA) v. Katiji and Bhag Singh v. Major Daljeet Singh 1987 Supp SCC 685. It is submitted that the principles for condonation of delay laid down in the abovesaid cases may therefore be adopted in the present case also.

(7) This Hon'ble Court in G. Ramegowda v. Land Acquisition Officer 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 bona fides is imputable to the party seeking condonation of delay.

(8) In the matter of State of Haryana v. Chandra Mani, 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 though 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 v. Jain and Associates 2001 3 SCC 277 decided on 6-2-2001 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 special leave petition could not be filed within time."

21. Before considering whether the reasons for justifying such a huge delay are acceptable or not, it is also useful to refer the decisions relied on by Mr Soli J. Sorabjee, learned Senior Counsel for the respondents.

22. In Commissioner Of Wealth Tax, Bombay v. Amateur Riders Club, Bombay 1994 Supp 2 SCC 603, there was 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 the petitioner's own words as under: (SCC p. 604, para 2)

"2. ... (g) The Advocate-on-Record got the special leave petition drafted from the drafting

Advocate and sent the same for approval to the Board on 24-6-1993 along with the case file.

(h) The Board returned the case file to the Advocate-on-Record on 9-7-1993 who re-sent the same to the Board on 20-9-1993 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 the 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 v. Jalgaon Medium Project* 2008 17 SCC 448 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 the government undertaking, this Court observed as under: (*Pundlik Jalam case*, SCC 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 life span 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 court’s 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 landlosers 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 landlosers. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under Section 5 of the Limitation Act. Dragging the landlosers 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.”

25. We have already extracted the reasons as mentioned in the “better affidavit” sworn by Mr Aparajeet Pattanayak, SSRM, Air Mail Sorting Division, New Delhi. It is relevant to note that in the said affidavit, the Department has itself mentioned and is aware of the date of the judgment of the Division Bench of the High Court in *Office of the Chief Postmaster v. Living Media India Ltd.* as 11-9-2009. Even according to the deponent, their counsel had applied for the certified copy of the said judgment only on 8-1-2010 and the same was received by the Department on the very same day. There is no explanation for not applying for the certified copy of the impugned judgment on 11-9-2009 or at least within a reasonable time. The fact remains that the certified copy was applied for only on 8-1-2010 i.e after a period of nearly four months.

26. In spite of affording another opportunity to file better affidavit by placing adequate material, neither the Department nor the person-in-charge has filed any explanation for not applying the certified copy within the prescribed period. The other dates mentioned in the affidavit which we have already extracted, clearly show that there was delay at every stage and except mentioning the dates of receipt of the file and the decision taken, there is no explanation as to why such delay had occasioned. Though it was stated by the Department that the delay was due to unavoidable circumstances and genuine difficulties, the fact remains that from day one the Department or the person/persons concerned have not evinced diligence in prosecuting the matter to this Court by taking appropriate steps.

27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

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 bona fides, 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.

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 bona fide 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 the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

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. Accordingly, the appeals are liable to be dismissed on the ground of delay.

31. In view of our conclusion on Issue (a), there is no need to go into the merits of Issues (b) and (c). The question of law raised is left open to be decided in an appropriate case.

32. In the light of the above discussion, the appeals fail and are dismissed on the ground of delay. No order as to costs.