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CONSUMER BULLETIN

“Telecom Services and Consumer”: Mr. S.K. Virmani, Project Manager, SCHKRMP took a session on “Telecom Services and Consumer” on 13th June 2013 during 16th Training of Trainers Programme for the Faculty Members of Training Institutions on Consumer Protection and Consumer Welfare held at IIPA, New Delhi during June 10-14, 2013. He shared knowledge with the participants about frequent occurring problems in Telecom Services and the Service Benchmarks as laid down by Telecom Regulatory Authority of India. The participants were also explained of grievance handling mechanism in telecom companies as per TRAI regulations.



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Condonation of Delay in filing consumer cases before Consumer Fora

Negligence of a litigant's agent is negligence of the litigant himself and is not sufficient cause for condoning the delay. The petitioner before National Consumer Disputes Redressal Commission in Revision Petition No.2051 OF 2013 with I.A. No.3375 of 2013 (Stay Application) (from the order dated 25.3.2013 First Appeal No.193/2013 of the State Commission, Haryana, Panchkula) contended that earlier counsel never communicated to the petitioners about the decision of the District Forum and as such petitioners could not take appropriate steps to challenge the decision passed by the District Forum within the requisite time. However, after knowing about the decision of the District Forum, petitioners immediately applied for the certified copy of the order and thereafter new counsel was engaged. Thus, delay in filing of the appeal before the State Commission was not intentional. The explanation furnished by the petitioners seeking condonation of delay is bonafide. It is further contended that petitioners' case on merits is very good and an opportunity should be granted to the petitioners to put forward the case before the State Commission. Further, State Commission has given no reason for not condoning the delay. Moreover, it has gone into the merits of the case.

National Commission further observed that *petitioners have failed to offer convincing rationale of reasons in support of their application. It is surprising to note that the application does not mention the name of the earlier counsel. There is nothing on record to show that any complaint has been filed before the Bar Council or any legal notice was served upon earlier counsel. There is also nothing on record to show that petitioners have initiated any action against their earlier counsel for deficiency in services, under the Act. Affidavit of earlier counsel also did not see the light of the day. The petitioners are supposed to explain the 'day-to-day' delay but the needful was not done. Such like stories can be created at any time. To our mind, in such like cases, false allegations are often made against the counsel so that the delay should be condoned. It is the duty cast on the petitioners themselves to find out as to what has happened to their case and why appeal has not been filed. They cannot put entire blame upon their counsel. The facts of this case rather reveal negligence, inaction and passivity on the part of the petitioners themselves. The facts of this case speak for itself. This view is further emboldened by the following authorities;*

In **Ram Lal and Ors. Vs. Rewa Coalfields Ltd.**, AIR 1962 Supreme Court 361, it has been observed;

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"It is, however, necessary to emphasize 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 discretionary jurisdiction vested in the Court by S.5. If sufficient cause is not proved nothing further has to be done; the application for condonation 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."

Similarly, in **Oriental Insurance Co. Ltd. vs. Kailash Devi & Ors. AIR 1994 Punjab and Haryana 45**, it has been laid down that;

"There is no denying the fact that the expression sufficient cause should normally be construed liberally so as to advance substantial justice but that would be in a case where no negligence or inaction or want of bona fide is imputable to the applicant. The discretion to condone the delay is to be exercised judicially i.e. one of is not to be swayed by sympathy or benevolence."

In **R.B. Ramlingam Vs. R.B. Bhavaneshwari, 2009 (2) Scale 108**, it has been observed:

"We hold that in each and every case the Court has to examine whether delay in filing the special appeal leave petitions stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition."

Hon'ble Supreme Court after exhaustively considering the case law on the aspect of condonation of delay observed in **Oriental Aroma Chemical Industries Ltd. Vs. Gujarat Industrial Development Corporation reported in (2010) 5 SCC 459** as under;

"We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time."

The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate - Collector, Land Acquisition, Anantnag v. Mst. Katiji (1987)2 SCC 107, N. Balakrishnan v. M. Krishnamurthy (1998) 7 SCC 123 and 10 Vedabai v. Shantaram Baburao Patil (2001) 9 SCC 106".

Apex Court in **Anshul Aggarwal Vs. New Okhla Industrial Development Authority, IV (2011) CPJ 63 (SC)** has observed ;

"It is also apposite to observe that while deciding an application filed in such cases for condonation of delay, the Court has to keep in mind that the special period of limitation has been prescribed under the Consumer Protection Act, 1986 for filing appeals and revisions in consumer matters and the object of expeditious adjudication of the consumer disputes will get defeated if this Court was to entertain highly belated petitions filed against the orders of the consumer foras".

This Commission in **Mahindra Holidays & Resorts India Ltd. vs. Vasantkumar H. Khandelwal and Anr., Revision Petition No.1848 of 2012 decided on 21.5.2012** has held;

"that under the Consumer Protection Act, 1986 the District Forum is supposed to decide the complaint within a period of 90 days from the date of filing and in case of some expert evidence is required to be led then within 150 days. The said Bench dismissed the revision petition on the ground that it was delayed by 104 days."

It is well settled that *Qui facit per alium facit per se*. Negligence of a litigant's agent is negligence of the litigant himself and is not sufficient cause for condoning the delay. See **M/s. Chawala & Co. vs. Felicity Rodrigues, 1971 ACK 92**.

In **B Madhuri Goud (Supra)**, Andhra Pradesh High Court has condoned the delay of 1236 days in filing of the appeal. However, Apex Court after considering various judgments on Section 5 of Limitation Act, 1963, allowed the appeal and application seeking condonation of delay of 1236 days in filing the appeal was dismissed.

In **S. Ganesharaju (Supra)** there was delay of only 53 days which was satisfactorily explained and that is why the same was condoned.

There is nothing on record to show that petitioners were being represented by an illiterate person. It has nowhere stated in the entire application for condonation of delay as to on which date knowledge came to the petitioners about passing the impugned order dated 17.7.2012. Petitioner no.1 who is a builder/developer must be having its legal department and large number of lawyers at its disposal. Therefore, it was expected from petitioner to have been vigilant and careful in pursuing the litigation which was pending before the fora below. Thus, gross negligence, deliberate inaction and lack of bonafide is imputable to the petitioner. Petitioner in order to cover up its own negligence, has shifted the entire burden upon the previous counsel which cannot be justifiable under any circumstances.

National Commission found that the discretion exercised by the State Commission for declining the petitioners' prayer for

condonation of delay of 215 days does not suffer from any legal infirmity and the possibility of this Commission forming a different opinion in the matter of condonation of delay cannot justify interference with the impugned order under Section 21(b) of the Act. National Commission dismissed the petition having no merit with cost of Rs.10,000/- (Rupees ten thousand only) to be deposited by way of demand draft in the name of 'Consumer Legal Aid Account' of this Commission within eight weeks from today. In case, petitioners fail to deposit the cost within prescribed period, then they shall be liable to pay interest @ 9% p.a. till its realization.

Quality of Service (QoS) Benchmarks for Telecom

Sl. No.	Service Parameter	Benchmark	
Broadband Service			
1.	Service provisioning/activation time	100% cases in <15 working days (subject to technical feasibility)	
2.	Fault repair/restoration time	99% within 3 days.	
		Rebate: Faults pending for >3 days and <7 days	Rebate equivalent to 7 days of minimum monthly charge or usage allowance.
		Faults pending for >7 and <15 days	Rebate equivalent to 15 days of minimum monthly charge or usage allowance.
		Faults pending for >15	One month rebate equivalent to 1 month of minimum monthly charge or usage allowance.
3.	Resolution of billing complaints	1000% within 4 weeks	
4.	Refund of deposits after Termination	100% within 60 days.	
5.	Broadband connection speed (download)	Subscribed broadband connection speed to be met >80% from ISP Node to user.	
Mobile/Landline Service			
1.	Provision of landline telephone after registration	100% within 7 days (subject to technical feasibility)	
2.	Shifting of telephone (landline)	Within 3 days.	
3.	Fault repair in urban areas (landline)	100% within 3 days	
4.	Fault repair in rural and hilly areas (landline)	100% within 5 days	
		Rental rebate Faults pending for >3 days and <7 days	7 Days
		Faults pending for >7 and <15 days	15 days
		Faults pending for >15	One Month
5.	Resolution of billing/charging complaints	100% within 4 weeks.	
6.	Termination/closure of service	Within 7 days	
7.	Refund of security deposit after Termination	100% within 60 days	

Consumer Alerts

- **Consumers have an option to selectively receive telemarketing calls and SMS.**
- **Telemarketing SMS/Calls cannot be made from 10 digit mobile numbers.**
- **Consumers can register complaint for receipt of such calls/SMS within 3 days of receipt at 1909.**
- **Do not respond to missed calls from numbers having prefix other than +91.**
- **Telecom Service Providers cannot activate any Value Added Service (VAS) without seeking explicit consent of the subscribers.**
- **Subscribers can deactivate the Value Added Service through a toll free common short code 155223.**
- **The companies are also required to inform the subscriber for renewal of VAS 24 hrs before the due date of renewal through SMS and outbound dialer call or tele-calling.**