**SUPREME COURT OF INDIA**

Esha Bhattacharjee

Vs.

Managing Committee of Raghunathpur Nafar Academy

C.A.Nos.8183-8184 of 2013

(Anil R. Dave and Dipak Misra JJ.)

13.09.2013

**JUDGMENT**

**DIPAK MISRA, J.**

1. Leave granted in both the special leave petitions.

2. The singular question that we intend to address in these appeals, by special leave, is whether the Division Bench of the High Court of Calcutta is justified in entertaining the CAN No. 365 of 2011 for condoning the delay of 2449 days in A.S.T.A. No. 10 of 2011 preferred against the interim order dated 25.2.2004 passed by the learned single Judge in W.P. No. 6124(W) of 2004. It is also worthy to note that the Division Bench in A.S.T.A No. 10 of 2011 in A.S.T. No. 13 of 2011 had directed stay of further proceedings in connection with A.S.T. No. 346 of 2004. Needless to say, the said order is consequential as whole thing would depend upon the issue pertaining to condonation of delay.

3. Sans unnecessary details, the facts which are essential to be stated for the purpose of disposal of the present appeals are that the appellant, an Assistant Teacher in language group (Bengali), invoked the jurisdiction of the High Court under Article 226 of the Constitution by preferring a writ petition seeking approval of her appointment and for certain other reliefs. The learned single Judge on 25.2.2004 taking note of the submissions of the learned counsel for the petitioner therein and further noticing the fact that in spite of notice none had appeared on behalf of the concerned respondents, issued a direction that during the pendency of the application the services of the petitioner as Assistant Teacher in Bengali in

Raghunathpur Nafar Academy (HS) at Abhoynagar in the district of Howrah shall not be disturbed until further orders. As the said order was not complied with, the appellant filed the contempt application being C.P.A.N. No. 1016 of 2004. Be it noted, learned counsel for the petitioner communicated the order to the school authorities but the said communication was not paid heed to. On 24.1.2006 the District Inspector of Schools (SE), Howrah, directed the said school authorities to comply with the direction issued by the learned single Judge. Despite the said direction the order was not complied with. It may be mentioned here that an undertaking was given before the learned single Judge and on that basis C.P.A.N. No. 1016 of 2004 was disposed of. As the factual matrix would further unfurl a new managing committee was constituted in place of the erstwhile managing committee of the school on 21.11.2009 and the appellant was not allowed to join her duty. Being constrained, she preferred another contempt petition No. C.P.A.N. No. 1506 of 2010 wherein the learned single Judge vide order dated 13.5.2010 referred to his earlier order and directed that the District Inspector of Schools (SE) would ensure due compliance of the order. That apart, a direction was issued that the concerned police authority should see to it that the Secretary and the teacher-in-charge of the concerned school implement the order in allowing the petitioner to join her duties. After the said order came to be passed, the appellant herein joined her duties as Assistant Teacher with effect from 14.6.2010. Though the appellant was allowed to join, yet she was neither permitted to sign the daily attendance register, nor allotted any work nor paid her salary. Being impelled, she filed an application for contempt, C.P.A.N. No. 1506 of 2010, and on 24.12.2010 the learned single Judge directed for personal presence of the Secretary and teacher-in-charge of the school. At this juncture, the Managing Committee and the Secretary of the school preferred an appeal along with an application for condonation of delay. The said application was seriously resisted by the appellant by filing an affidavit and, eventually, by the impugned order the Division Bench condoned the delay. Be it noted, the Division Bench has also passed an interim order of stay. The said orders are the subject-matter of assail in these appeals by special leave.

4. We have heard Mr. Kunal Chatterjee, learned counsel for the appellant, Mr. Anip Sachthey, learned counsel for respondent No. 1 and Mr. Sarad Kumar Singhania, learned counsel for the respondent Nos. 3 to 5.

5. Before we delve into the factual scenario and the defensibility of the order condoning delay, it is seemly to state the obligation of the court while dealing with an application for condonation of delay and the approach to be adopted while considering the grounds for condonation of such colossal delay.

6. In Collector, Land Acquisition, Anantnag and another v. Mst. Katiji and others[1], a two-Judge Bench observed that the legislature has conferred power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on merits. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice, for that is the life-purpose for the existence of the institution of courts. The learned Judges emphasized on adoption of a liberal approach while dealing with the applications for condonation of delay as ordinarily a litigant does not stand to benefit by lodging an appeal late and refusal to condone delay can result in an meritorious matter being thrown out at the very threshold and the cause of justice being defeated. It was stressed that there should not be a pedantic approach but the doctrine that is to be kept in mind is that the matter has to be dealt with in a rational commonsense pragmatic manner and cause of substantial justice deserves to be preferred over the technical considerations. It was also ruled that there is no presumption that delay is occasioned deliberately or on account of culpable negligence and that the courts are not supposed to legalise injustice on technical grounds as it is the duty of the court to remove injustice. In the said case the Division Bench observed that the State which represents the collective cause of the community does not deserve a litigant-non-grata status and the courts are required to be informed with the spirit and philosophy of the provision in the course of interpretation of the expression "sufficient cause".

7. In G. Ramegowda, Major and others v. Special Land Acquisition Officer, Bangalore[2], Venkatachaliah, J. (as his Lordship then was), speaking for the Court, has opined thus:-

> "The contours of the area of discretion of the courts in the matter of condonation of delays in filing appeals are set out in a number of pronouncements of this Court. See : Ramlal, Motilal and Chhotelal v. Rewa Coalfield Ltd.[3] ; Shakuntala Devi Jain v. Kuntal Kumari[4] ; Concord of India Insurance Co. Ltd. V. Nirmala Devi[5] ; Lala Mata Din v. A. Narayanan[6] ; Collector, Land Acquisition v. Katiji etc. There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fide on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression 'sufficient

cause' in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring 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 the delay."

8. In O.P. Kathpalia v. Lakhmir Singh (dead) and others[7], the court was dealing with a fact- situation where the interim order passed by the court of first instance was an interpolated order and it was not ascertainable as to when the order was made. The said order was under appeal before the District Judge who declined to condone the delay and the said view was concurred with by the High Court. The Court, taking stock of the facts, came to hold that if such an interpolated order is allowed to stand, there would be failure of justice and, accordingly, set aside the orders impugned therein observing that the appeal before the District Judge deserved to be heard on merits.

9. In State of Nagaland v. Lipok AO and others[8], the Court, after referring to New India Insurance Co. Ltd. V. Shanti Misra[9], N. Balakrishnan v. M. Krishnamurthy[10], State of Haryana v. Chandra Mani[11] and Special Tehsildar, Land Acquisition v. K.V. Ayisumma[12], came to hold that adoption of strict standard of proof sometimes fails to protect public justice and it may result in public mischief.

10. In this context, we may refer with profit to the authority in Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation and another[13], where a two-Judge Bench of this Court has observed that the law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time. Thereafter, the learned Judges proceeded to state that this Court has justifiably advocated adoption of liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate.

11. In Improvement Trust, Ludhiana v. Ujagar Singh and others[14], it has been held that while considering an application for condonation of delay no straitjacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not. It has been further stated therein that each case has to be weighed from its facts and the circumstances in which the party acts and behaves.

12. A reference to the principle stated in Balwant Singh (dead) v. Jagdish Singh and others[15]
would be quite fruitful. In the said case the Court referred to the pronouncements in Union of India v. Ram Charan[16], P.K. Ramachandran v. State of Kerala[17] and Katari Suryanarayana v. Koppisetti Subba Rao[18] and stated thus:-

> "25. We may state that even if the term "sufficient cause" has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of "reasonableness" as it is understood in its general connotation.
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> 26. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly."

13. Recently in Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai[19], the learned Judges referred to the pronouncement in Vedabai v. Shantaram Baburao Patil[20] wherein it has been opined that a distinction must be made between a case where the delay is inordinate and a case where the delay is of few days and whereas in the former case the consideration of prejudice to the other

side will be a relevant factor, in the latter case no such consideration arises. Thereafter, the two-Judge Bench ruled thus: -

> "23. What needs to be emphasized is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.
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> 24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay." Eventually, the Bench upon perusal of the application for condonation of delay and the affidavit on record came to hold that certain necessary facts were conspicuously silent and, accordingly, reversed the decision of the High Court which had condoned the delay of more than seven years.

14. In B. Madhuri Goud v. B. Damodar Reddy[21], the Court referring to earlier decisions reversed the decision of the learned single Judge who had condoned delay of 1236 days as the explanation given in the application for condonation of delay was absolutely fanciful.

15. From the aforesaid authorities the principles that can broadly be culled out are:

> i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.
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> ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.

iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

d) The increasing tendency to perceive delay as a non- serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.

17. Presently to the assertions made in the application for condonation of delay and the asseverations in oppugnation of the same. It may be stated here that the Division Bench while dealing with the application for condonation of delay has also adverted to the legal tenability of the interim order in a matter of appointment and approval of a teacher, and condoned the delay. It does not require Solomon's wisdom to perceive that the delay was colossal. In the application for condonation of delay the appellant before the High Court had stated about the circumstances in which the order came to be passed by the learned single Judge, the order in the earlier contempt petition and the second petition for contempt, the extinction of right of the respondent employee to continue in the post and thereafter proceeded to state the grounds for condonation of delay. We think it apposite to reproduce the grounds:-

"14. That from the record it appears that the order impugned was communicated to the then managing committee including the head master in question and the said fact is totally unknown to the newly elected managing committee as they have been elected on 20.9.2009 and they have been handed over charge on 21.11.09 and to the teacher in charge who has been handed over charge on 1.3.10. It is pertinent to mention in this context that after having received the notice and the contempt application the applicants entrusted the Ld. Advocate for taking appropriate steps and they have been advised to defend the case but due to miscommunication the applicant herein again handed over the brief from Mr. Banik, Ld. Advocate to Mr. Baidya, Ld. Advocate. After having received the said papers and after perusing all the records he opined to prefer an appeal before the appeal court or to prefer an application for vacating the interim order and ultimately the same was filed on 07.06.2010 after several pursuance in spite of taking the application for vacating the interim order the court below day to day is proceeding with the contempt application.

15. Having got no other alternative applicant have been advised to prefer an appeal without certified copy and the leave has been prayed for and the same was allowed.

The photocopy of the receipt for application of Xerox certified copy is annexed herewith and marked with letter "A".

16. That the delay occasioned in presenting the said mandamus appeal has taken place due to the aforesaid reasons which was beyond the control of the applicants and was completely unintentional."

18. Thereafter, the applicant therein stated about the duty of the court while dealing with the application for condonation of delay and in that context, proceeded to state as follows: -

"Nonetheless adoption of strict standard of proof may lead to grave miscarriage of public justice apart from resulting in public mischief by skilful management of delay in the process of filing the appeal, the appellants/applicants do not stand to benefit from the delay of about 2449 days occasioned in preferring the said Mandamus Appeal, nor it is a fact that the writ petitioners/ respondents will be immense/prejudiced if such non-deliberate delay is not condoned. There has not been deliberate delay as

would be evidenced from the foregoing paragraphs. Refusing to condone such non-deliberate delay may result in meritorious matters like the instant case, being thrown out at the very threshold and the cause of justice being defeated. As against this when delay is condoned the highest that can happen in the instant case is that a cause would be decided on merits after hearing the parties."

19. The said grounds were opposed by the contesting respondent therein by stating, inter alia, that the school authorities were very much aware of the order dated 25.2.2004 as the same was communicated to them by her counsel as well as by the District Inspector of school. That apart, an undertaking was given before the learned single Judge by the managing committee. Quite apart from above, in any case, the new managing committee that had come into being in 2009 was aware of the order but it chose not to assail the order till there was a direction for personal appearance of the Secretary and the teacher- in-charge. It was further put forth that the grounds urged did not justify condonation of such enormous delay and the plea of prejudice was not at all tenable.

20. On a perusal of the grounds urged in the affidavit and the stand put forth by the respondents herein for condonation of delay are that they were not aware of the order passed by the learned single Judge till they received the notice of the contempt application and thereafter because of miscommunication between the counsel and the parties no steps could be taken and, eventually, an application for vacation of stay was filed and thereafter, the appeal was preferred. That apart, it has been urged that if delay is not condoned there will be great miscarriage of public justice resulting in public mischief and cause of justice would be defeated if the meritorious matter like the present one is thrown at the threshold. The Division Bench of the High Court took note of the averments made in paragraph 14 of the application and thereafter, noted the submission of learned counsel for the parties, referred to the decision in Oriental Aroma Chemical Industries Limited (supra) and came to hold as follows: -

"Now upon a close look at the prayer made for condonation of delay we find that although the delay is substantial, the same has been sought to be explained in a manner even if it may not be full proof but is quite convincing."

21. Barring the aforesaid, most of the discussion pertains to the merits of the case. We are of the convinced opinion that the High Court has misdirected itself by not

considering certain facts, namely, (a) that the notice of the writ petition was served on the earlier managing committee; (b) that the earlier committee had appeared in the writ court and was aware of the proceedings and the order; (c) that the District Inspector of schools had communicated to the managing committee to comply with the order of the learned single Judge; (d) that the earlier managing committee had undertaken before the learned single Judge to comply with the order; (e) that the new managing committee had taken over charge from the earlier managing committee; (f) that nothing has been indicated in the affidavit that under what circumstances the new managing committee, despite taking over charge, was not aware of the pending litigation or for that matter the communication from the District Inspector; (g) that the writ court was still in seisin of the matter and no final verdict had come and hence, it would not be a case where there will be failure of justice if the appeal against the interim order is not entertained on the ground of limitation inasmuch as the final order was subject to assail in appeal; (h) that the managing committee had exhibited gross negligence and, in any way, recklessness; (i) that the conduct and attitude of the members of the committee before the writ court deserved to be decried since they should not have taken recourse to maladroit effort in complying with the order of the court; and (j) and that it was obvious that the managing committee was really taking resort to dilatory tactics by not seeking necessitous legal remedy in quite promptitude.

22. At this juncture, we are obliged to state that the persons who are nominated or inducted as members or chosen as Secretaries of the managing committees of schools are required to behave with responsibility and not to adopt a casual approach. It is a public responsibility and anyone who is desirous of taking such responsibility has to devote time and act with due care and requisite caution. Becoming a member of the committee should not become a local status syndrome. A statutory committee cannot remain totally indifferent to an order passed by the court and sleep like “Kumbhakarna”. The persons chosen to act on behalf of the Managing Committee cannot take recourse to fancy and rise like a phoenix and move the court. Neither leisure nor pleasure has any room while one moves an application seeking condonation of delay of almost seven years on the ground of lack of knowledge or failure of justice. Plea of lack of knowledge in the present case really lacks bona fide. The Division Bench of the High Court has failed to keep itself alive to the concept of exercise of judicial discretion that is governed by rules of reason and justice. It should have kept itself alive to the following passage from N. Balakrishnan (supra): -

"The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time."

We have painfully re-stated the same.

23. Ex consequenti, the appeals are allowed and the order passed by the Division Bench condoning delay is set aside. As a result of such extinction the appeal before the Division Bench of the High Court shall also stand dismissed. The learned single Judge is requested to dispose of Writ Petition No. 6124(W) of 2003 as expeditiously as possible, preferably, within a period of six months as the lis involved is not likely to consume much time. In the facts and circumstances of the case, there shall be no order as to costs.

[1] (1987) 2 SCC 107
[2] (1988) 2 SCC 142
[3] (1962) 2 SCR 762
[4] (1969) 1 SCR 1006
[5] (1979) 3 SCR 694
[6] (1970) 2 SCR 90
[7] (1984) 4 SCC 66
[8] (2005) 3 SCC 752
[9] (1975) 2 SCC 840
[10] AIR 1998 SC 3222
[11] (1996) 3 SCC 132
[12] (1996) 10 SCC 634
[13] (2010) 5 SCC 459
[14] (2010) 6 SCC 786
[15] (2010) 8 SCC 685
[16] AIR 1964 SC 215

[17] (1997) 7 SCC 556
[18] (2009) 11 SCC 183
[19] (2012) 5 SCC 157
[20] (2001) 9 SCC 106
[21] (2012) 12 SCC 693