REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 9726-9727 OF 2010
(Arising out of S.L.P. (C) Nos. 14520-14521 of 2010)

INDIAN OIL CORPORATION LTD. & ORS. — APPELLANT (S)

VERSUS

SUBRATA BORAH CHOWLEK , ETC. — RESPONDENT (S)

O R D E R

D.K. JAIN, J.:

Leave granted.

2. The present appeals, by special leave, are directed against order and judgment dated 29th January, 2010 passed by a Division Bench of the Gauhati High Court, whereby appellants' application seeking condonation of delay of 59 days in preferring the appeal was rejected and their writ appeal was dismissed *in limine* as being barred by limitation.

3. The respondents herein filed writ petitions in the High Court seeking regularization of their services from the dates of their initial appointment with consequential benefits. A learned Single Judge of the High Court, vide his judgment dated 29th April 2009, allowed the writ petitions, and directed appellant No.2 viz. the Assam Oil Division of the Indian Oil Corporation to treat the respondents as having been regularly appointed from the date of their initial appointment, and to give them all the consequential service benefits.

4. Being aggrieved by the said order, the appellants preferred an appeal before the Division Bench of the High Court on 29th July 2009, along with an application for condonation of delay in filing the appeal. It was pleaded that the delay of 59 days had occasioned because of the time taken by the company's consultant at Delhi, mainly on account of summer vacation.

5. As afore-mentioned, the Division Bench of the High Court dismissed the appeal, on the ground of limitation, observing thus:

> "As such, the averments made in the application do not disclose any weighty or convicting cause to construe the same as sufficient within the meaning of Section 5 of the Act. The applicant corporation had since the delivery of the judgment and order involved been cavalier and nonchalant in its approach. No urge or concern to act with expedition or dispatch in view of the period of limitation prescribed is discernible in

its enterprise to decide the next course of action following the decision of the Single Judge. In the facts and circumstances of the case, we are of the unhesitant opinion that the applicants are not entitled to the equitable relief of condonation of delay, they having utterly failed to offer a sufficient cause therefore in filing the accompanying writ appeals."

6. As stated above, the appellants had pleaded that the delay in filing the appeal was unintentional and bona fide in as much as on receiving an uncertified copy of the judgment, they sought legal opinion from their local lawyer on 7th May 2009, which was received by them on 21st May 2009. Thereafter, the same was forwarded to the General Manager (HR), Refinery Headquarters, New Delhi on 28th May 2009. Vide his letter dated 6th June 2009, the said General Manager sought some documents, including a certified copy of the judgment. Subsequently, the General Manager forwarded the case file to the company's legal advisors at New Delhi on 18th June 2009. The said legal advisors gave their opinion on 7th July 2009, advising the appellants to file an appeal against the judgment of the Single Judge; the proposal was approved by the headquarters of the appellants; whereafter the case file was handed over to the counsel for preparing and filing the appeal, which was ultimately filed on 29th July 2009.

7. Having heard the learned counsel, we are of the opinion that in the instant case a sufficient cause had been made out for condonation of delay in filing the appeal and therefore, the High Court erred in declining to condone the same. It is true that even upon showing a sufficient cause, a party is not entitled to the condonation of delay as a matter of right, yet it is trite that in construing sufficient cause, the Courts generally follow a liberal approach particularly when no negligence, inaction or *mala fides* can be imputed to the party. (See: ***Shakuntala Devi Jain*** *Vs.* ***Kuntal Kumari & Ors.***[1]; ***The State of West Bengal*** *Vs.* ***The Administrator, Howrah Municipality & Ors.***[2]; ***N. Balakrishnan*** *Vs.* ***M. Krishnamurthy***[3]; ***Sital Prasad Saxena*** *Vs.* ***Union of India & Ors.***[4])

8. In ***Ramlal, Motilal & Chhotelal*** *Vs.* ***Rewa Coalfields Ltd.***[5], this Court held that:

> "In construing Section 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be

[1] (1969) 1 SCR 1006
[2] (1972) 1 SCC 366
[3] (1998) 7 SCC 123
[4] (1985) 1 SCC 163
[5] (1962) 2 SCR 762

light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the court to condone delay and admit the appeal. This discretion has been deliberately conferred on the court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in *Krishna* v. *Chathappan*[6] "Section 5 gives the court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant."

9. Similarly, in ***Ram Nath Sao Alias Ram Nath Sahu & Ors.*** *Vs.* ***Gobardhan Sao & Ors***.[7], this Court observed that:

"But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over-jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine-like manner. However, by taking a pedantic and hypertechnical view of the matter the explanation furnished should not be rejected when stakes are high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates, either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance

[6] (1890) ILR 13 Mad 269
[7] (2002) 3 SCC 195

between resultant effect of the order it is going to pass upon the parties either way."

10. In ***State (NCT of Delhi)*** *Vs.* ***Ahmed Jaan***[8]**,** while observing that 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 motion of its wheels, highlighted the following observations of this Court in ***State of Nagaland*** *Vs.* ***Lipok Ao & Ors.***[9]:

> "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."(See also: ***Special Tehsildar, Land Acquisition,***

[8] (2008) 14 SCC 582
[9] (2005) 3 SCC 752

***Kerala** Vs. **K.V. Ayisumma**[10]**; State of Haryana** Vs. **Chandra Mani & Ors.**[11])*

11. It is manifest that though Section 5 of the Limitation Act, 1963 envisages the explanation of delay to the satisfaction of the Court, and makes no distinction between the State and the citizen, nonetheless adoption of a strict standard of proof in case of the Government, which is dependant on the actions of its officials, who

often do not have any personal interest in its transactions, may lead to grave miscarriage of justice and therefore, certain amount of latitude is permissible in such cases.

12. Examined on the touch-stone of the afore-noted observations, we are of the view that in the present case, the conduct of the appellants does not indicate inaction, negligence or *mala fides*. The explanation furnished for the marginal delay of 59 days, in our opinion, constitutes a sufficient cause and therefore, deserves to be accepted.

[10] (1996) 10 SCC 634
[11] (1996) 3 SCC 132

13. For the foregoing reasons, the appeals are allowed; the impugned judgment is set aside, and the matter is remanded back to the Division Bench of the High Court for consideration on merits. There shall be no order as to costs.

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(D.K. JAIN, J.)

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(H.L. DATTU, J.)

NEW DELHI;
NOVEMBER 12, 2010.