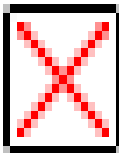


Ignoring limitation proves costly

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ARE

the Government (Central and State) or the Government authorities immune from the law of limitation? Can they claim the 'condonation of delay' as if it is their birthright (or bureaucratic right)?

These questions seem to have arisen recently in a case before the Hon'ble Supreme Court involving the consideration of the application for **condonation of delay of 663 days** in filing the Special Leave Petition by the State of Madhya Pradesh, the Petitioner before the Hon'ble Court.

The Supreme Court Bench comprising Hon'ble Mr. Justice Sanjay Kishan Kaul and Hon'ble Mr. Justice Dinesh Maheshwari were apparently not impressed with the routine reasons advanced on behalf of the Petitioner i.e. the State Government in this case and have **dismissed the SLP as time-barred with costs**. In their extremely hard-hitting Order passed on **October 15, 2020 - [2020-TIOL-160-SC-MISC](#)** in the matter of **State of Madhya Pradesh & Ors. Vs. Bherulal** on the Application for condonation of delay, their Lordships seemed to have sent a stern and clear message to the Governments and the Government authorities that '**enough is enough**'!

As can be observed from the Order, the reasons advanced by the Petitioner-State for the condonation of delay in filing the SLP were '**due to unavailability of the documents and the process of arranging the documents**'. It was also stated that '(the way) bureaucratic process works, it is inadvertent(?) that the delay occurs.' Painfully noting that '**all their counselling to Government and Government authorities have fallen on deaf ears**' and advancing a caution that '**the Supreme Court of India cannot be a place for the Government to walk in when they choose ignoring the period of limitation prescribed**', the Hon'ble Bench has, with constraints, penned down a detailed Order in this case.

Making a tongue-in-check observation, their Lordships observed that '**if the Government machinery is so inefficient and incapable of filing appeals/petitions in time, the solution may lie in requesting the Legislature to expand the time period for filing limitation for Government authorities because of their gross incompetence**'. '(However), **till the Statute subsists (as is at present), the appeals/petitions have to be filed as per the statute prescribed**', the Bench ruled.

In an interesting observation, the Bench further remarked that while '**some leeway is given to the Government inefficiencies, the sad part is that the authorities keep on relying on judicial pronouncements for a period of time when technology had not advanced and a greater leeway was given to the Government**'. Here, the Bench cited **one** of its landmark judgements in the case of Collector, Land Acquisition, Anantnag & Anr. Vs. Mst. Katiji & Ors. - **[2002-TIOL-444-SC-LMT](#)**. In this case, the Supreme Court considered the phrase '**sufficient cause**' in connection with Section 5 of the Limitation Act, 1963 and summarised its conclusions as follows:

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.

It is interesting to note that the same phrase '**sufficient cause**'

has been used in sub-section (4) of S.107 as well as sub-section (6) of S.112 of the CGST Act, 2017 empowering the Appellate Authority and the Appellate Tribunal respectively to condone the delay in filing of appeal and/or the cross-objections, as the case may be. The same phrase was also employed in the proviso to S.35(1) and sub-section (5) of S.35B of the erstwhile Central Excise Act, 1944 as well as in the proviso to S.85(3) and sub-section (5) of S.86 of the Finance Act, 1994 dealing with the powers of the Commissioner (Appeals) or the Appellate Tribunal, as the case may be, to condone the delay in filing the appeals before it. The phrase also finds mention in the proviso to S.128 and sub-section (5) of S.129A of the Customs Act, 1962.

Not surprisingly, the judgement in Mst. Katiji's case (supra) was always clung to as the "**last resort**"

by the defaulting Appellant who failed to file the appeal within the prescribed period of limitation. While many appellants found themselves rescued, all were not so lucky! The grant of '**condonation of delay**' is not '**a rule**'

nor can it be so claimed based on this judgement. The delay would merit condonation only if the applicant has not been deliberately indifferent or sloppy or lethargic in pursuing the appellate remedy or that he has not been inert to his rights and obligations under the Act or guilty of any mala fides. The onus would obviously lie on the Applicant to establish that he has not been so negligent so as to not deserve the relief.

A lot of water has flowed under the bridge since the judgement in Mst. Katiji's case (supra) was delivered and the rapid strides made by technology have changed or are expected to have changed the functioning of any organisation (Government or Private). The Bench, in this context, referred to its earlier judgement in the case of Chief Post Master General & Ors. Vs. Living Media India Ltd. & Anr. - [2012-TIOL-123-SC-LMT](#) wherein this position was captured very succinctly. In this case, the Hon'ble Court, taking note of the fact 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 filing a special leave petition**', posed a question that '

in the absence of plausible and acceptable explanation why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us (Court)?' While stressing that

'in a matter of condonation of delay, a liberal construction has to be adopted to advance substantial justice', the Court, nevertheless, rejected

'the claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes' in view of '**modern technologies being used and available**'.

The Hon'ble Court then offered the following sage principles to the Government and its agencies:

- Unless, the government bodies, their agencies and instrumentalities have **reasonable and acceptable explanation** for the delay and there was a **bona fide effort**, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process;

- The Government departments are under a **special obligation** to ensure that they perform their duties with diligence and commitment;

- **Condonation of delay is an exception** and should not be used **as an anticipated** benefit for government departments;
- The law views everyone in the same light and should not be departed from for the benefit of a few;
- The law of limitation undoubtedly binds everybody including the Government.

As in the above case, no proper explanation for the delay was forthcoming from the Department for the delay except mentioning of various dates, the Hon'ble Court had refused to condone the huge delay in filing SLP and dismissed the same as time-barred.

The Hon'ble Bench, in the present case, noted with dismay that though eight years have passed since the aforesaid judgement in **Living Media's case**

was delivered, the judgement still remains unheeded! Incidentally, even much prior to this judgement, the Hon'ble Supreme Court had expressed their anguish in a similar vein in the case of Commissioner Vs. Mathew Kurian -1999 (17) ELT 289 (SC) in the following words:

"3.

From the above it is seen that in explaining the delay, the appellant was satisfied in just stating that one dealing hand was responsible for the delay. No further details are given about what action was taken against the erring dealing hand and how the departmental action if any taken ended. We have come across that cases are invariably filed with enormous unexplained/casually explained delay. This state of affairs is continuing for quite some years. We wish to express our anguish that in spite of the Court pointing out the haphazard way of filing application for condoning delay, no improvement is forthcoming. Ultimately it is the Revenue that suffers as a result of dismissal of cases on the ground of delay. We hope that at least in further the appeals are filed in time and if there is any delay, it is explained properly."

Rejecting **the** proposition sought to be advanced on behalf of the Petitioner-State that '

if there is some merit in the case, the period of delay is to be given a go-by', the Court observed that

'if a case is good on merits, it will succeed in any case. It is really a bar of limitation which can shut out even good cases.

The readers may note that as early as in 1981, the Hon'ble Supreme Court had, in the case of State of Gujarat vs. Sayed Mohd. Baquir El Edross- AIR 1981 SC 1921 observed:

"Mr. Phadke also contended that he has a strong case for the acceptance of the appeal on merit and that the same should be regarded as a very good reason for the condonation of the delay. The contention is wholly without substance. The abatement stands in the way of the appeal being heard on merits which cannot, therefore, be looked into."

See also,

1. Navinkal Tea Factory vs.CEGAT - 1995 (79) ELT 415 (Mad.);

2. Radhakrishna Shipping P.Ltd. Vs. Commissioner - 1998 (100) ELT 479 (Tribunal)

In the end, the Hon'ble Court castigated the approach adopted by the Petitioners, that is, the Governments and their instrumentalities in general, in what were categorised as '**Certificate Cases**'. The Court sternly observed that '**the object appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal.**' The Court remarked that this was done '**to complete (the) formality**' and '**save the skin of (the) officers who may be at default.**' **'The**

Court once again deprecated this practice and the process being resorted to by the Government and its bodies and was '**constrained to send a signal**' which it '**proposed to do in all matters where there are such inordinate delays.**' Coming down heavily on the Government or State authorities approaching it in such a manner, the Court observed that '**(they) must pay for the wastage of judicial time which has its own value**' and that '**such costs can be recovered from the officers responsible.**'

The Hon'ble Court, while dismissing the SLP as time-barred, has then imposed a cost of Rs.25,000/- on the Petitioner-State to be deposited with the Mediation and Conciliation Project. More importantly, however, the Court directed the amount to be deposited in four weeks and to be recovered from the officers responsible for the delay in filing the SLP. The Court further directed the filing of certificate of recovery within the stipulated period and also warned that if the Order is not complied within time, it will be constrained to initiate contempt proceedings against the Chief Secretary.

Conclusion:

The judgement of the Hon'ble Supreme Court is noteworthy for more than one reason. The Government or Government agencies, in the matter of condonation of delay in filing of the appeal, generally take the relief for granted as if it is their '**birthright**'

! The 'bureaucratic red tape' is, more often than not, flashed as a ground before the Court/Tribunal for the grant of the condonation of delay and to receive a '**green signal**' to

proceed with the matter on merits! The extremely harsh observations of the Hon'ble Court in this judgement may hopefully serve as an '**eye opener**' for the Governments and their agencies making them realise that the grant of condonation of delay may not after all be a '**cakewalk**'

merely because it happens to be a Government or Government agency. This judgement, at the same time, will also put litigant assesseees on guard to be diligent in pursuing the statutory remedy of appeal. It will be remembered that the strong merits of a case are not sufficient to save the matter if the delay in filing the appeal is not sufficiently and convincingly explained. It may be prudent to remember and live by the Latin maxim "**Vigilantibus non dormientibus jura subveniunt**" which means

"The law assists those that are vigilant with their rights, and not those that sleep thereupon."

[The views expressed are strictly personal.]

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