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**(2021) 10 OHC CK 0018**

**Orissa High Court**

**Case No:** Writ Petition (Civil) No. 29224 Of 2020

State Of Odisha And Others

APPELLANT

Vs

Birenmitra Swain And Others

RESPONDENT

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**Date of Decision:** Oct. 5, 2021

**Hon'ble Judges:** Dr. S. Muralidhar, CJ; B.P. Routray, J

**Bench:** Division Bench

**Final Decision:** Dismissed

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**Judgement**

1. The challenge in the present petition is to an order dated 3rd April, 2019 passed by the Odisha Administrative Tribunal, Cuttack Bench, Cuttack in

O.A. No.1106(C) of 2015. The present petition has been filed on 28th October, 2020.

2. Para 4 of the affidavit dated 28th September, 2021 filed by Petitioner No.3, which seeks to explain the delay in filing the present petition, reads as

under:

“4. That it is humbly submitted that the judgment was passed by the Learned Odisha Administrative Tribunal on 03.04.2019, and after receiving copy of the order

passed by the Learned Odisha Administrative Tribunal, the matter was examined by the Department of Health & Family Welfare Department and when it was found

that similar matters pertaining to staff nurse are pending before the Honâ€™ble Court, it was decided to seek opinion/advise of the Law Department and vide letter

dated 18.08.2020 the Department of Health & Family Welfare sought for opinion of the Law Department who in term vide its letter dtd.03.09.2020 bearing No.8166

requested to the office of the learned Advocate General to file a writ application before this Honâ€™ble Court. Copy of the letter No.8166 dated 03.09.2020 is annexed

as Annexure-4.â€

3. It is seen that there is still no explanation offered for the delay of one year and four months between 3rd April, 2019 when the OAT passed the impugned order and 18th August, 2020 when the advice for filing the petition was sought from the Law Department. The explanation offered for the delay is, therefore, unsatisfactory.

4. The Supreme Court has made it clear in a series of judgments, including the recent decision in *The State of Madhya Pradesh v. Bherulal* 2020

SCC OnLine SC 849, that there have to be proper and convincing reasons for the delay in the state or its entities filing appeals or petitions. In the said decision the Supreme Court observed as under:

2. We are constrained to pen down a detailed order as it appears that all our counseling to Government and Government authorities have fallen on deaf ears i.e., the Supreme Court of India cannot be a place for the 2 Governments to walk in when they choose ignoring the period of limitation prescribed. We have raised the issue 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. That is not so. Till the Statute subsists, the appeals/petitions have to be filed as per the Statutes prescribed.

3. No doubt, some leeway is given for the Government inefficiencies but 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 (*Collector, Land Acquisition, Anantnag & Anr vs. Mst.*

*Katiji & Ors.* (1987) 2 SCC 107). This position is more than elucidated by the judgment of this Court in *Office of the Chief Post Master General & Ors. v. Living*

*Media India Ltd. & Anr.* (2012) 3 SCC 563 where the Court observed as under:

â€œ12) 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 3 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. 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 bonafide, 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.

13) 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 bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years 4 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 shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.â€

Eight years hence the judgment is still unheeded!

4. A reading of the aforesaid application shows that the reason for such an inordinate delay is stated to be only â€œdue to unavailability of the documents and the process of arranging the documentsâ€€. In paragraph 4 a reference has been made to â€œbureaucratic process works, it is inadvertent that delay occursâ€€.

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.

6. We are also of the view that the aforesaid approach is being adopted in what we have categorized earlier as “certificate cases”. 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. It is to complete this formality and save the skin of officers who may be at default that such a process is followed. We have on earlier occasions also strongly deprecated such a practice and process. There seems to be no improvement. The purpose of coming to this Court is not to obtain such certificates and if the Government suffers losses, it is time when the concerned officer responsible for the same bears the consequences. The irony is that in none of the cases any action is taken against the officers, who sit on the files and do nothing. It is presumed that this Court will condone the delay and even in making submissions, straight away counsels appear to address on merits without referring even to the aspect of limitation as happened in this case till we pointed out to the counsel that he must first address us on the question of limitation.

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.

8. Looking to the period of delay and the casual manner in which the application has been worded, we consider appropriate to impose costs on the petitioner-State of Rs.25,000/- (Rupees twenty five thousand) to be deposited with the Mediation and Conciliation Project Committee. The amount be deposited in four weeks. The amount be recovered from the officers responsible for the delay in filing the special leave petition and a certificate of recovery of the said amount be also filed in this Court within the said period of time.

9. The special leave petition is dismissed as time barred in terms aforesaid.

5. The Supreme Court has recently in a series of matters reiterated that the explanation usually offered by the State and its entities for the delay on account of administrative exigencies should not be accepted unless they are shown to be justified. A sampling of such orders is as under:

(i) Order dated 13th January 2021 in SLP No.17559 of 2020 (State of Gujarat v. Tushar Jagdish Chandra Vyas & Anr.)

(ii) Order dated 22nd January 2021 in SLP No.11989 of 2020 (The Commissioner of Public Instruction & Ors. v. Shamshuddin)

(iii) Order dated 22nd January 2021 in SLP No.25743 of 2020 (State of Uttar Pradesh & Ors v. Sabha Narain & Ors.)

(iv) Order dated 4th February 2021 in SLP No.19846 of 2020 (Union of India v. Central Tibetan Schools Admin & Ors)

(v) Order dated 11th January 2021 in SLP No.22605 of 2020 (The State of Odisha & Ors v. Sunanda Mahakuda)

6. In light of the legal position as explained in the above orders, the Court declines to condone the delay in filing of the present petition and dismisses

the petition on the ground of laches. Nevertheless it is clarified that this order will not affect in decision in the other pending matters involving a similar

issue.

7. An urgent certified copy of the order be issued as per Rules.

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