



AFR

ORISSA HIGH COURT : CUTTACK

I.A. No.160 of 2026

in

W.A. No.99 of 2026

In the matter of an Application to condone the delay
in filing Appeal under Article 4 of
the Odisha High Court Order, 1948
read with
Clause 10 of the Letters Patent constituting
the High Court of Judicature at Patna
and
Rule 6 of Chapter-III and Rule 2 of Chapter-VIII
of the Rules of the High Court of Odisha, 1948

* * *

- 1.** State of Odisha
Represented through its
Principal Secretary to Government
(at present
Commissioner-*cum*-Secretary
Panchayati Raj and Drinking Water Department
Secretariat Building, Bhubaneswar
District: Khordha.
- 2.** Engineer-in-Chief
Panchayati Raj and Drinking Water Department
Lokseva Bhawan, Bhubaneswar
District: Khordha – 751 001.
- 3.** Chief Engineer (RWSS)
Panchayati Raj and Drinking Water Department
Lokseva Bhawan, Bhubaneswar
District: Khordha – 751 001.
- 4.** Additional Chief Engineer
(Panchayati Raj and Drinking Water)



RWSS Circle, Cuttack, Mahanadi Vihar,
P.O.: Nayabazar, District: Cuttack – 753 004.

- 5.** Superintending Engineer
(Panchayati Raj and Drinking Water)
RWSS Division, Cuttack
At: Mahanadi Vihar, P.O.: Nayabazar
District: Cuttack – 753 004. ... Appellants
(Opposite party Nos.1 to 5
in the Writ Petition).

-VERSUS-

Ratnakar Swain
Aged about 60 years
Son of Late Brundaban Swain
Village/P.O.: Lekhanpur, P.S.: Salepur
District: Cuttack ... Respondent
(Petitioner in
the Writ Petition).

Counsel appeared for the parties:

For the Appellants : Mr. Debashis Tripathy,
Additional Government Advocate

For the Respondent : M/s. Jajati Keshari Khuntia,
Himansu Sekhar Deo,
Braja Kishore Mohanty,
Sai Suman, Advocates

P R E S E N T:

**HONOURABLE CHIEF JUSTICE
MR. HARISH TANDON**

AND

**HONOURABLE
MR. JUSTICE MURAHARI SRI RAMAN**



Date of Hearing : 22.06.2026 :: Date of Judgment : 30.06.2026

JUDGMENT

MURAHARI SRI RAMAN, J.—

THE QUESTION FOR CONSIDERATION IN THE INTERLOCUTORY APPLICATION FILED PRAYING THEREIN TO CONDONE THE DELAY IN FILING THE INTRA-COURT APPEAL:

Whether this intra-Court of appeal is liable to be entertained by condoning the delay of 303 days (excluding the prescribed period of thirty days) in filing the writ appeal by the functionaries of the Government of Odisha, being aggrieved by Order dated 13.02.2025 passed in W.P.(C) No.34529 of 2022, whereby and whereunder allowing the writ petition invoking provisions of Article 226 of the Constitution of India a learned Single Judge of this Court directed the appellants herein (the opposite parties in the writ proceeding), to accord regularisation in the service and pay retiral dues within period stipulated?

THE FACTS:

- 2.** The factual matrix as discussed by the learned Single Judge while disposing of the writ petition reveals that the respondent was engaged as “Fitter Mechanic” on Nominal Muster Roll basis with effect from 16.12.1980



in Salipur Division under the administrative control of the Superintending Engineer, (Panchayati Raj and Drinking Water), RWSS Division, Cuttack and the name of the petitioner appears at serial No.54 of the gradation list of the staff maintained by the then Executive Engineer, Cuttack P.H. Division No.III, Cuttack.

- 2.1. Though the name of one Debendranath Puan Fitter Mechanic appeared in the said gradation list at serial No.57 and his date of appointment, in the very division of the petitioner was 05.03.1981, his service was regularized treating the same as pensionable. Such fact could come to the notice of the petitioner from an information supplied under the Right to Information Act, 2005.
- 2.2. The petitioner got retired from service on 28.02.2022 on attaining age of superannuation and was relieved.
- 2.3. On consideration of the length of service the respondent had rendered since 16.12.1980 till he retired on 28.02.2022 (more than four decades), and taking note of principles and view percolated through *Jagoo Vrs. Union of India* 2024 INSC 1034; *Shripal & another Vrs. Nagar Nigam, Ghaziabad*, 2025 SCC OnLine SC 221; *Secretary, State of Karnataka Vrs. Uma Devi*, (2006) 4 SCC 1 and many others on the subject, the learned Single Judge held as follows:



“There cannot be a more glaring case than the case at hand when after serving for more than four decades, on flimsy grounds notwithstanding the regularization of junior to him, petitioner is still in the portals of the Court to get his legitimate dues and the matter has suffered number of adjournments for non-filing of the counter.”

2.4. Taking note of decision rendered by this Court in *Chandra Nandi Vrs. State of Odisha, 2014 (I) OLR 734* and in the case of *Narusu Pradhan Vrs. State of Odisha, O.A No.1189(C) of 2006 disposed of on 11.06.2009¹* by the learned Odisha Administrative Tribunal, Cuttack Bench, Cuttack, the learned Single Bench directed as follows:

“13. Accordingly, impugned order at Annexure-5 is quashed. It is directed that the services of the petitioner shall be regularized with effect from the date the services of his junior, Mr. Puhan (adverted to herein above) has been regularized and he shall be paid retiral dues in accordance with law within a period of three months hence, failing which, the same shall entail interest at the rate of 10% per annum from the date of entitlement till payment. And, the recovery of such interest shall be effected from the concerned official who is responsible.”

¹ The principle decided by the Tribunal has not only been confirmed by a Division Bench of this Court in *State of Odisha Vrs. Narusu Pradhan, W.P.(C) No.5377 of 2010*, dismissed on 19th December, 2011. The SLP before the Supreme Court of India preferred by the State has been dismissed *vide* order dated 7th January, 2013 in Civil Appeal No.22498 of 2012. : See discussion of Division Bench of this Court in *State of Odisha Vrs. Saroj Kanta Chaini, WA No.199 of 2023, vide Order dated 7th November, 2023.*



2.5. Aggrieved thereby, the State of Odisha has approached this Court in this writ appeal; but with a delay of 303 days (excluding thirty days of normal period allowed to file appeal).

HEARING OF THE INTERLOCUTORY APPLICATION FILED IN THE WRIT APPEAL BY THE APPELLANTS FOR CONDONATION OF DELAY:

3. This matter was taken up for hearing on the point of limitation on 22.06.2026. Having heard Sri Debashis Tripathy, learned Additional Government Advocate for the appellants and Sri Jajati Keshari Khuntia, learned Advocate for the respondent, matter stood posted today for orders.

Cause shown by the appellants explaining the delay:

4. The explanation offered by the State of Odisha in filing the writ appeal with such inordinate delay is stated in the petition as follows:

“2. That, the appellants have stated the necessary and relevant facts of the case and the grounds on the basis of which appeal is sought in the accompanying Writ Appeal, and the same may be treated as part and parcel of this application.

3. That, it is humbly submitted that the detailed factual report in the matter was sought from the subordinate offices. The officers of the Department examined the impugned order dated 13.02.2025 by taking into account various factors including nature of issues involved, Rules, Regulations, Guidelines, Circulars



and Case Laws regulating the subject matter, recurring effects and financial implications on the State Exchequer. Accordingly, decision for filing of Writ Appeal was taken. The draft Writ Appeal with detailed grounds and justifications for challenging the said impugned order was prepared and sent for vetting to the Advocate General vide PR&DW Department Letter No.30860, dated. 06.11.2025. After vetting, the writ appeal was finalized and accordingly is being filed on 12.01.2026 by AGA on 26.12.2025. As such, the delay of 303 days is bona fide, and is neither deliberate nor intentional.”

Objection of the respondent:

- 5.** Objections *inter alia* are raised by the respondent against the explanation of the appellants showing cause for the inordinate delay occurred in filing the writ appeal:
- i.* After initiation of contempt proceedings for non-compliance of the Order dated 13.02.2025 passed in the writ petition by the learned Single Judge, the writ appeal has been filed along with an application for condonation of delay.
 - ii.* The explanation offered by the appellants is vague, evasive and the explanation does not cover entire period of delay inclusive of normal specified period allowed for filing appeal.



iii. The writ appeal, being hopelessly time-barred, the merit of the case cannot be touched or examined. Each day's delay being not explained by the appellants the interlocutory application praying therein to condone the delay in filing the writ appeal is liable to be dismissed.

5.1. The respondent would rely on *Pathupati Subba Reddy Vrs. Special Deputy Collector*, (2024) 4 SCR 241; *Union of India Vrs. Jahangir Byramji Jeejeebhoi*, (2024) 4 SCR 76; *Shivamma Vrs. Karnataka Housing Board*, (2025) 9 SCR 1774; *Israr Ahmed Khan Vrs. Amarnath Prasad*, 2026 INSC 209, *et. al.* to buttress the stand that length of delay is a relevant factor for consideration of application for condonation of delay; inasmuch as there ought to be end to a litigation. *Per contra* it is fervent request of the appellants that inordinate days of delay in filing appeal by the State of Odisha can be condoned on the principles propounded in *Collector, Land Acquisition, Anantnag Vrs. Mst. Katiji*, (1987) 2 SCC 107; *G. Ramegowda, Major Vrs. Special Land Acquisition Officer*, (1988) 2 SCC 142; *State of Haryana Vrs. Chandra Mani*, (1996) 3 SCC 132; *Sheo Raj Singh Vrs. Union of India*, (2023) 10 SCC 531; and *Bhubaneswar Development Authority Vrs. Madhumita Das*, (2023) 6 SCR 590.

CONSIDERATION OF RIVAL CONTENTIONS AND SUBMISSIONS:



6. Sri Debashis Tripathy, learned Additional Government Advocate for the appellants placed the fact leading to delay in preferring the appeal by stating that after receipt of inputs from different offices and upon scrutiny of record and examination of law, it was decided to approach the writ appeal. The claim of the respondent was examined at various levels and the file was submitted before the learned Advocate General for taking steps to file the writ appeal. After thorough examination and necessary vetting, the appeal could be filed on 12.01.2026.

6.1. Sri Debashis Tripathy, learned Additional Government Advocate contended that the writ appeal is required to be considered on merits inasmuch as the order of the learned Single Judge is vulnerable and placed heavy reliance on the following observation made in paragraph 37 of *Sheo Raj Singh (Deceased) through L.Rs. & others Vrs. Union of India and another*, (2023) 13 SCR 743²:

² The judgment in *Sheo Raj Singh*, (2023) 13 SCR 743 has a marked distinction on facts, which is culled out by a three-Judge Bench of the Hon'ble Supreme Court in the case of *Delhi Development Authority Vrs. Tejpal*, (2024) 5 SCR 1211, wherein it has been made categorical that:

“38. Similarly, in *Sheo Raj Singh* (supra), the marked distinction was the scope of interference by this Court while exercising judicial review of an order of condoning delay passed by a High Court. This Court distinguished between the two situations, namely:

(i) its constraints while sitting in appeal over a discretionary order; and

(ii) itself considering an application for condonation of delay.

Such a distinction is discernable from the following passage in *Sheo Raj Singh* (supra):

‘30. Be that as it may, it is important to bear in mind that we are not hearing an application for condonation of delay but sitting in



“Having bestowed serious consideration to the rival contentions, we feel that the High Court’s decision to condone the delay on account of the first respondent’s inability to the present appeal within time, for the reason assigned therein, does not suffer from any error warranting interference. As the aforementioned judgments have shown, such an exercise of discretion does, at times, call for a liberal and justice-oriented approach by the Courts, where certain leeway could be provided to the State. The hidden forces that are at work in preventing an appeal by the State being presented within the prescribed period of limitation so as not to allow a higher court to pronounce upon the legality and validity of an order of a lower court and thereby secure unholy gains, can hardly be ignored. Impediments in the working of the grand scheme of governmental functions have to be removed by taking a pragmatic view on balancing of the competing interests.”

- 6.2. He submitted that since the learned Single Judge ignored basic factual backdrop that the respondent was engaged on NMR basis initially and was brought to work charged establishment in the year 2009 along with other

appeal over a discretionary order of the High Court granting the prayer for condonation of delay. In the case of the former, whether to condone or not would be the only question whereas in the latter, whether there has been proper exercise of discretion in favour of grant of the prayer for condonation would be the question...’

39. *It seems to us that acceding to the appellants’ request on the aforesaid account would also have undesirable consequences. If delay were to be condoned merely on the basis of a broad general assertion of bureaucratic indifference, without requiring demonstration of bona fide or an act of mala fide on the part of specific individuals, it would create an artificial distinction between the private parties and the Government entities vis-à-vis the law of limitation. This would not be in conformity with the spirit of equality before law as guaranteed under our Constitution. Allowing such latitude would further distort incentives for the Government and encourage more laxity by the bureaucracy in its general functioning, thereby undermining quality governance.”*



NMRs under RWSS due to benevolent policy of the Government and got retired on attaining the age of superannuation under work charged establishment in the year 2022 even as his seniors were awaiting for their absorption under regular establishment.

6.3. Sri Debashis Tripathy urged that the Odisha Civil Services (Pension) Rules, 1992 as amended by virtue of the Odisha Civil Services (Pension) Amendment Rules, 2005 *vide* Notification No.44451 dated 17.09.2005 does not extend the benefit of pension to the employee in the work charged establishment.

6.4. He, therefore, persisted to condone the delay of 303 days occasioned by official process and requested for admitting the writ appeal for hearing on merit. Elaborating arguments further Sri Debashis Tripathy, learned Additional Government Advocate canvassed before the Court that proviso to sub-rule (4) of Rule 3 of the Odisha Civil Services (Pension) Rules, 1992 postulates that the scheme envisioned by way of amendment in 2005 would not apply to the persons who are appointed under job contract and work charged establishments prior to 01.01.2005 and brought over to the regular establishment on or after 01.01.2005. It is therefore urged that even if maintaining parity the respondent would be notionally brought to regular establishment just before the date of retirement in view



of *Chandra Nandi (supra)*, no benefit of pension can be extended as the Rules have suffered amendment in the year 2005. Granting pension to the respondent by accepting the decision of the learned Single Judge would be contradictory to the provisions of the Rules. The learned Additional Government Advocate thus submits to utilize the discretion by condoning the delay, be it inordinate. The delay is to be weighed looking at the merit of the matter to meet the ends of justice. If the scales of balance are not utilized in favour of the State in the present context, it would tantamount to negating the provisions of the Odisha Civil Services (Pension) Rules.

- 6.5. It is emphasised that the delay in filing the writ appeal be condoned and the matter is required to be considered on merits in its own perspective.
7. Sri Jajati Keshari Khuntia, learned Advocate for the respondent vociferously argued that while exercising power to condone the delay, the merit of the writ appeal cannot be taken into consideration; it is only the merit so far as the delay is concerned deserves to be considered. The appellants have not provided any plausible explanation. The State of Odisha in its interlocutory application failed to demonstrate “sufficient” and “reasonable” cause. In *State of Madhya Pradesh Vrs. Bherulal*, 2020 SCC OnLine SC 849, quoting from *Chief Post Master General Vrs. Living Media India*



Ltd., (2012) 3 SCC 563 *in extenso*, it was held that two years delay in filing writ petition against Order of the learned Odisha Administrative Tribunal is not liable to be condoned. On the same analogy, in the present case, as no sufficient and reasonable cause has been shown by the appellants-functionaries of the State of Odisha in the petition for condonation of delay, there is no scope left than to adhere to what has been directed by the learned Single Judge while disposing of the writ petition.

- 7.1. It is submitted that the learned Single Judge in the right earnest appreciated the plight of the respondent, who was deprived of regularisation in service by bringing him to the regular establishment from work charged establishment so as to enable him to get the benefit of grant of pension despite the fact that similarly situated persons have already been extended such benefit. The learned Single Judge having taken note of the fact that despite opportunity the appellants did not wish to furnish counter affidavit and it is only after contempt proceeding being drawn up against the appellants, they woke up from the slumber. Even otherwise, since the junior employee was accorded the benefit, the respondent having joined the organisation much prior to named junior employee, is entitled to be given similar benefit.



7.2. Alleging non-compliance of Order dated 13.02.2025 in W.P.(C) No.34529 of 2022, a contempt application being CONTC No.2750 of 2025 was filed on 23.06.2025. However, the Writ Appeal being No.99 of 2026 was filed on 12.01.2026, i.e., after the learned Single Judge passed orders in the contempt petition on 08.08.2025.

7.3. The practice of belated filing of appeal has been deprecated by the Hon'ble Supreme Court of India in the case of *Israr Ahmad Khan Vrs. Amarnath Prasad*, 2026 SCC OnLine SC 322 with the following observations:

“Belated/Delayed Appeals to Delay/Defeat Implementation:

27. *Delayed filing of appeals should be the exception, but in recent times, the exception has practically evolved to become the rule. Orders passed by the Courts are not complied with for a long time, and when Contempt Petitions are filed, belated appeals, with tremendous delay, are preferred.*

28. *The (alleged) continuing contumacious conduct of the defaulting party is sought to be justified on the mere production of a Diary/Filing/Stamp Reporting Number showing that an appeal has been preferred, so as to obtain multiple adjournments in contempt matters.*

29. *We, in no uncertain terms, deprecate these practices. It is felt that by such modus operandi, disobedient litigants act brazenly which has the further effect of bringing down the authority and majesty of the Courts and the rule of law, interfering in the*



administration of justice. The same may well, in certain situations, border on criminal contempt.

30. *The High Courts should deal with such unscrupulous litigants, moreso when they happen to be 'State', within the meaning of Article 12 of the Constitution, or like bodies, with an iron hand. Unless the High Courts, so also this Court deal with these aspects firmly, we run the clear risk of erosion of the unflinching faith that the ordinary litigants of this country repose in the Judiciary at all levels. It is the solemn duty of all of us manning the Courts across the hierarchy to ensure that the public faith never wavers."*

7.4. Sri Jajati Keshari Khuntia, learned Advocate laying emphasis on the fact of inordinate delay, that too without any plausible explanation in the interlocutory application, submitted that a contempt petition was filed alleging non-compliance of the Order of the learned Single Judge in the writ petition. The appellants have not only failed to comply with the direction of the learned Single Judge, but also overstepped the period stipulated in the Order dated 13.02.2025 passed in said writ petition. As the authorities did not budge an inch even as the respondent got retired on attaining superannuation way back in the year 2022, finding no alternative contempt application was filed.

7.5. He, therefore, strenuously argued that the plea of delay on account of official process has no foundation as such



averment made without providing any material particulars need not be considered. Such averment being bald, terse and unintelligible is liable to be discarded at the threshold.

7.6. The move of the appellants is calculated only to frustrate the effect of direction contained in the Order dated 13.02.2025 passed in W.P.(C) No.34529 of 2022. It is apparent from the contents of the writ appeal and the averments made in the interlocutory application that the appeal has been preferred only to avoid rigours of contempt under the Contempt of Courts Act, 1971. The facts which were not brought to the notice of the learned Single Judge nor were argued cannot be subject matter to be agitated in the present appeal.

7.7. Under such premises, Sri Jajati Keshari Khuntia, learned Advocate for the respondent has prayed to dismiss the petition for condonation of delay and consequently, urged not to entertain the writ appeal being barred by limitation.

PROVISIONS REGARDING WRIT APPEAL AND THE PROVISIONS FOR LIMITATION:

8. The writ appeal before this Court has been filed invoking provisions of Clause 10 of the Letters Patent Constituting the High Court of Judicature at Patna, which stands thus:



“Civil Jurisdiction of the High Court

9. *And We do further ordain that the High Court of Judicature at Patna shall have power to remove and to try and determine, as a Court of extraordinary original Jurisdiction, any suit being or falling within the jurisdiction of any Court subject to its superintendence, when the said High Court may think proper to do so, either on the agreement of the parties to that effect, or for purposes of justice, the reasons for so doing being recorded on the proceedings of the said High Court.*
10. *And We do further ordain that an appeal shall lie to the said High Court of Judicature at Patna from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of Government of India Act and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, made (on or after the first day of February one thousand nine hundred and twenty nine) in the exercise of appellate*



jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court where the Judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to us, Our Heirs or Successors in Our or Their Privy Council, as hereinafter provided.”

8.1. Article 4 of the Orissa High Court Order, 1948 stands as follows:

“The High Court of Orissa shall have, in respect of the territories for the time being included in the Province of Orissa, all such original, appellate and other jurisdiction as under the law in force immediately before the prescribed day is exercisable in respect of the said territories or any part thereof by the High Court in Patna.”

8.2. Rule 6 of Chapter-III and Rule 2 of Chapter-VIII of the Rules of the High Court of Orissa, 1948, are given hereunder:

“Chapter-III

6. *Appeals to the High Court under Article 4 of the Orissa High Court Order, 1948 read with Clause 10 of the Letters Patent Constituting the High Court of Judicature at Patna from the Judgment of a Bench confirming the judgment of a lower Court under Section 98 of the Code of Civil Procedure shall be heard by a Bench consisting of at least three Judges including both or either of the Judges of the Bench from whose Judgment the appeal is preferred and, if*



from the judgment of one Judge or a Bench of two Judges, it shall be heard by a Bench consisting of at least two Judges other than the Judge from whose judgment the appeal is preferred.

Chapter-VIII

2. (1) *Subject to Article 12 of the Orissa High Court Order, 1948 every appeal to the High Court under Article 4 thereof read with Clause 10 of the Letters Patent Constituting the High Court of Judicature at Patna from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the Superintendence of the High Court and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of criminal jurisdiction) of one Judge of the High Court or one Judge of any Division Court pursuant to Article 225 of the Constitution, **shall be presented to the Registrar within thirty days from the date of the judgment appealed from unless a Bench in its discretion, on good cause shown, shall grant further time.** The Registrar shall endorse on the memorandum the date of presentation and after satisfying himself that the appeal is in order and is within time shall cause it to be laid before a Bench for orders at an early date. It shall be accompanied by a certified copy of the*



judgment appealed from together with a neatly typed second copy thereof.

- (2) Subject to Article 12 of the Orissa High Court Order, 1948 every application for a Certificate under Article 4 thereof read with Clause 10 of the Letters Patent Constituting the High Court of Judicature at Patna in the case of a judgment of a Single Judge of the Court deciding a second appeal shall be made orally to the Judge in question immediately after the judgment is delivered. No subsequent application will be entertained unless upon a duly stamped special application supported by affidavit filed within thirty days and not more from the date of the judgment the Judge is satisfied that circumstances existed rendering an immediate application impossible.*
- (3) If the Judge certifies that the case is a fit one for appeal a duly stamped memorandum of appeal may be presented to the Registrar within a period not exceeding sixty days from the date of the judgment unless the Judge in his discretion on good cause shown shall grant further time for its presentation.*
- (4) The memorandum of appeal need not be accompanied by a copy of the judgment of decree appealed from.”*

9. On conjoint reading of above provisions it is manifest that notwithstanding unambiguous specific provisions envisaging extension of time being postulated, the appellants-functionaries of the State of Odisha ignored



to adhere to the recourse available therein showing “good cause” with respect to delay caused in filing the writ appeal.

9.1. Bearing in mind oft-quoted dicta that “*a statute cannot be used for a purpose alien to which it has been made, and where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden*” [vide *Taylor Vrs. Taylor*, [L.R.] 1 Ch. 426, as referred to in *Sarda Mines Private Limited Vrs. State of Odisha*, 2026 SCC OnLine Ori 2303] scrutiny of I.A. No.160 of 2026 reveals that the interlocutory application for condonation of delay in filing writ appeal has been filed with title “An Application under Section 5 of the Limitation Act”. The nomenclature of cause title of said petition strictly speaking is defective and as such the petition is not maintainable for the reason that special provision is available under the Rules of the High Court of Orissa, 1948.

9.2. Be that as it may, without going into the technicalities, this Court proceeds to consider the said interlocutory application for condonation of delay taking into account the reason ascribed therein for ascertaining whether the appellants have shown “good cause”/”sufficient cause” for filing the writ appeal with an inordinate delay of 303



days (excluding 30 days specified period for filing the appeal) and on the basis of material available on record.

ANALYSIS:

- 10.** Above provisions would go to indicate that the writ appeal under Article 4 of the Odisha High Court Order, 1948 read with Clause 10 of the Letters Patent constituting the High Court of Judicature at Patna is required to be presented before this Court within thirty days from the date of the judgment appealed from as provided for in Rule 2 of Chapter-VIII of the Rules of the High Court of Orissa, 1948. In the event the appeal is not preferred within the said stipulated period, it is the Bench which is empowered to use its discretion to “grant further time”, subject to, of course, appreciation of “good cause”.
- 11.** Nevertheless, with the contents contained in the petition, bearing I.A. No.160 of 2026, praying therein to condone “the delay of 303 days in filing of the writ appeal”, this Court now examines whether with the available material on record as provided by the State of Odisha in said petition “discretion” can be exercised to condone the delay in preferring intra-Court appeal for “good cause” shown by the appellants. Finding good cause shown, this Court by exercising discretion may condone the delay in filing the writ appeal by granting “further time”.



11.1. On a conspectus catena of decisions rendered by different Courts it emerges that “discretion” means use of private and independent thought. When anything is left to be done according to one’s discretion the law intends it to be done with sound discretion and according to law. Discretion is discerning between right and wrong and one who has power to act at discretion is bound by rule of reason. Discretion must not be arbitrary. The very term itself stands unsupported by circumstances imports the exercise of judgment, wisdom and skill as contra-distinguished from unthinking folly, heady violence or rash injustice. When applied to a Court of Justice or Tribunal or *quasi* judicial body, it means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague and fanciful but legal and regular. Discretion must be exercised honestly and in the spirit of the statute. It is the power given by a statute to make choice among competing considerations. It implies power to choose between alternative courses of action. It is not unconfined and vagrant. It is canalized within banks that keep it from overflowing.

11.2. In *S.P. Road Link Vrs. State of Tripura*, (2006) 144 STC 380 (Gau) reference has been made to *Kumaon Mandal Vikas Nigam Ltd. Vrs. Girja Shankar Pant*, (2001) 1 SCC 182 to observe that “discretion” means when it is said



that something is to be done within the discretion of the authorities, that something is to be done according to the rules of reason and justice, not according to private opinion, according to law, and not humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself.

11.3. The following observations made in *Lanka Venkateswarlu Vrs. State of Andhra Pradesh*, (2011) 3 SCR 217 are pertinent to be referred to:

“21. In the case of Sardar Amarjit Singh Katra (dead) by LRs Vrs. Pramod Gupta (dead) by LRs., (2002) Suppl.5 SCR 350 = (2003) 3 SCC 272, this Court again emphasized that provisions contained in the Order 22 CPC were devised to ensure continuation and culmination in an effective adjudication and not to retard further progress of the proceedings. The provisions contained in the Order 22 are not to be construed as a rigid matter of principle, but must ever be viewed as a flexible tool of convenience in the administration of justice. It was further observed that laws of procedure are meant to regulate effectively, assist and aid the object of doing a substantial and real justice and not to foreclose even adjudication on merits of substantial rights of citizen under personal, property and other laws. In the case of Mithailal Dalsangar Singh Vrs. Annabai Devram Kini, (2003) 10 SCC 691, this Court again reiterated that inasmuch as abatement results in denial of



hearing on the merits of the case, the provision of an abatement has to be construed strictly. On the other hand, the prayer of setting aside abatement and the dismissal consequent upon abatement had to be considered liberally. It was further observed as follows:

‘The Courts have to adopt a justice oriented approach dictated by the uppermost consideration that ordinarily a litigant ought not to be denied an opportunity of having a lis determined on merits unless he has, by gross negligence, deliberate inaction or something akin to misconduct, disentitled himself from seeking the indulgence of the court.’

22. *The concepts of liberal approach and reasonableness in exercise of the discretion by the Courts in condoning delay, have been again stated by this Court in the case of Balwant Singh (dead) Vrs. Jagdish Singh, (2010) 8 SCR 597 = (2010) 8 SCC 685 as follows:*

‘25. We may state that even if the term ‘sufficient cause’ has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of ‘reasonableness’ as it is understood in its general connotation.

26. The law of limitation is a substantive law and has definite consequences on the right and obligation of party to arise. These principles should be adhered to and applied appropriately depending on the facts and



circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly.'

24. *Having recorded the aforesaid conclusions, the High Court proceeded to condone the delay. In our opinion, such a course was not open to the High Court, given the pathetic explanation offered by the respondents in the application seeking condonation of delay.*
25. *This is especially so in view of the remarks made by the High Court about the delay being caused by the inefficiency and ineptitude of the Government pleaders. The displeasure of the Court is patently apparent from the impugned order itself. In the opening paragraph of the impugned order the High Court has, rather sarcastically, dubbed the Government pleaders as without merit and ability. Such an insinuation is clearly discernable from the observation that 'This is a classic case, how the*



*learned Government pleaders appointed on the basis of merit and ability are discharging their function protecting the interest of their clients.’ Having said so, the High Court, graphically narrated the clear dereliction of duty by the concerned Government pleaders in not pursuing the appeal before the High Court diligently. The High Court has set out the different stages at which the Government pleaders had exhibited almost culpable negligence in performance of their duties. The High Court found the justification given by the Government pleaders to be unacceptable. Twice in the impugned order, it was recorded that in the normal course, the applications would have been thrown out without having a second thought in the matter. **Having recorded such conclusions, inexplicably, the High Court proceeds to condone the unconscionable delay.***

26. ***We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as ‘liberal approach’, ‘justice oriented approach’, ‘substantial justice’ cannot be employed to jettison the substantial law of limitation. Especially, in cases where the Court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any lis between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms. The use***



*of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. **Whilst considering applications for condonation of delay under Section 5 of the Limitation Act, the Courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law.** The discretion has to be exercised in a systematic manner informed by reason. Whims or fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers.”*

11.4. The discretionary exercise of power amounts to something that is not compulsory, but it is left to the discretion of the person or authority involved, such as a discretionary grant. It is opposite to “mandatory”. Therefore, “discretionary” is a term which involves an alternative power, *i.e.*, a power to do or refrain from doing a certain thing. In other words, it would be power of free decision or choice within certain legal bounds.

12. In this regard, therefore, the interpretation of the expression “sufficient cause” as found in the provisions of Section 5 of the Limitation Act, 1963 has bearing on the question that is involved in the instant case.

12.1. The expression “satisfies the Court” employed in Section 5 of the Limitation Act has significance. “Satisfaction” before completion of the proceedings under the Act is a



condition precedent for the exercise of jurisdiction. It is the satisfaction of the Court in the course of the proceedings regarding the delay in approaching the Court with sufficient reason, which constitutes the basis and foundation of the proceedings for consideration of condonation of delay. There must be something which shows from the record itself that in the course of the proceedings the Court was satisfied that there was sufficiency of reason for not approaching the Court within stipulated period and, therefore, it is a case in which the appeal deserves to be admitted for hearing on merit. To be satisfied with a state of things means to be honestly satisfied in one's own mind. Satisfaction is essentially a condition of the mind. It means that there is a substantial ground for the conclusion on the material available the phrase 'satisfied' means, makes up its mind; actual persuasion; a mind not troubled by doubt or a mind which has reached a clear conclusion.

12.2. In *Ramlal, Motilal and Chhotelal Vrs. Rewa Coalfields Ltd.*, (1962) 2 SCR 762 it has been succinctly stated:

*"Section 5 of the Limitation Act provides for extension of period in certain cases. It lays down, inter alia, that any appeal may be admitted after the period of limitation prescribed therefor when the appellant satisfies the Court that he had sufficient cause for not preferring the appeal within such period. This section raises two questions for consideration. **First is, what is sufficient cause; and***



the second, what is the meaning of the clause ‘within such period’?

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 lightly, 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 Vrs. Chattappan, 1890 ILR 13 Mad 269:

‘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.’

Now, what do the words ‘within such period’ denote? It is possible that the expression ‘within such period’ may



sometimes mean during such period. But the question is: Does the context in which the expression occurs in Section 5 justify the said interpretation? If the Limitation Act or any other appropriate statute prescribes different periods of limitation either for appeals or applications to which Section 5 applies that normally means that liberty is given to the party intending to make the appeal or to file an application to act within the period prescribed in that behalf. It would not be reasonable to require a party to take the necessary action on the very first day after the cause of action accrues. In view of the period of limitation prescribed the party would be entitled to take its time and to file the appeal on any day during the said period and so *prima facie* it appears unreasonable that when the delay has been made by the party in filing the appeal it should be called upon to explain its conduct during the whole of the period of limitation prescribed. In our opinion, it would be immaterial and even irrelevant to invoke general considerations of diligence of parties in construing the words of Section 5. The context seems to suggest that 'within such period' means within the period which ends with the last day of limitation prescribed. In other words, in all cases falling under Section 5 what the party has to show is why he did not file an appeal on the last day of limitation prescribed. That may inevitably mean that the party will have to show sufficient cause not only for not filing the appeal on the last day but to explain the delay made thereafter day by day. In other words, in showing sufficient cause for condoning the delay the party may be called upon to explain for the whole of the delay covered by the period between the last day prescribed for filing the appeal and the day on which the appeal is filed. To hold that the expression 'within such period' means during such period would, in our opinion, be repugnant in the context. We would accordingly hold that the learned



Judicial Commissioner was in error taking the view that the failure of the appellant to account for its non-diligence during the whole of the period of limitation prescribed for the appeal necessarily disqualified it from praying for the condonation of delay, even though the delay in question was only for one day; and that too was caused by the party's illness.

*It is, however, necessary to emphasise that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by Section 5. **If sufficient cause is not proved nothing further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the court has to enquire whether in its discretion it should condone the delay.** This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the court may regard as relevant. It cannot justify an enquiry as to why the party was sitting idle during all the time available to it. In this connection we may point out that considerations of bona fides or due diligence are always material and relevant when the court is dealing with applications made under Section 14 of the Limitation Act. In dealing with such applications the Court is called upon to consider the effect of the combined provisions of Sections 5 and 14. Therefore, in our opinion,*



*considerations which have been expressly made material and relevant by the provisions of Section 14 cannot to the same extent and in the same manner be invoked in dealing with applications which fall to be decided only under Section 5 without reference to Section 14. ****

12.3. It needs to be discussed the connotation of “good cause” *vis-à-vis* “sufficient cause”. In *Arjun Singh Vrs. Mohindra Kumar*, (1964) 5 SCR 946, these two terms have been considered as follows:

*“Before proceeding to deal with the arguments addressed to us by Mr. Setalvad— learned counsel for the appellant, it would be convenient to mention a point, not seriously pressed before us, but which at earlier stages was thought to have considerable significance for the decision of this question viz., the difference between the words ‘good cause’ for non-appearance in Order IX, Rule 7 and ‘sufficient cause’ for the same purpose in Order IX, Rule 13 as pointing to different criteria of ‘goodness’ or ‘sufficiency’ for succeeding in the two proceedings, and as therefore furnishing a ground for the inapplicability of the rule of res judicata. As this ground was not seriously mentioned before us, we need not examine it in any detail, but we might observe that **we do not see any material difference between the facts to be established for satisfying the two tests of ‘good cause’ and ‘sufficient cause’.** We are unable to conceive of a ‘good cause’ which is not ‘sufficient’ as affording an explanation for non-appearance, nor conversely of a ‘sufficient cause’ which is not a good one and we would add that either of these is not different from ‘good and sufficient cause’ which is used in this context in other statutes. If, on the*



other hand, there is any difference between the two it can only be that the requirement of a 'good cause' is complied with on a lesser degree of proof than that of 'sufficient cause' and if so, this cannot help the appellant, since assuming the applicability of the principle of res judicata to the decisions in the two proceedings, if the court finds in the first proceeding, the lighter burden not discharged, it must a fortiori bar the consideration of the same matter in the later, where the standard of proof of that matter is, if anything, higher."

12.4. The meaning of 'sufficient' is 'adequate' or 'enough', inasmuch as may be necessary to answer the purpose intended. Therefore, word 'sufficient' embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of a cautious man. 'Sufficient cause' means that the party had not acted in a negligent manner or there was a want of *bona fide* on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been 'not acting diligently' or 'remaining inactive'. However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. While deciding whether there is sufficient cause or not, the Court must bear in mind the object of doing substantial justice to all the parties concerned and



that the technicalities of the law should not prevent the Court from doing substantial justice and doing away the illegality perpetuated on the basis of the judgment impugned before it. “Sufficient cause” is thus the cause for which the defendant could not be blamed for his absence. Therefore, the applicant must approach the Court with a reasonable defence. **Sufficient cause is a question of fact and the Court has to exercise its discretion in the varied and special circumstances in the case at hand. There cannot be a straitjacket formula of universal application.** [Ref.: *Ramlal, Motilal and Chhotelal Vrs. Rewa Coalfields Ltd.*, AIR 1962 SC 361 = (1962) 2 SCR 762; *Lonard Grampanchayat Vrs. Ramgiri Gosavi*, AIR 1968 SC 222; *Surinder Singh Sibia Vrs. Vijay Kumar Sood*, (1992) 1 SCC 70; *Orinental Aroma Chemical Industries Ltd. Vrs. Gujarat Industrial Development Corporation*, (2010) 5 SCC 459; *Parimal Vrs. Veena*, (2011) 3 SCC 545; *Sudarshan Sareen Vrs. National Small Industries Corporation Ltd.*, 2013 SCC OnLine Del 4412; *State of Bihar Vrs. Kameshwar Prasad Singh*, (2000) 9 SCC 94; *Madanlal Vrs. Shyamlal*, (2002) 1 SCC 535; *Davinder Pal Sehgal Vrs. Partap Steel Rolling Mills (P) Ltd.*, (2002) 3 SCC 156; *Ram Nath Sao Vrs. Gobardhan Sao*, (2002) 3 SCC 195, *Kaushalya Devi Vrs. Prem Chand*, (2005) 10 SCC 127, *Srei International Finance Ltd. Vrs. Fairgrowth Financial Services Ltd.*,



(2005) 13 SCC 95; *Reena Sadh Vrs. Aniana Enterprises*, (2008) 12 SCC 589].

12.5. “Sufficient cause” has to be construed as an elastic expression for which no hard-and-fast guidelines can be prescribed. The Courts have a wide discretion in deciding the sufficient cause keeping in view the peculiar facts and circumstances of each case. The “sufficient cause” for non-appearance refers to the date on which the absence was made a ground for proceeding *ex parte* and cannot be stretched to rely upon other circumstances anterior in time. If “sufficient cause” is made out for non-appearance of the defendant on the date fixed for hearing when *ex parte* proceedings were initiated against him, he cannot be penalised for his previous negligence which had been overlooked and thereby condoned earlier. In a case where the defendant approaches the Court immediately and within the statutory time specified, the discretion is normally exercised in his favour, provided the absence was not *mala fide* or intentional. For the absence of a party in the case the other side can be compensated by adequate costs and the *lis* decided on merits. [Ref.: *G.P. Srivastava Vrs. R.K. Raizada*, (2000) 3 SCC 54; *A. Murugesan Vrs. Jamuna Rani*, (2019) 20 SCC 803]. The Court, in its discretion, has to consider the ‘sufficient cause’ in the facts and circumstances of every individual case.



Although in interpreting the words ‘sufficient cause’, the Court has wide discretion but the same has to be exercised in the particular facts of the case. See, *Hira Sweets & Confectionary Pvt. Ltd. Vrs. Hira Confectioners*, 2021 SCC OnLine Del 1823.

12.6. In *Balwant Singh Vrs. Jagdish Singh*, (2010) 8 SCR 597 the ingredients of “sufficient cause” for the purpose of condonation of delay has been discussed as follows:

“7. *** However, in terms of Section 5, the discretion is vested in the Court to admit an appeal or an application, after the expiry of the prescribed period of limitation, if the appellant shows ‘sufficient cause’ for not preferring the application within the prescribed time. The expression ‘sufficient cause’ commonly appears in the provisions of Order 22 Rule 9(2), CPC and Section 5 of the Limitation Act, thus categorically demonstrating that they are to be decided on similar grounds. The decision of such an application has to be guided by similar precepts.

8. In the case of *P.K. Ramachandran Vrs. State of Kerala*, (1997) 7 SCC 556 where there was delay of 565 days in filing the first appeal by the State, and the High Court had observed, ‘taking into consideration the averments contained in the affidavit filed in support of the petition to condone the delay, we are inclined to allow the petition’. While setting aside this order, this Court found that the explanation rendered for condonation of delay



was neither reasonable nor satisfactory and held as under:

- ‘3. It would be noticed from a perusal of the impugned order that the court has not recorded any satisfaction that the explanation for delay was either reasonable or satisfactory, which is an essential prerequisite to condonation of delay.*
- 4. That apart, we find that in the application filed by the respondent seeking condonation of delay, the thrust in explaining the delay after 12.05.1995 is:*

*‘*** at that time the Advocate General’s office was fed up with so many arbitration matters (sic) equally important to this case were pending for consideration as per the directions of the Advocate General on 02.09.1995.’*
- 5. This can hardly be said to be a reasonable, satisfactory or even a proper explanation for seeking condonation of delay. In the reply filed to the application seeking condonation of delay by the appellant in the High Court, it is asserted that after the judgment and decree was pronounced by the learned Sub-Judge, Kollam on 30.10.1993, the scope for filing of the appeal was examined by the District Government Pleader, Special Law Officer, Law Secretary and the Advocate General and in accordance with their opinion, it was decided that there was no scope for filing the appeal but later on, despite the opinion referred to above, the appeal was filed as late as on*



18.1.1996 without disclosing why it was being filed. The High Court does not appear to have examined the reply filed by the appellant as reference to the same is conspicuous by its absence from the order. We are not satisfied that in the facts and circumstances of this case, any explanation, much less a reasonable or satisfactory one had been offered by the respondent-State for condonation of the inordinate delay of 565 days.

6. ***Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribed and the courts have no power to extend the period of limitation on equitable grounds.*** The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained. This appeal, therefore, succeeds and the impugned order is set aside. Consequently, the application for condonation of delay filed in the High Court would stand rejected and the miscellaneous first appeal shall stand dismissed as barred by time. No costs.'

10. Another Bench of this Court in a recent judgment of *Katari Suryanarayana Vrs. Koppiseti Subba Rao*, AIR 2009 SC 2907 again had an occasion to construe the ambit, scope and application of the expression 'sufficient cause'. The application for setting aside the abatement and bringing the legal heirs of the deceased on record was filed in that



case after a considerable delay. The explanation rendered regarding the delay of 2381 days in filing the application for condonation of delay and 2601 days in bringing the legal representatives on record was not found to be satisfactory. Declining the application for condonation of delay, the Court, while discussing the case of *Perumon Bhagvathy Devaswom Vrs. Bhargavi Amma*, (2008) 8 SCC 321 in its para 9 held as under:

‘11. The words ‘sufficient cause for not making the application within the period of limitation’ should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words ‘sufficient cause’ in Section 5 of Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant.’

15. We feel that it would be useful to make a reference to the judgment of this Court in *Perumon Bhagvathy Devaswom Vrs. Bhargavi Amma*, (2008) 8 SCC 321. In this case, the Court, after discussing a number of judgments of this Court as well as that of the High Courts, enunciated the principles which need to be kept in mind while dealing with applications filed under the provisions of Order 22, CPC along with an application under Section 5, Limitation Act for condonation of delay in filing the application for



bringing the legal representatives on record. In paragraph 13 of the judgment, the Court held as under:

- ‘(i) The words ‘sufficient cause for not making the application within the period of limitation’ should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The words ‘sufficient cause’ in Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, when the delay is not on account of any dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the appellant.*
- (ii) In considering the reasons for condonation of delay, the courts are more liberal with reference to applications for setting aside abatement, than other cases. While the court will have to keep in view that a valuable right accrues to the legal representatives of the deceased respondent when the appeal abates, it will not punish an appellant with foreclosure of the appeal, for unintended lapses. The courts tend to set aside abatement and decided the matter on merits. The courts tend to set aside abatement and decide the matter on merits, rather than terminate the appeal on the ground of abatement.*
- (iii) The decisive factor in condonation of delay, is not the length of delay, but sufficiency of a satisfactory explanation.*



- (iv) *The extent or degree of leniency to be shown by a court depends on the nature of application and facts and circumstances of the case. For example, courts view delays in making applications in a pending appeal more leniently than delays in the institution of an appeal. The courts view applications relating to lawyer's lapses more leniently than applications relating to litigant's lapses. The classic example is the difference in approach of courts to applications for condonation of delay in filing an appeal and applications for condonation of delay in re-filing the appeal after rectification of defects.*
- (i) *Want of 'diligence' or 'inaction' can be attributed to an appellant only when something required to be done by him, is not done. When nothing is required to be done, courts do not expect the appellant to be diligent. Where an appeal is admitted by the High Court and is not expected to be listed for final hearing for a few years, an appellant is not expected to visit the court or his lawyer every few weeks to ascertain the position nor keep checking whether the contesting respondent is alive. He merely awaits the call or information from his counsel about the listing of the appeal. ****

16. *Above are the principles which should control the exercise of judicial discretion vested in the Court under these provisions. The explained delay should be clearly understood in contradistinction to inordinate unexplained delay. Delay is just one of the ingredients which has to be considered by the Court. In addition to this, the Court must also take*



into account the conduct of the parties, bona fide reasons for condonation of delay and whether such delay could easily be avoided by the applicant acting with normal care and caution. The statutory provisions mandate that applications for condonation of delay and applications belatedly filed beyond the prescribed period of limitation for bringing the legal representatives on record, should be rejected unless sufficient cause is shown for condonation of delay. **The larger benches as well as equi benches of this Court have consistently followed these principles and have either allowed or declined to condone the delay in filing such applications.** Thus, it is the requirement of law that these applications cannot be allowed as a matter of right and even in a routine manner. An applicant must essentially satisfy the above stated ingredients; then alone the Court would be inclined to condone the delay in the filing of such applications.”

12.7. In *Pundlik Jalam Patil Vrs. Executive Engineer, Jalgaon Medium Project*, (2008) 17 SCC 448, it is observed that:

“The laws of limitation are founded on public policy. Statutes of limitation are sometimes described as “statutes of peace”. An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. The principle is based on the maxim “*interest reipublicae ut sit finis litium*”, that is, the interest of the State requires that there should be end to litigation but at the same time laws of limitation are a means to ensure private justice suppressing fraud and perjury, quickening diligence and preventing oppression. The object for fixing time-limit for



litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.”

12.8. The Hon’ble Supreme Court of India investigated if “to condone, or not to condone” four days’ delay, besides examining as to “whether or not to apply the same standard in applying the ‘sufficient cause’ test to all the litigants regardless of their personality” in *Collector, Land Acquisition, Anantnag Vrs. Mst. Katiji*, (1987) 2 SCC 107 = (1987) 2 SCR 387 and laid down the following dicta:

“The Legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on ‘merits’. The expression ‘sufficient cause’ employed by the Legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice— that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

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.*

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the ‘State’ which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a



litigant, are accorded the same treatment and the law is administered in an even handed manner. There is no warrant for according a step-motherly treatment when the ‘State’ is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The Courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression ‘sufficient cause’. So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even handed justice on merits in preference to the approach which scuttles a decision on merits.”

12.9. Discussing the scope and discretion of the Court in condoning the substantial delay caused in filing appeal by the State in *G. Ramegowda Major Vrs. Special Land Acquisition Officer*, (1988) 2 SCC 142 the Hon’ble Supreme Court of India observed as follows:

*“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 a reasonable limits—is necessary if the judicial approach is not 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 these 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 sometime 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.’ ***”*

12.10. In absence of showing deliberate delay as a dilatory tactic, the manner of use of discretion in favour of condonation of delay in filing appeal by the State machinery with due regard to ‘sufficient cause’ has been enumerated in *N. Balakrishnan Vrs. M. Krishnamurty*, (1998) 7 SCC 123 in the following terms:

- “8. *The Appellant’s conduct does not on the whole warrant to castigate him as an irresponsible litigant.*



What he did in defending the suit was not very much far from what a litigant would broadly do. Of course, it may be said that he should have been more vigilant by visiting his advocate at short intervals to check up the progress of the litigation. But during these days when everybody is fully occupied with his own avocation of life an omission to adopt such extra vigilance need not be used as a ground to depict him as a litigant not aware of his responsibilities, and to visit him with drastic consequences.

9. *It is axiomatic that condonation of delay is a matter of discretion of the court Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. **Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory.** Once the Court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior Court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even untrammelled by the conclusion of the lower Court.*



10. *The reason for such a different stance is thus:*

*The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. **Time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.***

11. ***Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly.*** The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. ***The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be putt to litigation).*** Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. ***The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.***

12. *A Court knows that refusal to condone delay would result foreclosing a suitor from putting forth his*



cause. There is no presumption that delay in approaching the Court is always deliberate. This Court has held that the words 'sufficient cause' under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain Vrs. Kuntal Kumari*, AIR 1969 SC 575 = (1969) 1 SCR 1006 and *State of West Bengal Vrs. The Administrator, Howrah Municipality*, AIR 1972 SC 749 = (1972) 1 SCC 366.

13. *It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. **If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the Court should lean against acceptance of the explanation.** While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quiet a large litigation expenses. **It would be a salutary guideline that when Courts condone the delay due to laches on the part of the applicant the Court shall compensate the opposite party for his loss.***"

- 12.11. It is significant to notice the decision of the Hon'ble Supreme Court of India rendered in the case of *Sheo Raj Singh (deceased) through Legal Representatives Vrs. Union of India*, (2023) 10 SCC 531 wherein while



explaining the term “sufficient cause”, the nature of approach of the Court and the methodology in deciding the application for condonation of delay have been discussed with reference to earlier precedents. The said Court in the mentioned reported case held as follows:

- “30. Considering the aforementioned decisions, there cannot be any quarrel that this Court has stepped in to ensure that substantive rights of private parties and the State are not defeated at the threshold simply due to technical considerations of delay. However, these decisions notwithstanding, we reiterate that **condonation of delay being a discretionary power available to Courts, exercise of discretion must necessarily depend upon the sufficiency of the cause shown and the degree of acceptability of the explanation, the length of delay being immaterial.**
31. Sometimes, due to want of sufficient cause being shown or an acceptable explanation being proffered, delay of the shortest range may not be condoned whereas, in certain other cases, delay of long periods can be condoned if the explanation is satisfactory and acceptable. **Of course, the Courts must distinguish between an ‘explanation’ and an ‘excuse’.** An ‘explanation’ is designed to give someone all of the facts and lay out the cause for something. It helps clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault. **Care must however be taken to distinguish an ‘explanation’ from an ‘excuse’.** Although people tend to see ‘explanation’



and 'excuse' as the same thing and struggle to find out the difference between the two, there is a distinction which, though fine, is real.

32. An 'excuse' is often offered by a person to deny responsibility and consequences when under attack. It is sort of a defensive action. Calling something as just an 'excuse' would imply that the explanation proffered is believed not to be true. **Thus said, there is no formula that caters to all situations and, therefore, each case for condonation of delay based on existence or absence of sufficient cause has to be decided on its own facts.** At this stage, we cannot but lament that it is only excuses, and not explanations, that are more often accepted for condonation of long delays to safeguard public interest from those hidden forces whose sole agenda is to ensure that a meritorious claim does not reach the higher Courts for adjudication.

34. The order under challenge in this appeal is dated 21st December 2011. It was rendered at a point of time when the decisions in *Mst. Katiji (supra)*, *Ramegowda (supra)*, *Chandra Mani (supra)*, *Tehsildar (LA) Vrs. K.V. Ayisumma*, (1996) 10 SCC 634 and *State of Nagaland Vrs. Lipok AO*, (2005) 3 SCC 752 were holding the field. It is not that the said decisions do not hold the field now, having been overruled by any subsequent decision. Although there have been some decisions in the recent past [*State of M.P. Vrs. Bherulal*, (2020) 10 SCC 654 is one such decision apart from *University of Delhi Vrs. Union of India*, (2020) 13 SCC 745]



which have not accepted governmental lethargy, tardiness and indolence in presenting appeals within time as sufficient cause for condonation of delay, yet, the exercise of discretion by the High Court has to be tested on the anvil of the liberal and justice oriented approach expounded in the aforesaid decisions which have been referred to above.

40. *We can also profitably refer to State of Manipur Vrs. Koting Lamkang, (2019) 10 SCC 408 ... where the same Bench of three Hon'ble Judges of this Court which decided University of Delhi Vrs. Union of India, (2020) 13 SCC 745 was of the view that the impersonal nature of the State's functioning should be given due regard, while ensuring that individual defaults are not nit-picked at the cost of collective interest. The relevant paragraphs read as follows:*

'7. But while concluding as above, it was necessary for the Court to also be conscious of the bureaucratic delay and the slow pace in reaching a Government decision and the routine way of deciding whether the State should prefer an appeal against a judgment adverse to it. Even while observing that the law of limitation would harshly affect the party, the Court felt that the delay in the appeal filed by the State, should not be condoned.

8. Regard should be had in similar such circumstances to the impersonal nature of the Government's functioning where individual



officers may fail to act responsibly. This in turn, would result in injustice to the institutional interest of the State. If the appeal filed by the State are lost for individual default, those who are at fault, will not usually be individually affected.'

41. *Having bestowed serious consideration to the rival contentions, we feel that the High Court's decision to condone the delay on account of the first respondent's inability to present the appeal within time, for the reasons assigned therein, does not suffer from any error warranting interference. **As the aforementioned judgments have shown, such an exercise of discretion does, at times, call for a liberal and justice-oriented approach by the Courts, where certain leeway could be provided to the State. The hidden forces that are at work in preventing an appeal by the State being presented within the prescribed period of limitation so as not to allow a higher court to pronounce upon the legality and validity of an order of a lower court and thereby secure unholy gains, can hardly be ignored.** Impediments in the working of the grand scheme of governmental functions have to be removed by taking a pragmatic view on balancing of the competing interests."*

12.12. In *Pathupati Subba Reddy (died) by Lrs. Vrs. The Special Deputy Collector (LA)*, (2024) 4 SCR 241 = 2024 INSC 286, having taken review of relevant earlier decisions, the principles for consideration of



condonation of delay have been expounded in the following terms:

“6. The moot question before us is whether in the facts and circumstances of the case, the High Court was justified in refusing to condone the delay in filing the proposed appeal and to dismiss it as barred by limitation.

9. Section 3 of the Limitation Act in no uncertain terms lays down that no suit, appeal or application instituted, preferred or made after the period prescribed shall be entertained rather dismissed even though limitation has not been set up as a defence subject to the exceptions contained in Sections 4 to 24 (inclusive) of the Limitation Act.

12. In view of the above provision, the appeal which is preferred after the expiry of the limitation is liable to be dismissed. The use of the word ‘shall’ in the aforesaid provision connotes that the dismissal is mandatory subject to the exceptions. Section 3 of the Act is peremptory and had to be given effect to even though no objection regarding limitation is taken by the other side or referred to in the pleadings. **In other words, it casts an obligation upon the Court to dismiss an appeal which is presented beyond limitation. This is the general law of limitation. The exceptions are carved out under Sections 4 to 24 (inclusive) of the Limitation Act but we are concerned only with the exception contained in Section 5 which**



empowers the Courts to admit an appeal even if it is preferred after the prescribed period provided the proposed appellant gives 'sufficient cause' for not preferring the appeal within the period prescribed. In other words, the Courts are conferred with discretionary powers to admit an appeal even after the expiry of the prescribed period provided the proposed appellant is able to establish 'sufficient cause' for not filing it within time. **The said power to condone the delay or to admit the appeal preferred after the expiry of time is discretionary in nature and may not be exercised even if sufficient cause is shown based upon host of other factors such as negligence, failure to exercise due diligence etc.**

13. It is very elementary and well understood that Courts should not adopt an injustice-oriented approach in dealing with the applications for condonation of the delay in filing appeals and rather follow a pragmatic line to advance substantial justice.

17. It must always be borne in mind that **while construing 'sufficient cause' in deciding application under Section 5 of the Act, that on the expiry of the period of limitation prescribed for filing an appeal, substantive right in favour of a decree-holder accrues and this right ought not to be lightly disturbed.** The decree-holder treats the decree to be binding with the lapse of time and may proceed on such assumption creating new rights.



26. *On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:*

- (i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;*
- (ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;*
- (iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;*
- (iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;*
- (v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;*



- (vi) *Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the Court is not satisfied with the cause shown for the delay in filing the appeal;*
- (vii) *Merits of the case are not required to be considered in condoning the delay; and*
- (viii) *Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.”*

12.13. It may be of benefit to have reference to *Esha Bhattacharjee Vrs. Managing Committee of Raghunathpur Nafar Academy*, (2013) 9 SCR 782, wherein the following principles are culled out:

“15. From the aforesaid authorities the principles that can broadly be culled out are:

- (i) *There should be a liberal, pragmatic, justice- E oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.*
- (ii) *The terms ‘sufficient cause’ should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.*



- (iii) *Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*
- (iv) *No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*
- (v) *Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*
- (vi) *It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*
- (vii) *The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.*
- (viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*
- (ix) *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of*



balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*

(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. *To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:*

(a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.



- (b) *An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.*
- (c) *Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.*
- (d) *The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”*

12.14. In *Amalendu Kumar Bera Vrs. State of West Bengal*, (2013) 4 SCC 52 the consideration of “sufficient cause” *qua* official business has been perceived in the following manner:

“There is no dispute that the expression “sufficient cause” should be considered with pragmatism in justice oriented approach rather than the technical detection of “sufficient cause” for explaining every day’s delay. However, it is equally well settled that the courts albeit liberally considered the prayer for condonation of delay but in some cases the court may refuse to condone the delay inasmuch as the Government is not accepted to keep watch whether the contesting respondent further put the matter in motion. The delay in official business requires its pedantic approach from public justice perspective. In a recent decision in Union of India Vrs. Nripen Sarma,



(2013) 4 SCC 57 = AIR 2011 SC 1237 the matter came up against the order passed by the High Court condoning the delay in filing the appeal by the appellant-Union of India. The High Court refused to condone the delay on the ground that the appellant-Union of India took their own sweet time to reach the conclusion whether the judgment should be appealed or not. The High Court also expressed its anguish and distress with the way the State conducts the cases regularly in filing the appeal after the same became operational and barred by limitation.”

12.15. Having thus discussed the gamut of “sufficient cause” *vis-à-vis* “good cause” with reference to the parameters of consideration of germane grounds for condonation of delay in preferring appeal, this Court feels expedient to observe that in *State of M.P. Vrs. Pradeep Kumar*, (2000) 7 SCC 372, the Hon’ble Supreme Court held that if an appeal is time barred, the Court should either return the memorandum of appeal to the appellant to submit it along with an application under Section 5 of the Limitation Act or should provide a chance to file application for condonation of delay. The Court cannot, under such circumstances, dispose of the appeal on merit. In *S.V. Matha Prasad Vrs. Lalchand Meghraj*, (2007) 14 SCC 722, it has been clearly held that while dealing with an application under Section 5 of the Limitation Act, the Court cannot dispose of an appeal on merit and such a course has been disapproved by the Hon’ble Supreme Court of India. However, in *O.P. Kathpalia Vrs. Lakhmir Singh*, AIR 1984 SC 1744, it is



held that if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay.

12.16. The Supreme Court of India in *State of Madhya Pradesh Vrs. Bherulal*, (2020) 10 SCC 654, made it clear that,

- “5. A preposterous proposition is sought to be propounded that **if there is some merit in the case, the 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 categorised 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 officer concerned 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, straightaway the counsel 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.”

12.17. Taking note of *State of Madhya Pradesh Vrs. Bherulal*, (2020) 10 SCC 654, in the cases of *State of Odisha Vrs. Sunanda Mahakuda*, (2021) 11 SCC 560; *State of Gujarat Vrs. Tushar Jagdish Chandra Vyas*, 2021 SCC OnLine SC 3517; *State of U.P. Vrs. Sabha Narain*, (2022) 9 SCC 266; *Union of India Vrs. Central Tibetan Schools Admin*, 2021 SCC OnLine SC 119; *Union of India Vrs. Vishnu Aroma Pouching Pvt. Ltd.*, (2022) 9 SCC 263; *Commissioner of Public Instruction Vrs. Shamshuddin*, 2021 SCC OnLine SC 3518 identical view has been expressed by the Supreme Court of India.

12.18. The stand taken in the interlocutory application for condonation of delay by the State of Odisha does not disclose any sufficient/good cause. This apart, the



appellants have not explained with material particulars the delay in filing the writ appeal from the original prescribed period. Noteworthy here to have regard to the following conclusions enumerated by the Hon'ble Supreme Court of India in the case of *Shivamma Vrs. Karnataka Housing Board*, (2025) 9 SCR 1774:

“261. Thus, for the reasons aforesaid, the impugned order of the High Court deserves to be set aside. Before we proceed to close this judgment, we deem it appropriate to make it abundantly clear that administrative lethargy and laxity can never stand as a sufficient ground for condonation of delay, and we want to convey an emphatic message to all the High Courts that delays shall not be condoned on frivolous and superficial grounds, until a proper case of sufficient cause is made out, wherein the State-machinery is able to establish that it acted with bona fides and remained vigilant all throughout. Procedure is a handmaid to justice, as is famously said. But courts, and more particularly the constitutional courts, ought not to obviate the procedure for a litigating State agency, who also equally suffer the bars of limitation from pursuing litigations due to its own lackadaisical attitude.

262. The High Courts ought not give a legitimizing effect to such callous attitude of State authorities or its instrumentalities, and should remain extra cautious, if the party seeking condonation of delay is a State-authority. They should not become surrogates for State laxity and lethargy. The constitutional courts ought to be cognizant of the apathy and pangs of a private litigant. Litigants cannot be placed in



situations of perpetual litigations, wherein the fruits of their decrees or favourable orders are frustrated at later stages. We are at pains to reiterate this everlasting trend, and put all the High Courts to notice, not to reopen matters with inordinate delay, until sufficient cause exists, as by doing so the courts only add insult to the injury, more particularly in appeals under Section 100 of the Code of Civil Procedure, wherein its jurisdiction is already limited to questions of law.

263. *Limitation periods are prescribed to maintain a sweeping scope for the lis to attain for finality. More than the importance of judicial time, what worries us is the plight of a litigant with limited means, who is to contest against an enormous State, and its elaborate and never-exhausting paraphernalia. Such litigations deserve to be disposed of at the very threshold, because, say if a party litigating against the State, for whatever reason, is unable to contest the condonation of delay in appeal, unlike the present case, it reopens the lis for another round of litigation, and leaves such litigant listless yet again. As courts of conscience, it is our obligation that we assure that a litigant is not sent from pillar to post to seek justice.*

264. ***No litigant should be permitted to be so lethargic and apathetic, much less be permitted by the courts to misuse the process of law.***

13. Thus being the delineated legal perspective for consideration of petition for condonation of delay, the decisions of the Courts as referred to *supra*, it is to be



seen whether the petition under consideration filed by the State suggests sufficient cause for condonation of delay in filing writ appeal by conscientious application of discretion.

CONCLUSION & DECISION:

14. Cursory glance at the substance and circumstances demonstrated in the petition with regard to the gap between 13.02.2025 (date of pronouncement of order in writ petition in presence of the appellants being represented by the Additional Standing Counsel) to 12.01.2026 (date of filing of the writ appeal) it is discernible that vague explanation without material particulars save and except examination of “various factors” has been proffered. No whisper is made with respect to contempt proceedings faced by the appellants before the learned Single Judge. This Court feels it expedient to take cognizance of the fact that such a vital non-disclosure would tantamount to suppression of material fact in the petition for consideration of condonation of delay.

14.1. It is pertinent to quote the following from the Order dated 13.02.2025 passed in the writ petition:

“Since the counter was not filed, by order dated 16.08.2023, as a last chance, two weeks time was allowed to file counter. Even in the face of such order as the counter was not filed “last and final opportunity” of



two weeks was granted as per order dated 12.09.2023. Such time to file counter was further extended by four weeks by order dated 01.03.2024. While passing such order, this Court observed thus:

‘Let the counter be filed within four weeks, failing which, the matter shall be taken into adjudication on its own merit without further opportunity to file counter affidavit.’

Taking a liberal view, further time was allowed by order dated 29.07.2024 and the matter was adjourned at the instance of learned counsel for the State on 31.08.2024. The matter was adjourned to 31.08.2024 at the instance of the learned counsel for the petitioner and the matter was posted to 23.09.2024. While adjourning the matter on 04.11.2024 further prayer was made to file counter and the matter was adjourned to 21.01.2025 to file counter. In spite of repeated opportunities as detailed above, the State has chosen not to file any counter affidavit. Hence, this Court proceeds to hear the matter on merits.”

14.2. Record does not reveal any alacrity is shown by any of the authorities-functionaries of the State of Odisha though such observation was made by the learned Single Judge in the order disposing of the writ petition. Even after Order dated 08.08.2025 was passed in the contempt petition being CONTC No.2750 of 2025 by the learned Single Judge, the writ appeal could be filed only on 12.01.2026. This shows scant regard for paying attention to the orders of this Court and negligent attitude of the functionaries.



14.3. At this juncture, this Court is reminded of a judgment of this Court showing dissatisfaction taking note of non-filing of response by the State in the case of *Jagadish Dey Vrs. State of Odisha*, 2000 (I) OLR 609. The observation and direction of the Division Bench of this Court are as follows:

- “2. *It appears that in OJC No. 12623 of 1997 on 11.09.1997 a Division Bench of this Court presided over by the then Chief Justice directed the Inspector of Schools, Balasore (opposite party No. 3) to consider the case of the petitioners within two months as to whether they are entitled for payment of salary, and in case he comes to conclusion that they are so entitled, the same shall be paid to them within two months from the date decision is taken by him. As no steps at all were taken by the aforesaid opposite party No.3, the petitioners and no option than to file the present contempt application on 07.01.1999 after waiting for one year and two months.*
3. *On 15.02.1999 a Bench of this Court issued notice to the opposite parties calling upon them to show-cause in the matter. The Inspector of Schools, who is opposite party No.3 filed cause on 03.08.1999 stating therein that immediately after receipt of the order of this Court he moved the Director, Secondary Education by office letter No. 2262 dated 02.03.1998 for allotment of funds to the tune of Rs.3,05,720/- immediately for payment of arrears salary to the petitioners. As there was no response from the Director, the Inspector of Schools by letter No. 6046 dated 03.05.1999 requested him for*



allotment of funds amounting to Rs.4,08,058/- (inclusive of 1% audit cost) for payment of salary to the petitioners. The Inspector of Schools indicated his inability to make payment, as the funds were not allotted from the Directorate.

4. *Learned counsel for the State stated that he has received instruction from the Deputy Director, Secondary Education, Orissa who is present in Court that now funds have been allotted for making payment to the petitioners. When we put question to the learned counsel as to why payment has not been made, he stated that the State has no funds for making payment. Neither any statement has been made by learned counsel for the State nor any affidavit has been filed on behalf of the State that payment has already been made to the writ petitioners. On the other hand, learned counsel for the petitioners stated that no payment has been made till today.*

*Since the day, one of us (the Chief Justice) joined this Court on 18.11.1999, we find that the cases where orders of this Court have not been complied with are placed before Bench and adjourned at the instance of State. **We fail to understand why the State counsel is not in a position to obtain instruction from the concerned officer whether he has complied with the order and if not what is the reason for its non-compliance.***

When time is fixed in the matter for compliance by the Court, it should be punctually complied with within the time schedule and it should not be taken by the State or its instrumentalities and their officers



that such orders fixing time schedule have been passed by way of empty formality. As a result of non-compliance of orders, citizens are made to run from pillar to post in moving the concerned authority and finally filing contempt applications resulting thereby in increase of unnecessary contempt applications before this Court and unnecessary wastage of Court's time.

We have been noticing that in more than 90 per cent of the cases orders of this Court are not complied with and the writ petitioners are compelled to move applications for contempt which is most unfortunate. Reasons for non-compliance are also not furnished before us. We do not understand the real reason for non-compliance of Court's orders. But we presume the same may be because of scarcity of funds or inaction of the concerned officers which may in some cases constitute justifiable reason but on most of the occasions it may be for extraneous reasons not permissible under law.

6. *In the circumstances, we do not find any other remedy except to direct the Chief Secretary to give certain directions in this case. It may not be out of place to mention that this is not a solitary case, but this contempt application is an example of the type indicated above.*

For the foregoing reasons, we give the following directions to the Chief Secretary, Government of Orissa:

- (a) *He shall see that copy of this order is communicated to each and every officer of the*



State Government and its instrumentalities and Departmental Heads shall maintain a register in which he will take signature of the officer in token of having received the order, so that if there is any infraction of the order, he may not take the plea that he did not know about the order.

- (b) The letter sent by the State Counsel, who is an officer of the Court requiring the concerned officers to send instructions and para-wise comments along with competent person to file counter affidavit should be treated to be a direction of this Court. In case the said letter is not complied with within the time schedule, that may be a ground for taking action against the concerned officer for punishing him for violation of the order of this Court under Article 215 of the Constitution of India.*
- (c) All pending contempt applications relating to any matter and the cases in respect of which even if no contempt application has been filed and time fixed for compliance of this Court's order has already expired, the same shall be complied within a period of two months from today.*
- (d) In all cases where letters have been sent by the State Counsel to different authorities and have not been attended to, counter affidavit must be filed in those cases within a period of two months from today.*

****"*



14.4. It appears even after long years have been passed since the said judgment was delivered, the directions of this Court have not gone down well with the administration/ Government. After around twenty six years have been elapsed from the date of said judgment, still indifferent attitude is shown by the functionaries. The present case is classic case of lethargy and indolence in the functioning of the authorities.

14.5. This Court is apprised of the fact that a “Standard Operating Procedure (SOP) for Ensuring Timely Filing of Affidavits in Courts and Tribunals” has been issued by the Government of Odisha in Law Department *vide* Notification No.8292–IV/2 LR-210/26/L., dated 10.06.2026³ in consequence of Order dated 24th March, 2026 passed in CONTC No 1011 of 2026 arising out of WP(C) No 18177 of 2025 taking into account the casual approach adopted by the State Authorities in filing affidavits/instructions resulting in unwarranted delays in disposal of Court Cases. It is also noticed that though the State Litigation Policy was formulated in the State during 2011 to reduce the State litigations basing on the National Litigation Policy as per recommendation of the 13th Finance Commission, in its place a new State

³ Published in the Extraordinary Issue of the Odisha Gazette No.2406, dated 10.06.2026.



Litigation Policy⁴ has been formulated to minimize the litigations against/by the State and streamlining consideration of the grievances to prevent avoidable litigations keeping in view the Order dated 3rd October, 2023 passed by this Court in WPC (PIL) No.28053 of 2023 and the Guidelines of the National Litigation Policy.

14.6.The fact pleaded does not transpire as to why the appellants have not placed the materials relied on in the instant writ appeal before the learned Single Judge. It is not a fact nor could be asserted that the documents to support pleadings were not available with the appellants at the time of hearing of writ petition before the learned Single Judge. There is no disclosure in the pleading to suggest that the junior employee has been extended the benefit as claimed for by the respondent and it is the case of the appellants that the junior colleague of the respondent was not similarly placed so that his service could be regularized and granted pension.

14.7.From the contents of the writ appeal, it seems there is no dispute set out by the appellants with respect to the following observation on facts made by the learned Single Judge:

⁴ The State Litigation Policy, 2024 is published in the Extraordinary Issue of the Odisha Gazette No.2162, dated 18.11.2024.



“There cannot be a more glaring case than the case at hand when after serving for more than four decades, on flimsy grounds notwithstanding the regularization of junior to him, petitioner is still in the portals of the Court to get his legitimate”

14.8. Though such factual aspects are glaring on the face of the writ appeal, this Court being conscious of ratio of decisions of the Hon’ble Supreme Court of India is required to consider if at all the appellants have made out a case showing “sufficient cause”/“good cause” with respect to the delay of 333 days (including thirty days of normal period) caused in filing appeal so that indulgence can be shown to consider the merit of the matter by condoning the delay in filing the intra-Court appeal.

14.9. This Court on careful examination of contents of the interlocutory application praying therein for condoning the delay found that no material particulars have been pleaded leading to such inordinate delay. By way of clever drafting of the writ appeal and the interlocutory application the appellants have consciously avoided to place on record the fact (though were aware of pendency of contempt). It is sheer negligence and conscious avoidance on the part of the appellants to disclose that after the learned Single Judge passed Order dated 08.08.2025 in CONTC No. 2750 of 2025 in presence of the learned Additional Government Advocate who was directed to be served with copy of such contempt petition



the appeal was filed. Thereafter also there was sphinx silence for about five months till 12.01.2026, when the writ appeal was filed. By way of objection in shape of affidavit the respondent clearly brought to fore pendency of such contempt proceeding. It is eminently clear that in order to thwart payment to the respondent and avoid the rigours of contempt the writ appeal has been filed.

14.10. Another pertinent fact which came to light from scrutiny of material available on record that despite the learned Single Judge directed in the Order dated 13.02.2025 that the service of the respondent shall have to be regularized with effect from the date the service of his junior, Sri Debendranath Puhan, was regularized and the respondent would be paid retiral dues in accordance with law within stipulated period, failing which, the same would entail interest at the rate of 10% per annum from the date of entitlement till payment and, the recovery of such interest shall be effected from the concerned official who is responsible, nothing is pleaded neither in the writ appeal nor in the interlocutory application to show that action/step against erring official(s) has been taken by the Government.

14.11. While enunciating that pragmatism in justice oriented approach is to be shown by the Court having regard to the impersonal bureaucratic set up involved in



red-tapism within reasonable limits of time, the Hon'ble Supreme Court propounded to hold officer concerned personally responsible in the case of *State of Haryana Vrs. Chandra Mani*, (1996) 3 SCC 132 and the proposition of legal position stands thus:

*"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-a-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 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.”

14.12. In the considered view of this Court mere use of the expressions like “no wilful negligence”, “no deliberate laches”, “no deliberate” or “unintentional” in the petition without putting forth material fact would not assist the



cause of the appellants for condoning the delay in preferring writ appeal.

14.13. In the case of *Maniben Devraj Shah Vrs. Municipal Corporation of Brihan Mumbai*, (2012) 5 SCC 157, the observation of the Supreme Court of India may deserve to be quoted:

“What colour the expression ‘sufficient cause’ would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.”

14.14. Besides having taken note of the principles enunciated by the Court(s) as referred to in foregoing paragraphs, it is noteworthy to have regard to the following decisions also.

The position of law as discussed with regard to condonation of delay in *Office of the Chief Post Master General Vrs. Living Media India Ltd.*, (2012) 1 SCR 1045 = 2012 INSC 105 may throw light on the issue at hand. In the said case the Hon’ble Supreme Court of India was considering inordinate delay of around 427 days caused



by functionaries of the Government in filing SLPs and the said Hon'ble Court held as follows:

- “12. *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. 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 fide, 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 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 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.** Accordingly, the appeals are liable to be dismissed on the ground of delay.”*

This Court in *Radharaman Store Vrs. Odisha Sales Tax Tribunal and Another*, 1997 SCC OnLine Ori 98 = 85 (1998) CLT 657 = (1998) 108 STC 284 (Ori) has been pleased to make following observation for non-furnishing plausible explanation by the Government:

- “9. The question remains whether any plausible or acceptable reason was indicated by the Revenue while seeking condonation, and whether the Tribunal considered the matter in its proper perspective. The reasons indicated in the petition filed by the Revenue extracted in its entirety reads as follows:



‘That the delay in filing of the appeal is non-deliberate. The delay was due to the process of decision-making in Government office.’

The Tribunal’s order in its entirety reads as follows:

‘Heard the learned Addl. S.R. for the State and the learned advocate for the assessee. The 1st appeal orders were received in the office of the Commissioner of Sales Tax on December 14, 1993 and due date of filing of the appeals was February 12, 1994, but the appeals have been filed on April 4, 1994 causing a delay of 50 days. In the petition for condonation of delay it has been explained that the delay in filing of the appeal was due to process of decision-making for filing of the second appeals. On a perusal of the administrative file it appears that the file was endorsed to the Addl. S.R. for his opinion on December 31, 1993 and decision was made on March 30, 1994 for filing of the second appeal. Thereafter the appeals were filed on April 4, 1994. So, the delay of 50 days in filing the second appeal in decision-making which was considered sufficient cause for not filing the second appeal in time. Hence, the petition is allowed and the delay is condoned. Register the appeals.’

10. *The factual backdrop and few relevant facts need to be noted. It is an accepted position that the file was endorsed to the Addl. S.R. for opinion on December 31, 1993, and he passed an order on March 30, 1994 for filing of the second appeal. No cause has been indicated as to why the Addl. S.R. took such a long time, and what transpired during that period. **In fact no explanation whatsoever has been offered. Tribunal’s reasoning is that there was***



delay in decision-making process and that was considered to be sufficient cause. The conclusion does not stand to reason. On the contrary, it shows non-application of mind to the germane issue. Even though a liberal approach has to be adopted, that does not mean that any plea without any plausible or acceptable basis, and not even hearing semblance of rationality has to be accepted, and delay has to be condoned. That shall be against the very spirit of law. Prescription of timelimit for filing appeals would become meaningless in such event. Merely because State is involved, that does not mean that any lethargic or supine inaction has to be condoned or ignored, and even if no reason is indicated that would be inconsequential. The subject-matter was not very complex and rather the grounds of appeal filed appear to be of very routine nature. As has been observed by this Court in Hindustan Aeronautics Limited, Koraput Division Vrs. State of Orissa, (1976) 38 STC 538, delay caused by the concerned officer in giving his opinion, without any explanation whatsoever does not constitute sufficient ground for condonation of delay. In the aforesaid premises, the inevitable conclusion is that the Tribunal has not applied its judicial mind to the question whether delay was to be condoned.

Certain interesting and relevant features are noticed on perusal of the administrative file produced. Up to end of page 2, the proposed grounds of appeal have been written in hand. Interestingly from page 3, they



are typed. Except that portion, next are hand written. This aspect assumes greater importance because in the margin of page 2, the following endorsement has been made on March 25, 1994 “signature is wanting”. Whose signature was wanting and who detected it on March 25, 1994 remains a mystery. If the file was with the Addl. S.R. till March 30, 1994, how another officer handled it to notice absence of signature.

That has not been explained. If records have been manipulated, it is a very serious matter and needs an enquiry by the Commissioner of Sales Tax, Orissa.”

14.15. Apparently from the explanation as found mentioned in the interlocutory application, the appellants have not given details of events with sufficient reasons for the delay. Furthermore, there is no explanation whatsoever is placed on record to show as to why there was delay during the prescribed period of limitation in terms of the provisions for filing writ appeal under the Rules of the High Court of Orissa, 1948.

14.16. Regard may also be had to *State of Madhya Pradesh Vrs. Ramkumar Choudhary*, 2024 SCC OnLine SC 3612, wherein the following observations have been made by the Hon’ble Supreme Court of India:

“5. *The legal position is that where a case has been presented in the Court beyond limitation, the petitioner has to explain the Court **as to what was the “sufficient cause” which means an***



adequate and enough reason which prevented him to approach the Court within limitation. In *Majji Sannemma Vrs. Reddy Sridevi* 2021 SCC OnLine SC 1260, it was held by this Court that even though limitation may harshly affect the rights of a party, it has to be applied with all its rigour when prescribed by statute. A reference was also made to the decision of this Court in *Ajay Dabra Vrs. Pyare Ram*, 2023 SCC OnLine SC 92 wherein, it was held as follows:

‘13. This Court in the case of *Basawaraj Vrs. Special Land Acquisition Officer*, (2013) 14 SCC 81 while rejecting an application for condonation of delay for lack of sufficient cause has concluded in Paragraph 15 as follows:

‘15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the “sufficient cause” which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters



laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature.'

14. Therefore, we are of the considered opinion that the High Court did not commit any mistake in dismissing the delay condonation application of the present appellant.'

Thus, it is crystal clear that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case and that, the expression 'sufficient cause' cannot be liberally interpreted, if negligence, inaction or lack of bona fides is attributed to the party.

5.1. In Union of India Vrs. Jahangir Byramji Jeejeebhoy (D) through his legal heir, 2024 SCC OnLine SC 489 = 2024 INSC 262, wherein, one of us (J.B. Pardiwala, J) was a member, after referring to various decisions on the issue, it was in unequivocal terms observed by this Court that delay should not be excused as a matter of generosity and rendering substantial justice is not to cause prejudice to the opposite party. The relevant passage of the same is profitably extracted below:

'24. In the aforesaid circumstances, we made it very clear that we are not going to look into the



merits of the matter as long as we are not convinced that sufficient cause has been made out for condonation of such a long and inordinate delay.

25. *It hardly matters whether a litigant is a private party or a State or Union of India when it comes to condoning the gross delay of more than 12 years. If the litigant chooses to approach the court long after the lapse of the time prescribed under the relevant provisions of the law, then he cannot turn around and say that no prejudice would be caused to either side by the delay being condoned. This litigation between the parties started sometime in 1981. We are in 2024. Almost 43 years have elapsed. However, till date the respondent has not been able to reap the fruits of his decree. It would be a mockery of justice if we condone the delay of 12 years and 158 days and once again ask the respondent to undergo the rigmarole of the legal proceedings.*
26. *The length of the delay is a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the appellants, it appears that they want to fix their own period of limitation for instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such*



circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. **It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the Court may bring into aid the merits of the matter for the purpose of condoning the delay.**

27. We are of the view that the question of limitation is not merely a technical consideration. **The rules of limitation are based on the principles of sound public policy and principles of equity.** We should not keep the 'Sword of Damocles' hanging over the head of the respondent for indefinite period of time to be determined at the whims and fancies of the appellants.

34. In view of the aforesaid, we have reached to the conclusion that the High Court committed no error much less any error of law in passing the impugned order. Even otherwise, the High Court was exercising its supervisory jurisdiction under Article 227 of the Constitution of India.



35. In a plethora of decisions of this Court, it has been said that delay should not be excused as a matter of generosity. Rendering substantial justice is not to cause prejudice to the opposite party. **The appellants have failed to prove that they were reasonably diligent in prosecuting the matter and this vital test for condoning the delay is not satisfied in this case.**

36. For all the foregoing reasons, this appeal fails and is hereby dismissed. There shall be no order as to costs.'

Applying the above legal proposition to the facts of the present case, we are of the opinion that the High Court correctly refused to condone the delay and dismissed the appeal by observing that **such inordinate delay was not explained satisfactorily, no sufficient cause was shown for the same, and no plausible reason was put forth by the State.** Therefore, we are inclined to reject this petition at the threshold.

6. At the same time, we cannot simply brush aside the delay occurred in preferring the second appeal, due to callous and lackadaisical attitude on the part of the officials functioning in the State machinery. **Though the Government adopts systematic approach in handling the legal issues and preferring the petitions/applications/appeals well within the time, due to the fault on the part of the officials in merely communicating the information on time, huge revenue loss will be caused to the Government exchequer.** The present case is one such case, wherein, enormous



delay of 1788 days occasioned in preferring the second appeal due to the lapses on the part of the officials functioning under the State, though valuable Government lands were involved. Therefore, we direct the State to streamline the machinery touching the legal issues, offering legal opinion, filing of cases before the Tribunal/ Courts, etc., fix the responsibility on the officer(s) concerned, and penalize the officer(s), who is/are responsible for delay, deviation, lapses, etc., if any, to the value of the loss caused to the Government. Such direction will have to be followed by all the States scrupulously.

7. There is one another aspect of the matter which we must not ignore or overlook. Over a period of time, we have noticed that whenever there is a plea for condonation of delay be it at the instance of a private litigant or State the delay is sought to be explained right from the time, the limitation starts and if there is a delay of say 2 years or 3 years or 4 years till the end of the same. **For example if the period of limitation is 90 days then the party seeking condonation has to explain why it was unable to institute the proceedings within that period of limitation. What events occurred after the 91st day till the last is of no consequence. The court is required to consider what came in the way of the party that it was unable to file it between the 1st day and the 90th day.** It is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows the limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising



*before the limitation expired it was not possible to file the appeal within time. **No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. There may be events or circumstances subsequent to the expiry of limitation which may further delay the filing of the appeal.** But that the limitation has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of limitation. (See: Ajit Singh Thakur Singh Vrs. State of Gujarat, (1981) 1 SCC 495 = AIR 1981 SC 733)."*

14.17. In *Vedabai @ Vaijayanatabai Baburao Patil Vrs. Shantaram Baburao Patil*, AIR 2001 SC 2582, the Hon'ble Court observed that,

*"A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case no such consideration may arise and such a case deserves a liberal approach. **No hard and fast rule can be laid down in this regard. The Court has to exercise the discretion on the facts of each case keeping in mind that in construing the expression 'sufficient cause' the principle of advancing substantial justice is of prime importance.**"*

14.18. It needs to be emphasised age-old maxim "*Vigilantibus Et Non Dormientibus Jura Subveniunt*", meaning thereby equity avails to the vigilant, not the person who sleeps over his right. The Courts will not



help the person who sleeps over their rights but help those who are aware of their rights. A person is said to be liable for laches when he comes to the Court to affirm rights after a reasonable delay in that respect.

14.19. This Court, therefore, comes to the irresistible conclusion that stating simply that due to movement of files delay occasioned would not suffice. It cannot thus be construed that such explanation (rather excuse) is “sufficient cause”/“good cause” so as to warrant consideration of cause for the delay in filing writ appeal. This Court does not find the averments of the appellants in the application for condonation of delay as genuine.

15. From the above discussions it is immutable that unless “sufficient cause”/“good cause” is shown, there is little scope for the Court to exercise the discretion in condoning the inordinate delay in filing writ appeal by the Government.

15.1. Under the above premises, the petition for condonation of delay does not demonstrate sufficient/good cause; as such, this Court does not deem it a fit case deserving condonation of inordinate delay in filing writ appeal. Having noticed want of *bona fide* on the part of appellants and the inaction or negligence as is perceived on the facts and the circumstances of the present case, it would deprive the appellants of the protection within



ken of the connotation of the term “sufficient cause”/“good cause”. Thus, the petition praying to condone the delay of 303 (plus 30 days specified prescribed period) in filing the writ appeal cannot be allowed. It is on threadbare discussion on the material available on record this Court comes to hold that the appellants were found to be negligent. The appellants have not been diligently prosecuting cases.

- 16.** In the wake of aforesaid discussions and reasons ascribed on facts and in law, the interlocutory application, being I.A. No.160 of 2026, is dismissed. Consequently, the writ appeal bearing W.A. No.99 of 2026 stands dismissed with cost assessed at Rs.1,00,000/- to be deposited with the Odisha State Legal Services Authority within a week from date. In the event of such deposit, the said amount shall be kept in the account earmarked for Juvenile. Pending interlocutory application(s), if any, shall also stand disposed of accordingly.

I agree.

(HARISH TANDON)
CHIEF JUSTICE

(MURAHARI SRI RAMAN)
JUDGE