

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

M.C. (Rev. Pet.) No.6 of 2023

Ref:- Rev. Petn. No.7 of 2023

1. The State of Manipur represented by the Secretary (Power), Government of Manipur, P.O. & P.S. – Imphal, Pin No. – 795001.
2. The Chief Engineer (Power), Electricity Department, Government of Manipur, P.O. & P.S.- Imphal, Pin No. 795001.
3. The Administrative Officer (Power) Imphal, Government of Manipur, P.O. & P.S. – Imphal, Pin No. 795001.
4. The Manipur State Power Distribution Company Ltd. through its Managing Director, Government of Manipur, P.O. & P.S.- Imphal, Pin No. 795001.
5. The Manipur State Power Company Ltd., through its Managing Director, Government of Manipur, P.O. & P.S.- Imphal, Pin No. 795001.
6. The Chief Secretary (DP), Government of Manipur, P.O. & P.S. – Imphal, Pin No. 795001.

... APPLICANTS

-VERSUS-

1. Kabrabam Sanjoy Singh, aged about 39 years, S/O (L) K. Kameshor Singh who is Ex-Head Lineman in the Electricity Department, Government of Manipur of

Uripok Sorbol Thingel Kabrabam Leikai, P.O. & P.S.
Imphal, Imphal West District, Manipur.

2. Lentinhao Kom, aged about 33 years, S/O (L) Khomjir Kom who is Ex-JCC in the Electricity Department, Government of Manipur of Leimakhong, Sadar Hills, P.O. Mantripukhri, P.S. Gamnom Sapormeina, Kangpokpi District (Now Senapati District), Manipur.

... RESPONDENTS

BEFORE
HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the Applicants	::	Mr. S. Nepolean, GA
For the Respondents	::	Mr. S. Rupachandra, Sr. Adv.
Date of Hearing and reserving Judgment & Order	::	13.10.2023
Date of Judgment & Order	::	30.10.2023

JUDGMENT AND ORDER
(CAV)

Heard Mr. S. Nepolean, learned Government Advocate for the applicants and Mr. S. Rupachandra, the learned senior counsel for the respondents.

2. This miscellaneous case has been filed by the applicants under Section 5 of the Limitation Act read with Rule 4 of Chapter IX of the High Court of Manipur Rules, 2019 to condone the delay of 425 days in filing the review application.

3. Mr. S. Nepolean, the learned Government Advocate for the applicants submitted that soon after the receipt of the copy of the order dated 8.12.2021 passed in the writ petition, the Administrative Department processed the same for consideration for appointment of the writ petitioners under the die-in-harness scheme. In the process, the related file was referred to the Department of Personnel for its views. By the note dated 14.12.2022, the Department of Personnel returned the file by referring to the Office Memorandum dated 6.6.2007 and also requested the Administrative Department to take necessary action for reviewing the order dated 8.12.2021. Thereafter, the file was processed for filing a review application against the order dated 8.12.2021 and while processing the file, a delay of 463 days occurred. After deducting the statutory period and the period taken for obtaining the certified copy, there is a delay of 425 days in filing the review application.

4. The learned Government Advocate would submit that the said delay is neither wilful nor wanton nor deliberate. If the said delay is not condoned, the applicants would put to irreparable loss and damage. Since the State is the applicants, the Court should take a lenient view as the State represents collective cause of the community. Further, the applicants have a chance to

succeed in the review application. Thus, a prayer is made to condone the delay of 425 days in filing the review application.

5. Refuting the submissions of the learned Government Advocate, Mr. S. Rupachandra, the learned senior counsel for the respondents submitted that the Department of Personnel took more than nine months without whispering anything for reviewing the order stating that the related Office Memorandum was published on 9.7.2007. In fact, there is no mention in the miscellaneous case when the alleged publication was discovered. The Department of Personnel is not a party to the writ and they have never spelt out anything about it. The publication of Office Memorandum stated by the applicants is not applicable to the case of the respondents to the extent that the dates of applications submitted which are to be treated invalid was mentioned as applications submitted in between 15.6.2006 and 31.12.2006, whereas the respondents have submitted their applications on 7.11.2002 and 26.2.2008 respectively. No sufficient cause is shown for condoning the delay. On merits also, the applicants have no case for seeking review of the order dated 8.12.2021. Thus, a prayer has been made to dismiss the miscellaneous case.

6. This Court considered the rival submissions and also perused the materials available on record.

7. The applicants have filed the present miscellaneous case seeking to condone the delay of 425 days in filing the review application against the order dated 8.12.2021 passed in W.P.(C) No.1145 of 2018 on the ground that during the process of the file, the delay occurred. According to the applicants, the Administrative Department processed the order dated 8.12.2021 for appointment of the respondents under die-in-harness scheme. In the said process, the file was referred to the Department of Personnel and the Department of Personnel after examining the file returned the same stating that the finding of the High Court was mainly on the ground that the Office Memorandum dated 6.6.2007 was not notified for the knowledge of the general public. The Department of Personnel further stated that the Office Memorandum was published on 9.6.2007 in the local dailies and, as such, the Administrative Department may take necessary action for filing review application. Accordingly, the Administrative Department decided to file the review application against the order dated 8.12.2021.

8. On the other hand, the respondents contended that the Department of Personnel took nearly nine months' time to return the file. Moreover, the Department of Personnel is not a party to the writ petition and any opinion/view to be obtained from the Department of Personnel by the Administrative Department is an internal correspondence and the delay caused during the internal correspondence cannot be the sufficient cause for condoning the delay.

9. The applicants have explained the reasons for the delay in the present miscellaneous case as under:

8.12.2021	Judgment and order under review passed by this Court.
13.12.2021	Order of the Court dated 8.12.2021 was intimated by the office of the learned Advocate-General.
21.12.2021	Department of Administration put up the file to the Section Officer and in turn the Section Officer put up the file to the Under Secretary. The Under Secretary marked the file to the Section Officer with a note to put up the file along with records.
23.12.2021	Section Officer has put up the file along with relevant file to the Under Secretary.

	Thereafter, the file was processed on different dates i.e. 31.12.2021, 27.1.2022, 16.2.2022, 28.2.2022. On 4.3.20022, it was proposed to refer the file to the Department of Personnel for taking up further necessary action. On 7.3.2022, the file was referred to the Department of Personnel.
14.12.2022	The Deputy Secretary, Department of Personnel put up a note stating that the proposal of Power Department for appointment of the two petitioners were examined in DP's file and decided to request the Power Department to take necessary action for reviewing the order dated 8.12.2021.
19.12.2022	File put up to the Section Officer (Power) for approval along with draft letter to the Government Advocate (High Court) for filing review petition.
22.12.2022	The Secretary (Power) approved the same and Government Advocate was requested for taking necessary action for filing the review petition.
10.01.2023	Government Advocate (High Court) informed the Deputy Secretary (Power)

	for furnishing the certified copy of the order dated 8.12.2021.
09.02.2023	File was processed for obtaining the certified copy of the order dated 8.12.2021.
14.03.2023	Fair copy of the review petition sent to the Joint Secretary (Power) for signature.
17.03.2023	Review Petition filed

10. The learned counsel for the respondents submitted that the State has not shown any acceptable explanation for the delay and the State ought to have acted with reasonable diligence in prosecuting the review application.

11. Application under Section 5 of the Limitation Act is to be construed liberally so as to do substantial justice to the parties. In the present miscellaneous case, the applicants have stated the cause for the delay, which is the sufficient cause.

12. The question as to what would be held to be “sufficient cause” while considering the application for condonation of delay came up for consideration in the case ***Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar***

Academy and others, (2013) 12 SCC 649, wherein upon considering the obligation of the Court while dealing with an application for condonation of delay and the approach to be adopted while considering the grounds for condonation, the principles to be applied were summarized by the Hon'ble Supreme Court as under:

"21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) *There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.*

21.2. (ii) *The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.*

21.3. (iii) *Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*

21.4. (iv) *No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*

21.5. (v) *Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*

21.6. (vi) *It is to be kept in mind that adherence to strict proof should not*

affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) *The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

21.8. (viii) *There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

21.9. (ix) *The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*

21.10. (x) *If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*

21.11. (xi) *It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*

21.12. (xii) *The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is*

founded on objective reasoning and not on individual perception.

21.13. (xiii) *The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

13. In ***Collector, Land Acquisition, Anantnag and another v. Katiji and others***, (1987) 2 CC 107, the Hon'ble Supreme Court held:

"3. The legislature has conferred the power to condone delay by enacting Section 5 [Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.] of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice — that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal

approach is adopted on principle as it is realized that:

- “1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
- 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
- 3. “Every day's delay must be explained” does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*
- 4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*
- 5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*
- 6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the “State” which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the “State” is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression “sufficient cause”. So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time-barred, is therefore, set aside. Delay is

condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides.”

(emphasis supplied)

14. In ***State of Nagaland v. Lipok AO and others***, (2005) 3 SCC 752, the Hon'ble Supreme Court held thus:

“15. It is axiomatic that decisions are taken by officers/agencies proverbially at a slow pace and encumbered process of pushing the files from table to table and keeping it on the 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 a justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of the governmental

conditions would be cognizant to and requires adoption of pragmatic approach in justice-oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-à-vis private litigant could be laid to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal, needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while the State is an impersonal machinery working through its officers or servants.”

15. Refusal to condone the delay would result in denying the State in preferring the review application against the order dated 8.12.2021. There is no presumption that delay in approaching the Court is always deliberate. As held by the Hon'ble Supreme Court, the word "*sufficient cause*" under Section 5 of the Limitation Act should receive liberal construction so as to advance substantial justice.

16. The applicants are not to gain by delay. The reasons are spelt out in the present miscellaneous case. It is trite that if the technical considerations and cause for substantial justice are pitted against each other, the cause for substantial justice has to be sub-served.

17. Applying the aforesaid principles to the case on hand, it would be seen that the present miscellaneous case seeking condonation of delay spelt out the reasons for the delay in filing the review application and the reasons specified in that regard could not be held to be insufficient and no want of bona fides could have been imputed to the State. In the given facts and circumstances of the case, this Court is of the view that liberal approach has to be adopted in the present case and the delay has been sufficiently explained by the applicants by giving adequate

reasons. The present miscellaneous case ought not to be rejected on some hyper technical reasoning, as contended by the respondents. That apart, the applicants have shown sufficient cause for the delay.

18. For all the reasons stated above and having satisfied with the explanation for the delay, this Court is inclined to condone the delay of 425 days in filing the review application.

19. In the result, MC (Rev. Pet.) No.6 of 2023 in Review Petition No.7 of 2023 is allowed.

JUDGE

FR/NFR

Sushil