

GAHC010008272019



**THE GAUHATI HIGH COURT  
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : Arb.A./5/2019**

UNION OF INDIA  
REPRESENTED BY THE CHIEF ENGINEER PROJECT VARTAK, BORDER  
ROAD ORGANISATION, C/O 99 APO  
DIST SONITPUR, ASSAM 784001

VERSUS

M/S TENZING CONSTRUCTION  
MAIN MARKET, DIRANG, WEST KAMENG, ARUNACHAL PRADESH 790101

**Advocate for the Petitioner : MR. S C KEYAL**

**Advocate for the Respondent : MR. D WANGDI**

**BEFORE  
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA**

**JUDGMENT**

**Date : 18-01-2022**

Heard Mr. H. Gupta, learned counsel appearing for the appellant as well as Mr. U. K. Nair, learned senior counsel representing the respondent.

2. This is an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (Amendment) Act, 2015.

3. The arbitral award was passed on 02.05.2018. The statutory time limit for filing appeal against the award had expired and the appeal was filed on 01.09.2018. The learned trial court held that the appellant could not show proper and cogent reasons for not preferring the appeal within time stipulated by law. Therefore, the court below held that the prayer of the appellant under Section 34 (3) Arbitration and Conciliation Act, 1996 (Amendment) Act, 2015 to entertain the appeal under Section 34 of the said Act is not maintainable. The Court below dismissed the appeal on that ground.

4. Mr. Gupta has submitted the chronology of events whereby the delay occurred. The list submitted by Mr. Gupta reads as under:

Appx. "A"

CRITICAL DATES IN R/O CA NO. 27 & 28 OF 2009-10

Date	Activity/Incident took place	Remarks
02.May 2018	Hon'ble Sole Arbitrator Shri Raaj Wardhan Agarwal, published award signed on 02 May, 2018. An amount of Rs. 2,10,86,850/- (Rupees Two Crores, Ten Lacs Eight Six Thousands, Eight Hundred and Fifty only) awarded in favour of the Contractor (petitioner) the impugned Award was received by this HQ on 11 May, 2018.	
11 May, 2018	Award was received by this HQ on 11 May, 2018.	
16 May, 2018	This HQ instructed HQ 42 BRTF vide letter No. 80941/Arb/Web/E8 dated 16 May 2018 for submission of following documents :-  (a) Parawise comments on Award.  (b) Detailed SoC supported with annexure for	

	<p>Contesting the Award.</p> <p>(c) Liaison with RLC (E) for obtaining legal opinion On Award.</p> <p>(d) Recommendation of Commander TF.</p>	
15 June. 2018	The SOC, Parawise comments on impugned Award Recommendation of Commander were received By this HQ on 15 June, 2018.	
25 June 2018	This HQ vide letter No. 80941/Arb/88/E8 dated 25 June approached HQ ADGBR(E) for seeking Legal Opinion of ASGI.	
29 June, 2018	Legal Opinion of ASGI Shri Subhash Chandra Kayal, Advocate, received by this HQ on 29 June 2018.	
30 June 2018	Notice served by the Contractor for filing Money Execution Case.	
02 July, 2018	Case forwarded to HQs ADGBR(East) for challenging the impugned Award and requested for further advice on all the records submitted before him.	
16 July, 2018	In the mean time HQ 42 BRTF vide their letter No.8001/725/Arb/106/E8 dated 12 July, 2018 forwarded the case for contesting the Award, which was received by this HQ on 16 July, 2018.	
20 July, 2018	Case forwarded to HQ ADGBR (East) vide this HQ letter	

	No.80941/Arb/101/E8 dated 20 July, 2018 for legal opinion of LA (Def), which is required for contesting or implementing the Award.	
24 July, 2018	This HQ approached Advocate Shri Surendar Mishra, Govt. Pleader to defend Money Execution Case in Hon'ble District Court Sonitpur at Tezpur.	
30 July, 2018	Case forwarded to HQ DGBR by HQ ADGBR (East).	
31 July, 2018	Money Execution Case 03/2018 filed by the Contractor in Hon'ble District Court Sonitpur at Tezpur.	
16 Aug. 2018	HQ ADGBR (East) suggested to file case to safe guard Govt. Dues vide their letter No. 80002/ADG(E)/---/ARB/28/E8.	
23 Aug, 2018	This HQ approached Advocate Shri Surendar Mishra, Govt. Pleader to File the Petition to set aside Award for safe Guard of Govt. Dues.	
04 Sept, 2018	Petition No. 05/2018 filed by the department to set aside Arbitration Award.	

5. The submission of Mr. Gupta is primarily based on the fact that the appellant is a

part of the Union of India having its headquarters outside the State of Assam and Arunachal Pradesh. Mr. Gupta has submitted that because of official communication the delay took place.

6. In order to buttress his argument, Mr. Gupta has relied upon the decision of the Supreme court in *G. Ramegowda v. Spl. Land Acquisition Officer*, (1988) 2 SCC 142.

In this case, the Supreme Court has held as under:

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.

16. 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 or 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.

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. 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. In the opinion of the High Court, the conduct of the law officers of the Government placed the Government in a predicament and that it was one of those cases where the mala fides of the officers should not be imputed to Government. It relied upon and trusted its law officers. Lindley, M.R., in the *In re National Bank of Wales Ltd.* [LR (1899) 2 Ch 629, 673] observed, though in a different context:

"Business cannot be carried on upon principles of distrust. Men in responsible positions must be trusted by those above them, as well as by those below them, until there is reason to distrust them."

In the opinion of the High Court, it took quite some time for the government to realise that the law officers failed that trust.

18. While a private person can take instant decision a "bureaucratic or democratic organ" it is said by a learned Judge "hesitates and debates, consults and considers, speaks through paper, moves horizontally and vertically till at last it gravitates towards a conclusion, — unmindful of time and impersonally". Now at the end, should we interfere with the discretion exercised by the High Court? Shri Datar criticised that the delay on the part of Government even after January 20, 1971 for over a year cannot be said to be either bona fide or compelled by reasons beyond its control. This criticism is not without substance. Government could and ought to have moved with greater diligence and dispatch consistent with the urgency of the situation. The conduct of Government was perilously close to such inaction as might, perhaps, have justified rejection of its prayer for condonation. But as is implicit in the reasoning of the High Court, the unarticulated thought, perhaps was that in the interest of keeping the stream of justice pure and clean the awards under appeal should not be permitted to assume finality without an examination of their merits. The High Court noticed that the Government Pleader who was in office till December 15, 1970 had applied for certified copies on July 20, 1970, but the application was allowed to be dismissed for default. In one case, however, he appears to have taken away the certified copy even after he ceased to be a Government Pleader. In a similar context where delay had been condoned by the High Court, this Court declined to interfere and observed [Spl. Land Acquisition Officer v. B.M. Krishna Murthy, (1985) 1 SCC 469] : (SCC p. 472, para 5)."

7. Mr. Gupta has further relied upon another decision of the Supreme Court in *State of Haryana v. Chandra Mani*, (1996) 3 SCC 132. Here, the Supreme Court has held as under:

"11. 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 to 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."

8. Per contra, Mr. Nair has submitted that the law of limitation is applicable to the government departments like a private person. Mr. Nair has strenuously submitted that in this century of internet revolution, the government departments are not entitled to privilege in the matter of condonation of delay. The learned senior counsel has relied upon the decision of the Supreme Court that was rendered in *Postmaster General v. Living Media India Ltd.*, (2012) 3 SCC 563. In this case, the Supreme Court has held as under:

"28. 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 bona fides, 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.

29. 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 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 the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few".

9. I have given my anxious consideration to the submissions made by the learned counsels for both sides.

10. "Equity aids the vigilant, not those who slumber on their rights."This doctrine is the foundation, on the basis of which, the Law of Limitation stands. This doctrine recognizes the fact that an adversary might lose a fair chance to defend himself or herself after expiry of time from the date when the wrong was committed. The law encourages a speedy resolution for every dispute. It does not favour the cause of someone who suddenly wakes up to enforce his or her rights long after discovering that they exist.

11. Law is already settled that the law of limitation undoubtedly binds everybody, including the Government. In a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, but the Government Department cannot take advantage of various earlier decisions at least in this age of electronic communication. 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. In Postmaster General's case (supra), the Supreme court has held that 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 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.

12. In the case in hand, I have decided to agree with the view taken by the court below that the appellant has failed to explain the reasons for delay in a satisfactory manner. The learned trial court has rightly held that since the date of filing of the appeal was to be calculated from 11.05.2018 and the prayer for condonation of delay should have been filed before 09.08.2018. The trial court has correctly appreciated the legal provisions and arrived at a correct finding.

13. The present appeal is found to be devoid of merit and stands dismissed accordingly.

**JUDGE**



**Comparing Assistant**