

State Of Gujarat vs Bharatbhai Shaluji Baranda on 1 July, 2019

Author: Anant S. Dave

Bench: Anant S. Dave, Biren Vaishnav

C/CA/1160/2019

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CIVIL APPLICATION NO. 1160 of 2019

In F/LETTERS PATENT APPEAL NO. 14431 of 2019

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STATE OF GUJARAT
Versus
BHARATBHAI SHALUJI BARANDA

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Appearance:

MS MANISHA LAVKUMAR SHAH GOVERNMENT PLEADER for the
Applicant(s) No. 1,2,3,4
MR KB PUJARA(680) for the Respondent(s) No. 1

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE ANANT S. DAVE
and
HONOURABLE MR.JUSTICE BIREN VAISHNAV

Date : 01/07/2019

ORAL ORDER

(PER : HONOURABLE THE ACTING CHIEF JUSTICE ANANT S. DAVE)

1. This application, under Section 5 of the Limitation Act, is preferred by the State of Gujarat seeking condonation of delay of 320 days caused in preferring the Letters Patent Appeal.

2. Learned Government Pleader has relied on initial affidavit filed by the deponent wherein certain facts were mentioned about following administrative procedure to which learned advocate for the opponents raised an objection that such an explanation did not reveal sufficient cause and thereafter an additional affidavit is filed explaining, in detail, the procedures undertaken for sending proposals, seeking certain legal opinions and following several procedures by various department and filing of Letters Patent Appeal. Learned Government Pleader has relied on additional affidavit in reply filed on behalf of respondent No.2, relevant abstract of which reads as under:

"... the Special Civil Application No.2834 of 2015 came to be allowed by this Hon'ble Court vide judgment dated 11.05.2018. In the said judgment this Hon'ble Court was pleased to direct the appellant authorities to consider the case of the respondent for regularization. However, as the appellant authorities were aggrieved by the said direction of regularization had decided to challenge the judgment dated 11.05.2018 by filing the Letters Patent Appeal. In this regard on 24.05.2018 the Tribunal Development Department forwarded the relevant papers to the Commissioner (Tribal Development). Thereafter, on 26.07.2018 the Commissioner (Tribal Development) sent the proposal to the Tribal Development Department. Thereafter the opinion of the Office of the Government Pleader with regard to the directions issued vide judgment dated 11.05.2018 was sought for and on 30.07.2018 the Office of the Government Pleader had submitted the opinion to the concerned office. Thereafter on 16.08.2018 the Tribal Development Department called for the details with regard to financial burden from the Commissioner (Tribal Development). Thereafter on 06.10.2018 the Commissioner (Tribal Development) had sent the details with regard to the financial burden to the Tribal Development Department. It was also informed to consult the General Administration Department for challenging the judgment dated 11.05.2018. Thereafter it was decided to challenge the judgment dated 11.05.2018 by filing appropriate Letters Patent Appeal before this Hon'ble Court. Thereafter on 22.10.2018 the Commissioner (Tribal Development) was informed provide reasons for challenging the order dated 11.05.2018. Thereafter on 06.12.2018 the appellant authorities were served with the notice of Contempt Application No.1311 of 2018. Hence, the argument of the respondent that the decision to challenge the judgment dated 11.05.2018 was taken by the authority after the initiation of contempt proceedings is without any basis. However, it appears that Legal Department was of the view of accepting the directions issued by this Hon'ble Court vide judgment dated 11.05.2018 but as the directions for regularization may have far reaching effects the appellant authorities were left no option but to challenge the order passed by this Hon'ble Court. Therefore, the permission for preferring the Letters Patent Appeal was received from the highest authority on 05.04.2019 and accordingly the Letters Patent Appeal came to be preferred on 25.04.2019."

2.1 In support of her submissions, learned Government Pleader has relied upon the following two decisions for consideration of facts that when the efforts are made by the State Authorities to pursue the cause diligently, the fact remains that, in some cases, it may appear that Government is a impersonal machinery and decisions are taken at slow pace certain amount of latitude is not impermissible.

A decision in the case of State of Haryana vs. Chandra Mani and others reported in AIR 1996 SC 1623, more particularly para:10, which reads as under:

"10. 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 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, 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 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. The factors which are peculiar to 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 merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-à-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts 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 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 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 a fit case for condonation of the delay."

A decision in the case of State (NCT of Delhi) vs. Ahmed Jaan reported in (2008) 14 SCC 582, more particularly paras:11 and 12, which read as under:

"11. "8. The proof by sufficient cause is a condition precedent for exercise of the extraordinary discretion vested in the court. What counts is not the length of the delay, but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion. In N.Balakrishnan v. M. Krishnamurthy it was held by this Court that Section 5 is to be construed liberally so as to do substantial justice to the parties. The provision contemplates that the

court has to go in the position of the person concerned and to find out if the delay can be said to have resulted from the cause which he had adduced and whether the cause can be recorded in the peculiar circumstances of the case as sufficient. Although no special indulgence can be shown to the Government which, in similar circumstances, is not shown to an individual suitor, one cannot but take a practical view of the working of the Government without being unduly indulgent to the slow motions of its wheels.

9. What constitutes sufficient cause cannot be laid down by hard and fast rules. In *New India Insurance Co. Ltd. v. Shanti Misra* 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 receive a liberal construction. In *Brij Indar Singh v. Kanshi Ram* it was observed that true guide for a court to exercise the discretion under Section 5 is whether the appellant acted with reasonable diligence in prosecuting the appeal. In *Shakuntala Devi Jain v. Kuntal Kumari* 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 cannot be refused to be condoned.

10. In *Concord of India Insurance Co. Ltd. v. Nirmala Devi* 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* this Court had 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 device 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.

11. In *State of Kerala v. E.K.Kuriyipe* 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 *Milavi Devi v. Dina Nath* it was held that the appellant had sufficient cause for not filing the appeal within the period of limitation. This Court under Article 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 the case was remitted for decision on merits.

12. In *O.P.Kathpalia v. Lakhmir Singh* a Bench of three Judges had held that if the refusal to condone the delay results in grave miscarriage of justice, it would be aground to condone the delay. Delay was accordingly condoned. In *Collector, Land Acquisition v. Katiji* a Bench of two Judges considered the question of 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 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.

13. 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 represents 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 provision in the course of the interpretation of the expression of sufficient cause. Merit is 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 *Prabha v. Ram Parkash Kalra* this 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.

14. In *G. Ramegowda v. Spl. Land Acquisition Officer* it was held that no general principle saving the party from all mistakes of its 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 or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of delay. In litigations to which Government is 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 ultimate analysis, suffers is public interest. The decisions of Government are collective and institutional decisions and do not share the characteristics of decisions of private individuals. The law of limitation is, no doubt, the same for a private citizen as for governmental authorities. Government, like any other litigant must take responsibility for the acts, omissions of its officers. But a somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it. 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 considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the 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 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.

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15. 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. 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 a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to 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 merits unless the case is hopelessly without merit.

No separate standards to determine the cause laid by the State vis-à-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision or given appropriate permission for settlement. In the event of decision to file appeal, needed prompt action 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 State is an impersonal machinery working through its officers or servants."

The above position was highlighted in *State of Nagaland v. Lipok Ao* (SCC pp. 757-760, paras 8 to 15); *Spl. Tehsildar, Land Acquisition v. K.V. Ayisumma* and *State of Haryana v. Chandra Mani*. It was noted that adoption of strict standard of proof sometimes fails to protract public justice, and it would result in public mischief by skillful management of delay in the process of filing an appeal.

12. We find that the appellant had indicated the reasons for the delay in filing and re-filing the revision petition. The High Court unfortunately did not deal with those explanations and merely stated that the delay has not been explained. The High Court was required to examine the correctness of the explanation given, keeping in view the principles laid down by this Court in several cases. According to us, the explanations offered were plausible and deserved to be accepted. Accordingly, we set aside the impugned order of the High Court and remit the matter to it to hear the criminal revision on merits. It is made clear that we have not expressed any opinion on merits."

Accordingly it is submitted that sufficient cause is shown and delay is explained as prayed for.

3. Against the submissions made by learned Government Pleader, Mr.K.B.Pujara, learned advocate for the opponents has vehemently opposed the condonation of delay on the ground that except mentioning various dates and names of the department and movement of file, no plausible reason or ground exists whereby this Court can see sufficient cause and the deponent and the department both are negligent in pursuing remedy bona fide and, therefore, relying upon the affidavit in reply filed by the respondent - original petitioner it is submitted that in view of decision in the case of *Postmaster General and others vs. Living Media India Limited* and another reported in (2012) 3 SCC 563, the contention of delay as held in the above referred judgment that condonation of delay is an exception and should not be used as an anticipated benefit for Government departments and even after filing of additional affidavit, so-called 'better particulars' had gathered from the record absence of diligence by department in prosecuting the matter and further no explanation is offered as to why there was delay in pursuing the matter at every stages with various departments. The negligence and lethargy on the part of the officers / department deserves no lenient view at the ends of this Court and though persons concerned were well aware and conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing Letters Patent Appeal. Now, they cannot claim that either any approval or sanction was required of

the department and nothing prevented the deponent and concerned department to file the appeal immediately after receiving the certified copy. It is submitted that likewise another decision in the case of Basawaraj and ors. vs. The Special Land Acquisition Officer reported in Manupatra SC 0850 2013 P.34 stating no exercise of powers by the Court while considering the application seeking condonation of delay and when the delay is without any justification or unexplained and further a person responsible and / or the department both have not acted diligently, the application for condonation of delay to be rejected at the outset.

4. We have carefully gone through the submissions made by learned advocate for the parties. On perusal of the judgment in the case of Postmaster General and others vs. Living Media India Limited and another (supra) and in the case of Basawaraj and ors. vs. The Special Land Acquisition Officer (supra), we are in respectful agreement with the law laid down therein but at the same time the Apex Court has kept it open for the concerned Court to whether there was any gross negligence or diligent inaction or lack of bona fide, liberal concession has to be adopted to advance substantial justice. Reference can be made to Chandra Mani (supra) and NCT (supra) and keeping in mind, we find that though there appears to be some delay on the part of applicant but it cannot be said to be inordinate or gross so as not to exercise powers. Considering overall facts and circumstances, we have inclined to allow this application by condoning the delay. Rule is made absolute. Direct service is permitted.

5. Letters Patent Appeal No.14431 of 2019 to be listed on 08.07.2019 for admission.

(ANANT S. DAVE, ACJ) (BIREN VAISHNAV, J) MISHRA AMIT V.