

Office Of The Chief Post Master & Ors vs Living Media India Ltd.& Anr on 24 February, 2012

Equivalent citations: AIR 2012 SUPREME COURT 1506, 2012 AIR SCW 1812, AIR 2012 SC (CIVIL) 1109, (2012) 1 GUJ LH 670, (2012) 348 ITR 7, (2013) 3 CPR 622, (2012) 1 WLC(SC)CVL 547, (2012) 91 ALL LR 879, (2012) 3 RAJ LW 2142, (2012) 2 SCALE 782, (2012) 2 CAL LJ 93, (2013) 2 CURCC 20, (2011) 4 CIVILCOURTC 202, (2011) 5 MAH LJ 241, (2011) 4 BANKCAS 519, (2012) 2 SCT 269, (2012) 112 ALLINDCAS 69 (SC), (2013) 1 SERVLJ 320, (2012) 3 ALL WC 2651, (2012) 3 CALLT 65, (2012) 2 CIVILCOURTC 1, (2012) 4 MAD LW 100, (2013) 2 CPR 306, (2012) 1 CLR 559 (SC), (2012) 116 REVDEC 167, (2012) 3 JCR 59 (SC), (2012) 113 CUT LT 1066, 2012 (2) SCC (CRI) 580, (2012) 1 CURCC 173, (2011) 5 ALLMR 598 (BOM), (2012) 4 BOM CR 831

Author: P. Sathasivam

Bench: J. Chelameswar, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2474-2475 OF 2012

(Arising out of SLP (C) Nos. 7595-96 of 2011)

Office of the Chief Post Master General & Ors. Appellant (s)

Versus

Living Media India Ltd. & Anr.

.... Respondent(s)

J U D G M E N T

P. Sathasivam, J.

- 1) Leave granted.
- 2) The following issues arise for consideration:

a) Whether the Office of the Chief Post Master 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 11.09.2009 passed by the High Court of Delhi at New Delhi in LPA Nos. 418 and 1006 of 2007 whereby the Division Bench while upholding the judgment and order dated 28.03.2007 passed by the learned single Judge of the same High Court in Writ Petition (C) Nos. 22679-80 of 2005 and Writ Petition (C) No. 4985 of 2006 dismissed the appeals filed by the appellants herein.

4) Brief Facts:

(a) Living Media India Ltd.-Respondent No. 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 Post Master General, Delhi Circle, New Delhi (in short 'Postal Department')-

appellant herein under the provisions of the Indian Post Office Act, 1898 (in short 'the Act') read with the Indian 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.

(b) 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 book-let with Calendar for the year 2006 at concessional rates in New Delhi. By letter dated 08.11.2005, the Postal Department denied the grant of permission for mailing the said issue at concessional rates on the ground that the book-let 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 once again submitted an application seeking the same permission which was also denied by the Postal Department by letter dated 21.11.2005.

(c) In the same way, the Postal Department also refused to grant concessional rate of postage to post the issue dated December 26, 2005 of 'India Today' magazine containing a book-let of Amway India Enterprises titled "Amway" vide their letters dated 18.02.2006 and 17.03.2006 stating that the said magazine was also not entitled to avail the benefit of concessional rate available to registered newspapers.

(d) Respondent No. 1, being aggrieved by the decision of the Postal Department filed Writ Petition (C) Nos. 22679-80 of 2005 and Writ Petition (C) No. 4985 of 2006 before the High Court. Learned single Judge of the High Court, by order dated 28.03.2007 allowed both the petitions filed by Respondent No. 1 herein.

(e) Being aggrieved, the Postal Department filed LPA Nos.

418 and 1006 of 2007 before the High Court. The Division Bench of the High Court, vide common final judgment and order dated 11.09.2009, 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.

5) Heard Mr. H. P. Raval, learned Additional Solicitor General for the appellants-Department of Posts and Mr. Soli J.

Sorabjee, learned senior counsel for the respondents.

Delay in filing the SLPs:

6) Since 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 10.02.2011 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, 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.

7) 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.

i) In Collector, Land Acquisition, Anantnag and Another vs. Mst. Katiji and Others, (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. Learned ASG heavily relied on the following principles:-

- "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 legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

By showing the above principles, 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 this case,

the delay was only for four days.

ii) In *G. Ramegowda, Major and Others vs. Special Land Acquisition Officer, Bangalore*, (1988) 2 SCC 142, the principles enunciated in paras 15 & 17 are heavily relied on by the learned ASG. They are:-

"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.

iii) In *State of Haryana vs. Chandra Mani and Others*, (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 setup 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.

iv) In *State of U.P. and Others vs. Harish Chandra and Others*, (1996) 9 SCC 309, by giving similar reasons, as mentioned in *Chandra Mani's* case (supra) this Court, condoned the delay of 480 days in filing the SLP.

v) In *National Insurance Co. Ltd. vs. Giga Ram and Others*, (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.

vi) In *State of Nagaland vs. Lipok Ao and Others*, (2005) 3 SCC 752, this Court, while reiterating the principle that latitude be given to 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.

8) Though the learned ASG heavily relied on the above said 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.

9) 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. 05.12.2011 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 Special Leave Petition.

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

11.09.2009 Date of judgment in LPA Nos. 418/2007 and 1006/2007.

29.10.2009 Certified copy of judgment not received from the Government counsel and hence copy of judgment was downloaded from the web site of Delhi High Court and office note was put by ASP (Court) proposing to refer the matter to Postal Directorate for opinion and further course of action for approval of the Chief Postmaster General, Delhi.

12.11.2009 Chief Postmaster General Delhi approved to refer the matter to Directorate.

16.12.2009 Directorate desired to submit legal opinion and certified copy of judgment.

08.01.2010 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 08.01.2010.

11.01.2010 The desired documents supplied to Directorate.

25.01.2010 Directorate desired to submit copies of original writ petition filed by the party, counter affidavit thereto, copies of appeals filed by DOP & counter reply thereto.

12.02.2010 The desired documents supplied to Directorate.

17.02.2010 Directorate desired to send an official/officer well conversant with the case.

15.03.2010 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.

06.04.2010 Shri Suresh Chandra, Additional Legal Advisor was contacted on 06.04.2010 and the matter was briefed thoroughly by ASP (Court).

25.06.2010 Case file collected from Directorate and handed over to Central Agency Section on 25.06.2010 under diary No. 1865/2010 dated 25.06.2010 as per advice of Additional Legal Advisor.

26.06.2010 to Central Agency Section sent the file back 30.06.2010 to the Postal Department with directions to send the same through Ministry of Law and Justice.

01.07.2010 to After receiving the file through proper 10.09.2010 channel. Central Agency Section sent the file to Ld ASG for his considered opinion and Ld. Additional Solicitor General opined that it is a fit case for filing the Special Leave Petition.

11.09.2010 to On receiving the opinion of Ld. ASG the 30.09.2010 file was sent to Central Agency for drafting the Special Leave Petition.

01.10.2010 Directorate informed that ASG had considered the case and found it fit for Special Leave Petition.

15.11.2010 The panel counsel prepared the draft of Special Leave Petition and submitted the draft Special Leave Petition with file to Central Agency Section for further steps.

The draft Special Leave Petition was forwarded to the Department by Central Agency Section for vetting.

After factual verification, the draft Special Leave Petition was returned to Central Agency Section for typing and preparation of Paper Book which also took some time.

04.01.2011 Special Leave Petition remained pending due to non-availability of disputed magazines of Reader's Digest and India Today. Hence, ASG was requested to intervene and direct Shri Akash Pratap who handled the case to provide the magazines.

14.01.2011 Shri A.K. Sharma was requested to arrange to collect the above magazines from the record of Delhi High Court.

31.01.2011 SSRM Delhi Sorting Division was authorized to sign the affidavit on behalf of the respondent.

10.02.2011 Special Leave Petition filed in Supreme Court.

5. It is submitted that it is evident from the foregoing reasons that the delay caused in filing the petition was result of all the necessary and unavoidable office formalities and was bonafide 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 the case of Collector Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors. and Bhag Singh & Anr. Vs. Major Daljeet Singh & Ors. It is submitted that the principles for condonation of delay laid down in the above cited cases may therefore be adopted in the present case also.

7. This Hon'ble Court in G. Ramegowda Vs. Special Land Acquisition Officer, (1998) 2 SCC 142 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 bonafide is imputable to the party seeking condonation of delay.

8. In the matter of State of Haryana vs. Chandra Mani, reported in (1996) 3 SCC 132, this Hon'ble Court observed and laid down as follows:-

"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 but 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 vs. Manager, Jain and Associates, 2001 (3) SCC 277 decided on 06.02.2011 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 the time."

10) 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.

i) In Commissioner of Wealth Tax, Bombay vs. Amateur Riders Club, Bombay, 1994 Supp (2) SCC 603, there is 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 petitioner's own words as under:

".....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 June 24, 1993 along with the case file.

(h) The Board returned the case file to the Advocate-on-

Record on July 9, 1993 who re-sent the same to the Board on September 20, 1993 requesting that draft SLP was not approved by the Board. The Board after approving the draft SLP sent this file to CAS on October 1, 1993."

After incorporating the above explanation, this Court refused to condone the delay by observing thus:

"3. Having regard to the law of limitation which binds everybody, we cannot find any way of granting relief. It is true that 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]

ii) In *Pundlik Jalam Patil (dead) by LRS. vs. Executive Engineer, Jalgaon Medium Project and Another*, (2008) 17 SC 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:

".....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".

After referring various earlier decisions, taking very lenient view in condoning the delay, particularly, on the part of the Government and Government Undertaking, this Court observed as under:-

"29. It needs no restatement at our hands that the object for fixing time-limit for litigation is based on public policy fixing a lifespan 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 courts' 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."

11) 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 LPA Nos. 418 and 1006 of 2007 as 11.09.2009. Even according to the deponent, their counsel had applied for the certified copy of the said judgment only on 08.01.2010 and the same was received by the Department on the very same day. There is no explanation for not applying for certified copy of the impugned judgment on 11.09.2009 or at least within a reasonable time. The fact remains that the certified copy was applied only on 08.01.2010, i.e. after a period of nearly four months. 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.

12) 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.

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 bonafide, 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.

13) 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 bonafide 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 government departments. The law shelters everyone under the same light

and should not be swirled for the benefit of a few. 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.

14) In view of our conclusion on issue (a), there is no need to go into the merits of the issues (b) and (c). The question of law raised is left open to be decided in an appropriate case. In the light of the above discussion, the appeals fail and are dismissed on the ground of delay. No order as to costs.

.....J. (P. SATHASIVAM)J. (J.
CHELAMESWAR) NEW DELHI;

FEBRUARY 24, 2012.