

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

**HON'BLE SHRI JUSTICE SUSHRUT ARVIND
DHARMADHIKARI**

&

HON'BLE SHRI JUSTICE ANIL VERMA

ON THE 25th OF MAY, 2023

WRIT APPEAL No.720 of 2022

BETWEEN:-

**NAGAR PALIK NIGAM, AYUKT UJJAIN, AGAR ROAD, UJJAIN
(MADHYA PRADESH)**

.....APPELLANT

(SHRI BALENDU DWIVEDI, ADVOCATE)

AND

**MOHAMMAD SHAKIR KHAN S/O SHRI MOHAMMAD SHABIR KHAN
1. OCCUPATION: NOKRI, GREENPARK COLONY HARIFATAK
(MADHYA PRADESH)**

**2. THE STATE OF MADHYA PRADESH SECRETARY STHANIYA SHASAN
VIBHAG VALLABH BHAWAN (MADHYA PRADESH)**

.....RESPONDENTS

*This appeal coming on for admission this day, **JUSTICE
SUSHRUT ARVIND DHARMADHIKARI** passed the following:*

ORDER

This writ appeal under Section 2(1) of the Madhya Pradesh Uchha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 has been filed being aggrieved by the order dated 07/09/2016 passed by learned Single Judge in Writ Petition No.1079/2016.

2. I.A. No.4769/2022, an application for condonation of delay in

filing the present writ appeal is taken up.

3. The present writ appeal is barred by 2026 days.

4. Learned counsel for the appellant submitted that after passing of the impugned order dated 07/09/2016, the same was sent for seeking legal opinion on 05/12/2016. The legal opinion was received on 30/01/2017. Thereafter, W.A. No.209/2017 was filed and the same was dismissed with liberty to file a review petition before the learned writ Court. Then, review petition was filed bearing No.1857/2019 and the same was rejected as time barred. Being aggrieved by the orders, the present writ appeal has been filed.

5. Learned counsel for the appellant further contended that the delay is genuine which has been caused due to procedural formalities and the same is *bonafide* on the part of the appellant. Therefore, delay in filing the appeal deserves to be condoned.

6. Learned counsel for the appellant in support of his contentions has placed reliance on the judgment passed in the case of **State of Haryana Vs. Chandramani and Others reported in 1996 (3) SCC 132** wherein it has been held thus:

"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."

7. In view of the settled legal principles of law when the delay and latches in filing the writ petitions/appeals cannot be brushed aside, otherwise, the same would amount to reviewing a dead/stale claim. Various judgments have been passed by Apex Court which are as under:-

. In the case of **Postmaster General & Ors. Vs. Living Media India Ltd. & Anr(2012) 3 SCC 563**, it is held that merely because the Government is involved, different yardsticks cannot be laid down for condoning the delay. The SLPs dismissed due to delay of 427 days.

. In the case of **State of Madhya Pradesh And Others Vs. Bherulal reported in (2020)10 SCC 654**, the Apex Court held that unavailability of documents and the process of arranging the documents and bureaucratic process works cannot be a ground to condone the delay in filing of an appeal by the State. The delay of 663 days was not condoned and the SLP was dismissed with a cost of Rs. 25,000/-.

. In the case of **State of M.P. & Anr. Vs. Chaitram Maywade reported in (2020)10 SCC 667**, it was held that the Law Department took 17 months in permitting filing of SLP. Officers responsible cannot just sit on the

files and delay its filing. The SLP was dismissed with a cost of Rs. 35,000/- as delay of 588 days has occurred.

. In the case of Govt. of India Vs. Md Wasim Akram in SLP (Cri) Diary No. 10760/2020, although it was a good case on merits, the threshold bar of delay and latches cannot be ignored. SLP was dismissed with a cost of Rs.25,000/- for a delay of 254 days.

8. Heard, learned counsel for the appellant and perused the record.

9. In the present appeal, there is a delay of 2026 days in filing the writ appeal. In the application seeking condonation of delay, no plausible explanation has been put forth by the appellant for such delay, therefore, the present appeal suffers from inordinate delay and latches and the same is liable to be dismissed.

10. Whilst, it is true that limitation does not strictly apply to the proceedings under Article 32 or 226 of the Constitution of India, nevertheless such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate latches would always be relevant in writ actions and writ Courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence sitters cannot be allowed to barge into Courts and cry for their rights at their convenience and vigilant citizens ought not to be treated alike with mere opportunists. On multiple occasions, it has been restated by the Apex Court for there are implicit limitations of time within which writ remedies can be enforced.

11. In the case of S.S. Balu Vs. State of Kerela, the Apex Court has observed that " it is also well-settled principle of law that "delay defeats equity"..... It is now a trite law that where the writ petitioner approaches

the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and latches.

12. In view of the aforesaid pronouncement of law and the fact that the delay has not been properly explained, **I.A.No.4769/2022** seeking condonation of delay is hereby **rejected**.

13. Consequently, writ appeal also stands **dismissed**.

(S. A. DHARMADHIKARI)
V. JUDGE

(ANIL VERMA)
V. JUDGE

Aiyer*

