

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.51 of 2021

In

Civil Writ Jurisdiction Case No.16866 of 2011

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1. The State of Bihar.
2. Engineer-in-Chief-cum-Special Secretary, Public Health Engineering Department, Bidhseshwariay Bhawan, Baily Road, Patna.
3. The Chief Engineer, Mechanical, Public Health Engineering Department, Bisheshwariaya Bhawan, Bailey Road, Patna.
4. The Superintending Engineer, P.H.E. Circle, Patna Rajbanshi Nagar, Patna.
5. The Executive Engineer, P.H.E. Division Patna East, Patna.

... ... Appellant/s

Versus

1. Md. Ahmad S/o Md. Haphiz Mehtar Resident of Village Masood Bigha, P.O., P.S. Bardh, District- Patna.
2. Randhir Kumar Singh S/o Sri Bhuneshwar Prasad Singh Resident of Village Mankaura, P.O.- Mubarknur, P.S. Bardh, District- Patna.
3. Satyendra Singh @ Satyendra Kumar S/o Late Rajendra Singh Resident of Village Dwarika Bigha, P.O. Chora, P.S. Harnaut, District- Nalanda.
4. Ramesh Prasad S/o Sri Basudeo Prasad Resident of Village Chandaurya, P.O., P.S. Kako, District- Jehanabad.

... ... Respondent/s

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Letters Patent Appeal of the High Court---Delay in filing of LPA on behalf of State---most of the L.P.As filed on behalf of the State Government are belated months and years together---in order to facilitate expeditious filings of State LPAs, State must constitute a Committee on department basis or through Law Department or other concerned department in a Single Window System instead of tossing file from one building to another etc.---State being mighty litigant, they must streamline the filing of L.P.A. within the time limit stipulated---at each and every stage, there are lapses on the part of appellants-State in not prosecuting the present case diligently---LPA dismissed---order communicated to the Chief Secretary, Government of Bihar for information. (Para- 4, 5, 7)

(2012) 3 SCC 563, (Special Leave Petition (C) Diary No. 9217 of 2020Relied Upon.

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Appearance :

For the Appellant/s	:	Mr. Md. Kamil Akhtar, Advocate
For the Respondent/s	:	Mr. S.Raza Ahmad, AAG-5
		Mr. Vishambhar Prasad, AC to AAG-5

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 25-07-2024

Ref: I.A. No. 02 of 2024

This is a State L.P.A. in assailing the order of the



learned Single Judge dated 16.09.2019 passed in C.W.J.C. No. 16866 of 2011.

2. There is a delay of about 01 Year, 01 Month and 19 Days. Sufficient cause has not shown so as to condone the enormous delay. It is necessary to reproduce paragraph Nos. 02 to 13, it reads as under:

2. That in compliance of order dated 16.09.2019 passed in C.W.J.C. No. 16866 of 2011, the petitioner has filed a representation in the department on 18.11.2019, which has been received in the section 20.11.2019.

3. That in light of aforesaid the section present the filed on 21.11.2019.

4. That the Senior In-charge Officer returned the file to the Section on 28.11.2019 with certain direction.

5. That after taking appropriate action on the direction the Section has presented the file on 02.12.2019. The Senior In-charge Officer after reviewing the matter placed the file before the Engineer-in-Chief cum Special Secretary, PHED on 03.12.2019.

6. That the Engineer-in-Chief cum Special Secretary, PHED endorsed the file to the departmental advocate on 04.12.2019 for preparing statement or facts for filing LPA. The same has been returned by the departmental



advocate on 17.01.2020.

7. That the statement of fact for filing LPA has been received in the Section on 20.01.2020 and the Section has presented the statement of fact along with file on 20.01.2020.

8. That after approval of statement of fact the file has been transferred to Law Department, Government of Bihar for filing LPA on 23.01.2020.

9. That the file has been received in the Law Department on 23.01.2020 and the file has been presented to the office of Learned PAAG -2 on 24.01.2020 for filing LPA.

10. That vide Letter No. 2195 dated 02.03.2020 the office of Learned PAAG-2 directed to authorize any competent person to swear the affidavit and the same has been received in Section on 04.03.2020 and on the same day it was presented for necessary action.

11. That vide Letter No. 507 dated 13.03.2020 the Executive Engineer, PH Division, Patna East has been authorized to swear affidavit.

12. That the Executive Engineer, PH Division, Patna East has sworn the affidavit for filing the LPA on 18.03.2020.

13. That due to spread of COVID-19 pandemic, the LPA has been filed belatedly on 13.12.2020.”



3. The cause of action accrued to the appellants in the month of October, 2019. They had sufficient time to file LPA within the time limit stipulated.

4. We have come across most of the L.P.As filed on behalf of the State Government and they are belated months and years together. They must have some policy matter insofar as filing L.P.A. to avoid unnecessary delay in filing L.P.A. In other words, State must constitute a Committee and it should be constituted on department basis or through Law Department or other concerned department in a Single Window System instead of tossing file from one building to another etc. On the other hand, each and every file relating to L.P.A. there is invariably delay and it is explained only to the extent that the file was moving from one office to another office and one section to another section. We have not even come across a single LPA, where there is no delay in filing L.P.A. That apart, State being mighty litigant before this Court, they must streamline the filing of L.P.A. within the time limit stipulated. Even though, State has merit in some of the cases. Such cases were also dismissed on the ground of delay. Resultantly, there may be a financial loss to the State exchequer and it would be burden on the tax payer. This observation may be taken note of by the Chief Secretary of



State of Bihar.

5. In the present case, there is a delay of about 01 Year, 01 Month and 19 Days and it cannot be condoned for want of sufficient cause. They have not appraised this Court with reference to reasons as to why there is a delay. On the other hand, in the pleadings, it is stated that the file was moving from one office to another office. Such reasonings are deprecated by the Hon'ble Supreme Court in the case of ***Postmaster General vs. Living Media India Ltd.*** reported in (2012) 3 SCC 563.

Paragraph Nos. 27 and 28 reads as under:-

“27. It is not in dispute 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 way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

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.”

In case of ***The State of Madhya Pradesh & Ors.***
Vs. Bherulal decided on 15.10.2020 (***Special Leave Petition (C) Diary No. 9217 of 2020.*** Paragraph Nos. 5 and 7 reads as under:

“5. A preposterous proposition is sought to be propounded that if there is some merit in the case, the 5 period of delay is to be given a go-by. If a case is good on merits, it will succeed in any case. It is really a bar of limitation which can even shut out good cases. This does not, of course, take away the jurisdiction of the Court in an appropriate case to condone the delay.



7. We are thus, constrained to send a signal and we propose to do in all matters today, where there are such inordinate delays that the Government or State authorities coming before us must pay for wastage of judicial time which has its own value. Such costs can be recovered from the officers responsible.”

Thereafter, in number of Judgments Hon’ble Supreme Court has made observations in respect of filing belated litigation on behalf of the State and its authorities.

6. Accordingly, I.A. No. 02 of 2024 for condonation of delay stands rejected.

7. At this stage, we have also noticed that L.P.A. was filed on 15.01.2021 and it was not supported by I.A. for condonation of delay in the year 2021. In other words, this Court has pointed out in the absence of I.A. for condonation of delay, L.P.A. cannot be entertained. Thereafter, the same was taken note of by the appellants and proceeded to file I.A. No. 02 of 2024 seeking condonation of delay of about 01 Year, 01 Month and 19 Days. Therefore, at each and every stage, there are lapses on the part of appellants-State in not prosecuting the present case diligently. Consequently, L.P.A. No. 51 of 2021



stands dismissed.

8. Pending I.As, if any, stands dismissed.

9. Copy of this order shall be communicated to the
Chief Secretary, Government of Bihar for information.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

Manish/-

AFR/NAFR	A.F.R.
CAV DATE	N.A
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Transmission Date	N.A

