



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.9018 OF 2024
IN
FIRST APPEAL (L) NO.15584 OF 2023
AND
INTERIM APPLICATION NO.7168 OF 2024
IN
FIRST APPEAL (L) NO.16462 OF 2023
AND
INTERIM APPLICATION NO.9025 OF 2024
IN
FIRST APPEAL (L) NO.17081 OF 2023

The Municipal Corporation
of Greater Bombay Through
Its Secretary & Anr.

.... Applicants

Vs.

The Indian Hotels Company Ltd.

.... Respondent

Mr. Drupad Patil a/w. Ms Pallavi Khare for the Applicant/BMC in all Applications.

Mr. Karl Tamboly a/w. Rajesh Satpalkar & Devansh Gadda i/b. Mulla & Mulla and Craigie Blunt & Careo for Respondent in all Applications.

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE: SEPTEMBER 25, 2024

Oral Judgment:

1. The core issue that falls for consideration in these Applications is whether it would be permissible for the Municipal Corporation of Greater Mumbai ("**MCGM**") to seek condonation of delay when it has changed its mind about pursuing this batch of appeals, over five years after it first decided not to appeal, and then taking another two years to file these First Appeals. For the reasons set out below, these Applications for condonation of delay are rejected and consequently, the First Appeals are dismissed.

2. The judgment impugned in this batch of First Appeals was passed on January 13, 2016 (“*Impugned Judgement*”). On the last occasion, after hearing the parties at some length in order to appreciate the materials brought on record in the Respondent’s Affidavit-in-Reply dated September 13, 2024 (“*Reply Affidavit*”), the request of Learned Counsel for MCGM to take instructions as to whether it would seriously press these Applications for Condonation of Delay, was accepted. In my order dated September 13, 2024, the grounds on which the Condonation of Delay was sought was extracted. Based on the Reply Affidavit, the erroneous reference in these Applications to the date of the meeting when the MCGM’s Appeal Committee decided not to appeal, was noticed – the meeting had been held on June 3, 2016, and not on December 21, 2019 (as stated in these Applications).

3. Today, Mr. Drupad Patil, Learned Counsel for the Respondent fairly states that the date referred to in these Applications was indeed erroneous and that there had been no consideration of the Respondent’s case in the meeting held on December 21, 2019. Mr Patil strenuously urges that MCGM should be allowed to file a further affidavit in the matter. His request is primarily based on the desire to set the record straight on the actual date of the decisions of the Appeal Committee. He does not confirm what else he would wish to address in the additional affidavit, but states that if he is given another week’s time to review the file personally, he can decide if anything more needs to be brought on

record.

4. Admittedly, the Appeal Committee of Applicant held its meeting on June 3, 2016 and took a considered view not to appeal. It is nearly five years later, at the meeting of the Appeal Committee held on March 17, 2021, that a new view was adopted, namely, to appeal against the Impugned Judgement. These Applications for condonation of delay, namely, Interim Application No.9018 of 2024, Interim Application No.7168 of 2024 and Interim Application No9025 of 2024 were affirmed on June 14, 2023, June 22, 2023 and June 28, 2023. In other words, even after the change of opinion on March 17, 2021, these First Appeals came to be filed more than two years later. Thereby, the total period of delay for which condonation is sought is seven years and 101 days.

5. It is now clearly evident that the MCGM's decision to appeal is a highly belated change of opinion, and the action taken on that changed opinion too has been a highly delayed one. Be that as it may, I am of the view that no fruitful purpose would be served by having one more affidavit being filed since it is clear that nothing new about the dates can be brought to bear to further support these Applications. Besides, I am not inclined to accept that with such a legacy of delayed actions on these files, it would not be fruitful to further prolong the matter, by accepting a request for further time, only to research the file, in order to examine

what more may be brought into a further affidavit.

6. Appeals to this court from decisions of the Chief Judge of the Small Causes Court are governed by Section 218D of the Mumbai Municipal Corporation Act, 1888 (“*the Act*”). The proviso to Section 218D(2) prohibits the High Court from hearing any appeal filed after one month of the date of decision that is impugned. Seen in that statutory framework, the very meeting of the Appeal Committee was held after the expiry of limitation – the Impugned Judgement was rendered in January 2016 while the Appeal Committee met in June 2016. At that meeting, it was decided not to appeal.

7. Against this backdrop, the reasons set out in these Applications simply do not lend themselves to acceptance for condoning the delay in these matters. The law is now well declared that mere reliance on “bureaucratic methodologies” for deciding whether to appeal, is no ground to seek condonation of delay. Towards this end, the following observations of the Supreme Court in Postmaster General vs. Living Media India Ltd.¹ are instructive:-

“27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

¹ (2012) 3 SCC 563

28. *Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.*

29. *In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.”*

[Emphasis Supplied]

8. Following the said decision (rendered in 2012), the Supreme Court once again had occasion (this time in 2020) to reiterate the declared law. Inter alia quoting the aforesaid extracts, the Supreme Court in State of Madhya Pradesh & Ors. vs. Bherula² stated the following:-

“2. We are constrained to pen down a detailed order as it appears that all our counselling to the Government and

² (2020) 10 SCC 654

*government authorities has fallen on deaf ears i.e. **the Supreme Court of India cannot be a place for the Governments to walk in when they choose ignoring the period of limitation prescribed.** We have raised the issue that if the government machinery is so inefficient and incapable of filing appeals/petitions in time, the solution may lie in requesting the legislature to expand the time period for filing limitation for government authorities because of their gross incompetence. That is not so. **Till the statute subsists, the appeals/petitions have to be filed as per the statutes prescribed.***

3. No doubt, some leeway is given for the government inefficiencies but the sad part is that the authorities keep on relying on judicial pronouncements for a period of time when technology had not advanced and a greater leeway was given to the Government [LAO v. Katiji]. This position is more than elucidated by the judgment of this Court in *Postmaster General v. Living Media (India) Ltd.* wherein the Court observed as under: (*Postmaster General case*, SCC pp. 573-74, paras 27-30)

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."*

[Emphasis Supplied]

9. What is most piquant is that a Learned Single Judge of this Court, in a case involving the same parties as in the instant case, and in fact, in one of the very matters covered by the Appeal Committee at the same meeting held on March 17, 2021, rejected the request for

restoration of an appeal which was sought after a delay of five years and six months. First Appeal No.890 of 2007 had come to be dismissed for non-filing of private paper book, for which a period one year had been given. Although such period was granted by an order dated March 8, 2007, since no compliance was found, the Appeal stood dismissed. However, a restoration application was allowed on February 24, 2009 with a cost of Rs.1,000 being imposed. Thereafter, on April 20, 2015, the Appeal was dismissed for non-payment of *bhatta* charges as also non-filing of the private paper book (which indicates that right until 2015, despite the first restoration, the non-compliance continued). Yet again, an application for restoration was routinely filed in 2022, which was dismissed by the Learned Single Judge³.

10. Mr. Patil states that the Appeal Committee comprises of *ex officio* members and it is not easy for them to convene. That cannot be an acceptable reason to condone delay. It is for the MGCM to put its house in order and not have a framework for its decisions on whether to appeal, that is inconsistent with the statutory framework of having to appeal within 30 days under Section 218D of the Act.

11. The matter at hand involves an objection to the rateable value of property of the Respondent, which leads to a statutory right to adjudication before the Chief Judge of the Small Causes Court, which was exercised by the Respondent. Mr. Patil submits that the rateable

³ 2022 SCC OnLine Bom. 6227

value for the property in question had been approximately Rs. 53 lakhs way back in 2002 and the same rate had continued until 2008. The Respondent had raised an objection in 2002, seeking reduction of the ratable value. In 2010, the MGCM disposed of that objection by reducing the ratable value to approximately Rs. 21 lakhs (the objection had remained pending until then). Mr. Patil submits that the Impugned Judgement takes such disposal in 2010, of the objection taken in 2002, as the basis to adjudicate the rateable value for the years 2005-06 to 2008-09. According to Mr. Patil, even if the rateable value for 2002 were to be lowered to Rs. 21 lakhs, it would not mean that that value could have remained static for the period 2005 to 2009.

12. Without intending to pronounce upon the merits, I found it relevant to mention the aforesaid submission only to underline the nature of the facts and context attendant with the extraordinary delay in pursuing these First Appeals. While the MCGM's internal processes wound its way through the first decision not to appeal in 2016, to the reversed decision to appeal in 2021, and eventually to the actual action of filing these Appeals in 2023, over seven years went by. Meanwhile, the very basis of computing the rateable value has undergone a fundamental change – a development that both Mr. Patil and Mr. Karl Tamboly, Learned Counsel for the parties confirm. Consequently, I am of the view that quite apart from the MCGM not being able to justify the reasons for condoning delay, it is also evident that no fruitful purpose would be served with these Appeals being entertained. In other words,

the very core of the litigation at hand has gone stale.

13. Be that as it may, these are facets of merits that ought to have weighed with the Appeal Committee when it took its decision in 2016 not to appeal.

14. The delay being inordinate, with no plausible explanation being given in these Applications for the change of heart taken at a leisurely pace, I am not inclined to condone the delay in the facts and circumstances of the case. These Applications for condonation of delay are hereby ***rejected***. Consequently, these First Appeals are ***disposed of*** and are not entertained.

15. Before parting with the matter, it may be stated that the dismissal of these Applications for condonation of delay is no impediment to the MCGM reviewing its files and processes to set its house in order in a manner that is commensurate with the statutory framework in which it operates.

16. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.]