

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : CONDONATION OF DELAY

W.P(C) No.101/2007

DATE OF DECISION : 9TH JAN 2008

Executive Engineer, PWD, ED IX .

PETITIONER

Through:

Mr.V.K. Tandon, Advocate

Versus

Smt.Virwati

RESPONDENT

Through :

Mr.Varun Prasad, Advocate

CM No.1515/2007 in W.P(C) No.101/2007

1. This is an application by the petitioner seeking condonation of delay in filing the writ petition. The petitioner has contended that an award was passed on 12th October, 2004 which was published on 24th May, 2005 and became enforceable with effect from 23rd June, 2005. The applicants plea is that legal opinion was sought from Mr.V.K. Kalra, Advocate, who was handling the same before the Industrial Tribunal who by letter dated 27th July, 2005 opined that this is a fit case for challenging the award. Thereafter by letter dated 8th August, 2005, directions were sought from the Chief Engineer, PWD, Division I, for appointment of counsel to challenge the above-noted award and the matter was referred to CPWD. Since the control is with CPWD as such communications were sent to CPWD by PWD regarding appointment of Government counsel for filing the writ petition. The petitioner/applicant contended that by inadvertence, it was considered to be a case of Central Government and, therefore, CPWD was informed by PWD to contact the Litigation Section of High Court of Union of India for appointment of Government counsel. As the concerned Department was PWD which comes under Government of NCT of Delhi, the matter was referred back to PWD and ultimately, after various communications Government counsel was appointed vide BTF dated 27th November, 2006 and thereafter the writ petition has been filed on 2nd January, 2007. The application is contested by the respondent alleging inter alia that there is an inordinate delay in filing the writ petition as the award dated 12th October, 2004 was opined to be challenged by letter dated 27th May, 2005 and delay after that has not been explained properly and the explanations give are totally vague and cryptic. The applications is also contested on the ground that there has been considerable delay in taking a decision for appointment of a High Court counsel only on 7th July, 2006 and thereafter also the writ petition was filed only on 8th January, 2007. Considering the fact that no limitation is prescribed for filing a writ petition, the rigor of explanation of each day of delay for condonation of delay of a petition for which a limitation is provided cannot be applied, in a writ petition filed under Article 226 of the Constitution of India by a petitioner aggrieved by an award. In any case, the petitioner has disclosed various steps which were taken which has led to delay in filing the writ petition which in the facts and circumstances will constitute sufficient cause for not dismissing the petition on the ground of delay and laches. In the facts and circumstances, the inevitable inference is that there is sufficient cause not to dismiss the petition on the ground of delay and laches, the delay is condoned and the application is allowed in the peculiar facts and circumstances of this case. CM No.163/2007 Since the petitioner has filed

another application explaining the delay in filing the writ petition being CM No.1515/2005, Learned counsel for the petitioner does not press this application. The application is dismissed as not pressed. CM No.162/2007 In view of another stay application being CM No.15868/2007, learned counsel for the petitioner does not press this application. The application is dismissed as not pressed. W.P(C) No.101/2007 and CM No.15868/2007 Issue notice to the respondent. Mr.Prasad accepts notice on behalf of the respondent and seeks time to file the counter affidavit and the reply. The counter affidavit and the reply be filed within four weeks. Rejoinder, if any, be filed within four weeks after filing of counter affidavit and the reply to the application. Learned counsel for the respondent seeks litigation expenses on behalf of respondent. A sum of Rs.10,000/- as expenses be paid by the petitioner to the respondent through his counsel within two weeks. List on July 14, 2008. Interim order to continue.

January 09, 2008

Sd./-
ANIL KUMAR, J.