

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

MC(W.A.) No.41 of 2023

Shri Haobijam Gitajen Meitei, aged about 40 years old, S/o H. Lukhoi Meitei, presently Central Committee Member of the Manipur People's Party with its office at Khwairamband Bazaar near Polo Ground, a resident of Thanga Karang, PO & PS Moirang, Bishnupur District, now at present residing at Ghari Awang Leikai, Imphal West, PO Tuliha & PS Lamphel, Manipur – 795140.

..... Applicant/s

– Versus –

1. Shri Rajesh Agrawal, the Chief Electoral Officer, Manipur having its office at Lamphelpat Imphal, PO & PS Lamphel, Imphal West, Manipur – 795004.
2. Shri K. Bono Singh, the Returning Officer, Election of the Interim President of Manipur People's Party, Manipur, having its office at Lamphelpat, PO & PS Lamphel, Imphal West, Manipur – 795004.

.... Respondent/s

BEFORE
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Applicant : Mr. S. Rupachandra, Sr. Adv. assisted by
Ms. Joan Kipgen, Adv.

For the Respondents : Mr. A. Jagjit, Advocate for R-1

Mr. S. Biswajit, Senior Advocate for R-2 assisted by
Ms. Prista Devi, Advocate, and
Mr. Surajkumar Sukham, Advocate

Date of Hearing : 29.03.2023

Date of Judgment & Order : **05.04.2023**

JUDGMENT & ORDER
(CAV)

(A. Guneshwar, J.)

The applicant/appellant has filed the present application under Section 5 of the Limitation Act for condoning delay of 37 days in filing the accompanying Writ Appeal against the order dated 09.11.2022 passed by the Learned Single Judge in Cont.Cas(C) No.54 of 2022.

It is stated that there has been a delay of 37 days and the details of the delay has been given as under:

09.11.2022 -	Contempt Court passed order.
11.11.2022 -	Existence of Court's order was communicated to the applicant and party.
15.11.2022 - to 30.11.2022-	Discussion took place among the interested petitioners.
01.12.2022 - to 15.12.2022 -	Consulted lawyer for challenging the order passed in Contempt Case.
30.12.2022 -	Contacted lawyers, engaged and instructed to challenge the order.
05.01.2023 - to 13.01.2023 -	Counsel managed to procure documents.
13.01.2023 -	Certified copy of order applied.
17.01.2023 -	Certified copy availed.
17.01.2023 -	Drat finalized.
09.11.2022 - to 17.01.2023 -	Total No. of days is 71 from the date of passing order and date of filing.
13.01.2023 - to 17.01.2023 -	4 days time gap in between the date of application and available of certified copy of order.
30 days -	Statutory time of limitation
18.01.2023 -	Writ Appeal along with Misc.Case filed with a delay of 37 days.

It is stated that the delay so caused is unintentional and if not condoned, there will be loss and injury to the applicant and prayed that the same may be condoned.

[2] The Respondent No.1 filed detailed reply to the application for condonation of delay. It is stated that the delay of 37 days in preferring the Writ Appeal has not been properly explained by the applicant/appellant.

In Para 4 of the counter affidavit, it is stated as follows:-

4. *That, it is a settled position of law that while dealing with the matter under a Limitation Act every day's explanation for such delay is inevitable. Above being the position, the present Miscellaneous application seeking for 37 days of delay in preferring the accompanying Writ Appeal without satisfying explanation of causing such delay cannot be entertained. The applicant has approached the Court in a very casual manner without giving even the explanation of the intervening periods of the events, and as such the present application is misconceived and same has been filed in such a casual manner that the same deserves to be rejected with heavy cost.*

It is stated that, there has been unexplained gap of 3 days starting from 12/11/2022 till 14/11/2022 and further the applicant also failed to explain the delay caused with effect from 16.12.2022 till 29.12.2022 in filing of the application and since the applicant is not able to properly explain the delay, it is prayed that the application may be dismissed with heavy cost.

[3] The Respondent No.2 has also filed reply to the application for condonation of delay. It is stated that the Writ Appeal itself is not maintainable as the appellant/applicant is aggrieved by an order passed in Contempt proceeding and the applicant ought to have filed a Contempt Appeal and hence, the present application may be dismissed on this ground of maintainability. It is also stated that the present applicant has no locus to file the contempt petition as well as the present appeal as he himself was participating in the said election by being a proposer of a candidate apart from being a voter enrolled in the said notify voter list. He further stated that the applicant is a chronic litigant and he has filed multiple writ petitions relating to the administration of the MPP and was acting as the General Secretary even after the Election Commission of India clarified that there was no office bearers of MPP which was legally not recognised by the ECI. Therefore, he prays that the application be dismissed as a threshold.

[3] Mr. S. Rupachandra, learned senior counsel for the applicant submits that there is no inordinate delay. The delay as pointed out by the respondents has been properly explained in the application. There is some confusion due to typographical mistake.

[4] Mr. A. Jagjit, learned counsel for Respondent No.1 says that there is no explanation for the period between 15.12.2022 to 30.12.2022 as given in Para 2 of the application. Hence, the application may be rejected on this ground.

[5] Mr. S. Rupachandra, learned senior counsel for the applicant/appellant submits that due to typographical mistake in the application, the time period from 01.12.2022 to 15.12.2022 should be between 01.12.2022 to 30.12.2022 and the same may be construed liberally in the interest of justice and prays that the delay in filing the accompanying Writ Appeal may be condoned.

[6] Mr. S. Biswajit, learned senior counsel for Respondent No.2 says that the Writ Appeal has been filed against the closer of the Contempt and the same is not maintainable in the present form and the application for condoning delay in connection with non-maintainable appeal ought to be thrown at the threshold.

[7] Heard the learned counsels for the parties and considered the rival submissions and materials on record.

The applicant has explained the time taken in filing the accompanying Writ Appeal and it is also clarified that there was a typographical mistake in the application and the date 15.12.2022 is to be read as 30.12.2022.

[8] The ground of non-maintainability of the Writ Appeal can be considered at the time of admission of the Writ Appeal and in the present application, the Court is to consider the explanation given by the applicant/appellant.

We do not find inordinate and unexplained delay on the part of the applicant in preferring the Writ Appeal and the delay of 37 days in filing the accompanying Writ Appeal is condoned and the application is allowed.

It is clarified that the respondents may raise the plea of maintainability of the Writ Appeal while considering the admission of the Writ Appeal.

[9] Accordingly, the Application being MC(W.A.) No.41 of 2023 is allowed.

[10] Registry is directed to register the Writ Appeal if the same is in order.

JUDGE

ACTING CHIEF JUSTICE

-Larson

FR/NFR