

Sikkim High Court Principal Secretary, Transport ... vs Narmaya Das on 7 June, 2005 Equivalent citations: 2006 ACJ 150 Author: A Subba Bench: N Singh, A Subba JUDGMENT A.P. Subba, J. 1. This is an application filed by the Principal Secretary, Transport Department, Government of Sikkim, Gangtok, the petitioner department, under Section 5 of the Limitation Act, 1963 for condonation of delay of 853 days in filing the present appeal against the respondent. 2. The appeal is directed against the impugned award/order dated 23.8.2002 passed by the learned Commissioner for Workmen's Compensation, Sikkim at Gangtok in Misc. Case No. 5 of 2002 in the matter of Narmaya Das, m/o late Kamal Mani Das v. Secretary, Transport Department, Government of Sikkim, Gangtok, granting death compensation amounting to Rs. 4,19,850 to the legal heirs of the deceased late Kamal Mani Das. As per the facts of the case set out in the memo of appeal the deceased late Kamal Mani Das was a member of the Sikkim State Mechanical Engineering Service holding the post of Assistant Engineer (Mechanical) in the junior grade scale of Rs. 1,820-60-2,600-EB-75-3,200 at the time of his death in a fatal vehicular accident that occurred on 20.1.2001 at a place called Lower Martam while returning after completion of his official work for the day. On his death his mother Narmaya Das filed the application dated 29.8.2001 before the learned Commissioner for Workmen's Compensation, Sikkim at Gangtok claiming payment of workmen's compensation. On this application the Commissioner granted death compensation amounting to Rs. 4,19,850 to the legal heirs of the deceased. It is against this order/award that the petitioner department has come up with the present appeal and has filed the present application for condonation of delay in filing the appeal beyond the period of limitation prescribed under the provisions of Workmen's Compensation Act, 1923. It is stated that in pursuance of the impugned award the amount of the death compensation awarded by the learned Commissioner has been deposited in the office of the Commissioner for Workmen's Compensation, Department of Labour, Government of Sikkim, Gangtok in terms of Sub-section (2) of Section 8 of Workmen's Compensation Act on 5.1.2005. 3. In the application for condonation of delay it has been stated that no formal notice was issued to the petitioner department by the Commissioner in the case registered under Workmen's Compensation Act and as such no opportunity was given to the petitioner department of presenting their case before the Commissioner. All that the petitioner department received was a letter dated 25.5.2002 from the Labour Department seeking information regarding the exact date of birth of the deceased in his service book and enquiring as to whether they had any objection to the grant of death compensation in favour of the dependants of late Kamal Mani Das. The said letter did not mention anything about the registration of Misc. Case No. 5 of 2002 nor any copy of claim application filed by the mother of the deceased was annexed. In view of this it is contended that the Under Secretary of the petitioner department was under the wrong impression that no-objection certificate was sought from the administrative department only for the purpose of ascertaining as to whether any dues were outstanding against the deceased late Kamal Mani Das and accordingly after verifying from the Accounts section and on finding that no dues

were outstanding against the deceased the said officer issued the no-objection certificate. While issuing the no-objection certificate, the said Under Secretary was also under the impression that the death compensation was to be paid by the Labour Department and the no objection certificate was required only to confirm as to whether there were any dues outstanding in the name of the deceased and being under such impression issued the no-objection certificate without obtaining the approval of the competent authority. It is further stated that on receipt of the letter dated 24.8.2002 directing the petitioner department to release the payment of death compensation awarded to the legal heirs of the deceased Kamal Mani Das, the department processed the file in the department and ultimately it was referred to the Law Department for opinion on 3.12.2003. The Law Department returned the file on 26.6.2004 placing on the file a copy of the impugned order dated 23.8.2002 under which death compensation was awarded to the legal heirs of the deceased and the petitioner department was made liable. It is the case of the petitioner department that the department came to know about the impugned order for the first time on receipt of the copy of the impugned award along with the file from the Law Department on 26.6.2004. On receipt of this impugned order along with the file, the Office Superintendent of the department had put up the file on 2.7.2004 for releasing the amount of compensation or for filing an appeal in the matter. In the process the matter was ultimately referred to the learned Advocate General on 5.7.2004 and on 26.8.2004 for opinion and advice. Thereafter a decision to file an appeal against the impugned order was taken by the department and accordingly the present appeal has been filed. 4. The respondent-claimant opposed the application for condonation of delay by filing a written objection. In the written objection, it has been stated that the application being misconceived and not maintainable was liable to be dismissed in limine. It is contended that the plea of the petitioner department that they came to know about the impugned order dated 23.8.2002 only on 26.6.2004 is contrary to the admission made by the petitioner that the Labour Department had intimated them regarding the impugned order by department's letter dated 24.8.2002. According to further contention the fact noted by the Commissioner in his order that the proceedings of the death compensation were initiated upon receipt of letter dated 23.2.2002 from the petitioner department totally falsifies the plea of ignorance. It was also stated that the no-objection certificate signed by the Under Secretary of the petitioner department further goes to show that petitioner department was not unaware and ignorant. It was only to make out a case for condonation of delay that the plea of ignorance was being set up. The opinion expressed by the learned Advocate General that the appeal is completely barred by limitation further goes to show that the present appeal is a chance appeal filed by petitioner department. It was thus contended that the delay was a result of the utter negligence and inaction on the part of the petitioner department. There was therefore no sufficient cause for condoning the inordinate delay of 853 days. It was accordingly contended that the application was liable to be rejected as being devoid of any merit. 5. Mr. J.B. Pradhan, learned Government Advocate assisted by Mr. Karma Thinley, learned Assistant Government Advocate for

the petitioner department and Mr. S. Mazumdar assisted by Mr. N.T. Bhutia, learned counsel for the respondent were heard. 6. It was the submission of Mr. J.B. Pradhan, learned counsel for the petitioner that the delay in filing the present appeal occurred mainly on account of the fact that the petitioner being a government department the file had to be routed through the different authorities including the Law Department and the office of the learned Advocate General. Therefore, the delay was not on account of any negligence or inaction on the part of petitioner department. It was also his submission that the question that arises for consideration in the appeal being whether a gazetted officer in the Government of Sikkim would fall in the definition of 'workman' under the Workmen's Compensation Act, 1923 was of considerable importance which required examination in depth by the court. It was, therefore, his further submission that it would be appropriate to condone the delay so that the question which is pertinent may be examined when the matter is heard on merits. Mr. S. Mazumdar, learned counsel for the respondent, on the other hand submitted that the plea of ignorance as pleaded by the petitioner department for condonation of delay was meant only to cover up the inaction and negligence on the part of the petitioner department. It was his further submission that the question of law raised in the appeal had no relevance to the consideration of sufficient cause under Section 5 of the Limitation Act and as such the application was liable to be dismissed. 7. As can be seen from the above, the short question for consideration is whether the cause shown by petitioner department could be taken as sufficient cause within the meaning of Section 5 of the Limitation Act and, if so, whether the delay of 853 days can be condoned in the circumstances of the case. 8. The extract of the note sheets taken from the department's concerned file bearing No. 19/65/SNT/95-96 and appended to the present application as Annexure P-1 go to show that the matter was delayed to a great extent on account of the leisurely manner in which the matter was dealt with and also on account of considerably long time taken by the Law Department to whom the file was referred for advice and opinion in the matter. It is clear from the extract of the notes that the process was started on 19.9.2002 and the file was sent to the Law Department for opinion and advice for the first time on 16.11.2002. The file was received back by petitioner department from the Labour Department with some queries on 18.2.2003. Thereafter, the file was sent back ultimately to the Law Department on 3.12.2003. The Law Department took about 6 months to return the file back with the opinion on 26.6.2004 to the concerned department. After the file was returned by the Law Department on the above date the file was referred to the office of learned Advocate General on 9.7.2004 after which the decision to file the present appeal was taken. As can be noticed from the above the matter was not attended to as expeditiously as it should have been by the officers of the petitioner department. Lack of sensitivity on the part of the officers dealing with the matter is writ large on the face of the material on record. That the importance and urgency of the matter was not present in the mind of the concerned officers is clear from the manner in which the file was dealt with. 9. As per the provision of Section 30 of the Workmen's Compensation Act, 1923 the period of limitation for an appeal is 60 days. This

period admittedly expired on 23.10.2002. It thus appears that there has been inordinate delay on the part of the petitioner department in filing the present appeal. However, it is to be noted that what counts is not the length of delay but the sufficiency of the cause shown. The quantum of delay has been held in *Municipal Corporation of Ahmedabad v. Voltas Limited*, to have no direct nexus with the sufficiency of the cause. It has been held as follows: Majority view (M.B. Shah, Y.B. Bhatt, JJ.): Whether the delay is for a short period or a long period is of no consequence. If sufficient cause is shown, long delay can be condoned and if no cause is shown, even delay for a short period may not be condoned. The quantum or extent of the delay has no direct nexus in law with the sufficiency of the cause, inasmuch as the two are independent and diverse factors. In the context of Section 5 of the Limitation Act, what is material is the sufficiency of the cause which is required to be established to the satisfaction of the court. If the court finds that the cause for delay is sufficient, the extent of the delay is immaterial. Obviously, therefore, the extent of the delay in itself would not determine whether the cause is sufficient or otherwise. (Emphasis added) Hence, it is clear from the above that the extent of delay should not be the only criteria for determining whether the cause shown is sufficient or not.

10. As regards the sufficiency or otherwise of the cause shown in the present case for condonation of delay it is useful to refer to the following decision of the Hon'ble Supreme Court in *Ram Nath Sao v. Gobardhan Sao* AIR 2002 SC 1201, wherein it has held as follows: (11) Thus it becomes plain that the expression 'sufficient cause' within the meaning of Section 5 of the Act or Order 22, Rule 9 of the Code or any other similar provision should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fide is imputable to a party. In a particular case whether explanation furnished would constitute 'sufficient cause' or not will be dependant upon facts of each case. There cannot be a strait jacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal an exception more so when no negligence or inaction or want of bona fide can be imputed to the defaulting party. On the other hand, while considering the matter courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine like manner. However by taking a pedantic and hypertechnical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the Us terminates either by default or inaction and defeating valuable right of such a party to have the decision on merits. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way. (Emphasis added) 11. In view of the above, we cannot lose sight of the fact that the object underlying Section 5 of the Act is to enable the court to

do substantial justice and as such, the court should approach the question of sufficient cause with the liberal approach while deciding application under Section 5 of the Limitation Act. A justice oriented approach is what is necessary while deciding a question of sufficient cause in an application under Section 5 of Limitation Act. 12. Further, it also becomes clear from the above that where arguable points of facts and law are involved the explanation furnished should not be brushed aside taking hyper technical view of the matter. It is indeed well-established that merits of the case may also be taken into consideration in excusing the delay. In *Urban Improvement Trust v. Poonam Chand* , it has been held as follows: (19) Now it must be taken to be well settled principle of law that before rejecting applications under Section 5 of the Limitation Act and dismissing appeals as barred by lapse of time, the courts of law are required to put a glance as a condition precedent on the merits of the appeals and unless the appeals are found to be hopelessly devoid of merits ordinarily efforts should be made to decide the appeals on merits. In addition to the above, recent decision of the Hon'ble Supreme Court rendered in *Divisional Manager, Plantation Division, Andaman and Nicobar v. Munnu Barrick* AIR 2005 SCW 109, leaves no room for doubt that where serious questions of law are raised by appellants the court should take a liberal view on the application for condonation of delay. 13. In the present case, it may be noted that the deceased who has been treated as falling within the definition of 'workman' while granting the compensation was a gazetted officer being a member of the Sikkim State Engineering Service and also holding the post of Assistant Engineer (Mechanical) at the relevant time. Against this backdrop, the question that has been sought to be raised in this appeal is whether a gazetted officer holding the post of Assistant Engineer (Mechanical) in the junior grade of Sikkim State Mechanical Engineering Service would fall in the definition of 'workman' under the Workmen's Compensation Act, 1923. This question being pertinent needs, in our view, proper examination in depth. At this juncture, it is also relevant to note that even though the present appeal has been delayed the amount of compensation deposited by the petitioner department in the office of the Commissioner for Workmen's Compensation, Department of Labour, Government of Sikkim, Gangtok on 5.1.2005 in terms of Section 8 (2) of the Workmen's Compensation Act, 1923 has not been disbursed to the respondent as on date. Besides the above, it is also appropriate to note that where the government machinery is involved a certain amount of latitude is not impermissible so as to advance the cause of substantial justice. It has been held by Andhra Pradesh High Court in *Revenue Divisional Officer, Vijayawada v. T. Laxminarayana* , that where a proposed appeal involved a decision on a matter of policy at the highest executive level or where there is a conflict of legal advice and advice from the topmost legal adviser is considered essential delay in filing an appeal by the government may perhaps be justified. Similarly in *State of Haryana v. Chandra Mani* , the Apex Court held that where an application under Section 5 is made by government a certain amount of latitude is not impermissible because machinery of government is impersonal and decisions are taken at a slow pace. The case-laws so far cited by the respondent that is the case between *State of Gujarat v. Sayed Mohd. Baquir*

El Edross , does not support the case of the present respondent inasmuch the issue pertaining to the abatement was in the way of the related appeal being heard on merit and that being the position, it was held that the same could not be looked into. This was the decision of the Apex Court in the related case. Therefore, the above decision relied on by the respondent is not applicable in the case in hand. It is well settled that laches and delay defeats equity and justice. However, a meritorious matter should not be thrown out on the ground of technical considerations as well as delay when cause of delay has been shown with reasons by the party concerned. It is also well settled that in the matter of condonation of delay the court should adopt liberal approach and the reasons for adopting such approach has been highlighted in the above foregoing paras keeping in view the decision of Hon'ble Apex Court rendered in Collector, Land Acquisition, Anantnag v. Katiji , wherein the Supreme Court laid down about the liberal approach to be adopted on principle as it is realised that: (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. 14. Therefore, keeping in view the above legal position and the peculiar facts and circumstances of the case in hand, we are of the opinion that sufficient cause has been shown by the petitioner department for condoning the delay in the institution of the present appeal. Accordingly, we are inclined to condone the delay of 853 days and allow the application in the interest of substantial justice. 15. In the result, the application is allowed. N.S. Singh, Actg. C.J. 16. I agree.