

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

MC(WA) No. 48 of 2020

Ref:- WP(C) No. 308 of 2015

1. The State of Manipur represented by the Chief Secretary, Government of Manipur, P.O. & P.S. Imphal West District, Manipur, Pin- 795001.
2. The Addl. Chief Secretary (Tribal Affairs & Hills), Government of Manipur, P.O. & P.S. Imphal, Imphal West District, Manipur, Pin- 795001.
3. The Commissioner (Rural Development and Panchayati Raj) to the Government of Manipur, P.O. & P.S. Imphal, Imphal West District, Manipur, Pin- 795001.
4. The Commissioner (Revenue) to the Government of Manipur, P.O. & P.S. Imphal, Imphal West District, Manipur, Pin- 795001.
5. The Principal Secretary (Finance) to the Government of Manipur, P.O. & P.S. Imphal, Imphal West District, Manipur, Pin- 795001.

.....Applicants

-Versus-

1. Shri Ch. Menaishim, aged about 45 years, S/o Ch. Angdong by occupation Chairman of Kambang Khunou Hill Village, Tengnoupal Sub-Division, P.O.

Pallel, P.S. Tengnoupal, Chandel District, Manipur,
Pin- 795127.

.....Respondent

2. The Deputy Secretary (Hill Areas Committee) Manipur
Legislative Assembly, P.O. & P.S. Imphal, Imphal West
District, Manipur, Pin-795001.

..... Proforma Respondent

MC(WA) No. 75 of 2021

Ref:- WP(C) No. 308 of 2015

1. The State of Manipur represented by the Chief
Secretary, Government of Manipur, P.O. & P.S. Imphal
West District, Manipur, Pin- 795001.
2. The Addl. Chief Secretary (Tribal Affairs & Hills),
Government of Manipur, P.O. & P.S. Imphal, Imphal
West District, Manipur, Pin- 795001.
3. The Commissioner (Rural Development and
Panchayati Raj) to the Government of Manipur, P.O. &
P.S. Imphal, Imphal West District, Manipur, Pin-
795001.
4. The Commissioner (Revenue) to the Government of
Manipur, P.O. & P.S. Imphal, Imphal West District,
Manipur, Pin- 795001.
5. The Principal Secretary (Finance) to the Government
of Manipur, P.O. & P.S. Imphal, Imphal West District,
Manipur, Pin- 795001.

.....Applicants

-Versus-

1. Shri Ch. Menaishim, aged about 45 years, S/o Ch. Angdong by occupation Chairman of Kambang Khunou Hill Village, Tengenoupal Sub-Division, P.O. Pallel, P.S. Tengenoupal, Chandel District, Manipur, Pin- 795127.

.....Respondent

2. The Deputy Secretary (Hill Areas Committee) Manipur Legislative Assembly, P.O. & P.S. Imphal, Imphal West District, Manipur, Pin-795001.

..... Proforma Respondent

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

For the Applicants :: Mr. M. Devananda, Addl. AG

For the Respondents :: Mrs. H. Bisheshwari, Advocate

Date of Hearing and
reserving Judgment & Order :: 23.02.2023

Date of Judgment & Order :: **13.03.2023**

JUDGMENT AND ORDER

(CAV)

(M.V. Muralidaran, Acting CJ)

Heard Mr. M. Devananda, learned Addl. AG for the petitioners and Mrs. H. Bisheshwari, the learned counsel for the first respondent.

2. MC (WA) No.48 of 2020 has been filed by the petitioners to condone the delay of 538 days in filing the writ appeal against the order dated 6.8.2018 passed in W.P.(C) No.308 of 2015.

3. MC (WA) No.75 of 2021 has been filed by the petitioners to stay the operation of the order dated 6.8.2018 passed in W.P.(C) No.308 of 2015.

4. Mr. M. Devananda, the learned Addl. AG submitted that the first respondent has filed the writ petition for a direction on the petitioners herein for payment of remuneration or allowances in favour of the members of the village authority of Kambang Khunou Village, who were duly appointed/elected by the villagers under the provisions of Manipur (Village Authorities in Hill Areas) Act, 1957 and related Rules, 1957, in view of their duties discharged under the statute. By the order dated 6.8.2018, the learned Single Judge disposed of the said writ petition with a direction to the respondent authorities therein to work out appropriate remuneration for the members of the Village Authorities not only in respect of Kabang Khunou village, but also in respect of all the other Village Authorities constituted under the Manipur (Village Authorities in Hill Areas) Act, 1957 in the State of Manipur who shall be paid remuneration and allowances as

fixed by the State respondents in this respect within a period of six months from the date of passing the said order.

5. The learned Addl. AG would submit that the order dated 6.8.2018 was communicated to the Government authority by the State counsel on 7.8.2018 and on 9.8.2018, the Deputy Secretary has put up the file to the Secretary (TA & Hills). On 22.10.2018, official correspondence was sent for placing the matter in the meeting of the Committee for consideration and, on 18.3.2019, the Additional Chief Secretary (TA & Hills) addressed a letter to the Chairman, Hill Areas Committee for necessary action. In the meanwhile, on 6.7.2019, the writ petitioner's counsel sent a legal notice for non-compliance of the order and, on 24.8.2019, Kuki Chiefs Association submitted a representation requesting for appointment of Secretary and Members of Village Authorities.

6. The learned Add. AG further submitted that the petitioners have received notice in Contempt Case No.142 of 2019 for non-compliance of the order and, on 18.2.2020, an order has been passed for preferring an appeal against the order dated 6.8.2018 and after applying the certified copy of the order and after obtaining of the same, on 6.3.2020, the appeal has been preferred with a delay of 578 days. After deducting the statutory

period of 30 days and the 10 days time gap between the application and obtaining the certified copy, there is a delay of 538 days in preferring the appeal.

7. According to the learned Addl. Advocate General, there was a necessity to put up the file to two major Departments i.e. TA & Hills Department and the Hills Areas Committee, Manipur Legislative Assembly, wherein meetings/discussions were to be convened and while processing the files, it takes much time. That apart, in between, there have been various Secretariat strikes from time to time in connection with the revision of pay and, therefore, the delay is neither willful nor wanton. Unless the delay of 538 days so caused in filing the appeal is not condoned and the appeal is taken up on its merit, the petitioners would be put to irreparable loss. Thus, a prayer has been made to condone the delay of 538 days in filing the writ appeal.

8. Per contra, Mrs. H. Bisheshwari, the learned counsel appearing for the contesting first respondent/writ petitioner submitted that after processing of the file by the Deputy Secretary (TA & Hills) and sent it to the Secretary (TA & Hills) on 9.8.2018, there is no proper explanation for the period from 10.8.2018 to 21.10.2018, 23.10.2018 to 17.03.2019, 19.03.2019

to 05.7.2019 and that the time taken by the petitioners from 9.8.2018 to 26.9.2019 to ascertain whether the matter pertains to Manipur Legislative Assembly or TA & Hills is not satisfactory. In fact, the decision to file an appeal was taken only after filing of the Contempt Case No.142 of 2019 only to evade the contempt proceedings. The 10 days' time between the filing of copy application and obtaining of the certified copy cannot be deducted, as the petitioners have filed the copy application only after the expiry of 30 days statutory period.

9. Mrs. H. Bisheshwari, the learned counsel for the first respondent further submitted that the petitioners cannot give lame excuses that there have been various Secretariat strikes from time to time in connection with the revision of pay etc. because it is an abuse of the process of law. Since the petitioners failed to satisfy the sufficient cause for the delay and the explanation given by the petitioners is not convincing, the learned counsel prayed for dismissal of the miscellaneous case.

10. We have considered the rival submissions and also perused the materials available on record.

11. The order in W.P.(C) No.308 of 2015 was made on 6.8.2018 and it is not the case of the petitioners that they have

no knowledge about the order dated 6.8.2018 passed in the writ petition. As per their own averments, the petitioners started communicating the order on 9.8.2018 itself and the official correspondences were also exchanged between them. According to the petitioners, only on 18.2.2020, an order was passed for preferring an appeal against the order dated 6.8.2018 passed in the writ petition.

12. It is pertinent to note that the petitioners themselves admitted that they have applied the certified copy of the order only on 25.2.2020 and obtained the same on 5.3.2020. At this juncture, it is pertinent to point out that it is the bounden duty of the Government authorities to instruct the State counsel to apply the certified copy of the order on the next date for preferring an appeal, if they aggrieved. In the case on hand, the petitioners have failed to do so, which will clearly prove that they have not taken due care even for applying the certified copy of the order of the learned Single Judge passed in the writ petition. Such an act of the petitioners is not appreciable.

13. Coming to the explanation offered by the petitioners for the delay occurred qua the time taken by the petitioners to ascertain whether the matter pertains to Manipur Legislative Assembly or TA & Hills is not the proper explanation for the delay.

The another explanation given by the petitioners that there have been various Secretariat strikes from time to time in connection with the revision of pay etc. is also not the proper explanation for the delay and such lame excuses given by the petitioners cannot be countenanced. As rightly argued by the learned counsel for the first respondent, faced with the contempt notice in Contempt Case No.142 of 2019, the petitioners have decided to file the writ appeal against the order dated 6.8.2018 and it is to be pointed out that they have applied the certified copy of the order only on 25.2.2020.

14. At this juncture, the learned Addl. Advocate General appearing for the petitioners argued that liberal approach has to be adopted in delay condonation application and refusal to condone the delay would cause serious prejudice to the petitioners. The aforesaid argument of the learned Addl. Advocate General cannot be countenanced for the simple reason that the petitioners have failed to explain the delay so caused and the explanation given for the delay in filing the appeal is not satisfactory.

15. It appears that the affidavit filed in support of the petition, does not disclose sufficient cause for condonation of such huge delay. As stated supra, it is simply stated that

because of the time taken to ascertain whether the matter pertains to Manipur Legislative Assembly or TA & Hills and there have been various Secretariat strikes from time to time, the petitioners are unable to file the appeal in time. Nothing has been produced by the petitioners to prove the same. Further, the aforesaid explanation cannot be the reason for not preferring the appeal within the statutory period of limitation.

16. Under Section 5 of the Limitation Act, it is only sufficiency of the cause that matters and not the length and breadth of the delay. While dealing with the Section 5 application, the question of diligence or bonafides are to be considered.

17. It is settled law that length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Admittedly, in the case on hand, the explanation offered by the petitioners is not satisfactory.

18. The Hon'ble Supreme Court in the case of ***Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and others, 2013 (5) CTC 547 (SC)*** held that

there should be a liberal, pragmatic, justice oriented, non-pedantic approach while dealing with an application for condonation of delay. The Hon'ble Supreme Court referred to its earlier judgments in *G. Ramegowda, Major and others v. Special Land Acquisition Officer, Bangalore*, 1988 (2) SCC 142; *O.P. Kathpallia v. Lakhmir Singh (dead) and others*, 1984 (4) SCC 66; *State of Nagaland v. Lipok AO and others*, 2005 (3) SCC 752; *New India Insurance Co. Ltd. v. Shanti Misra*, 1975 (2) SCC 840; *Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation and another*, 2010 (5) SCC 459, which declared that the Court should be liberal in dealing with condone delay petition. In paragraphs 15 and 16, the Hon'ble Supreme Court held thus:

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

- (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.*
- (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.*
- (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*
- (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.*
- (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*
 - (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.*
 - (vii) The concept of liberal approach has to en capsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.*
 - (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 <http://www.judis.nic.in> one warrants strict approach whereas the second calls for a liberal delineation.*
 - (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.*
 - (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.*
 - (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.*
 - (xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*
 - (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.*

16. *To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:*

(a) An Application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the Courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

(b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challan manner requires to be curbed, of course, within legal parameters."

19. In ***Esha Bhattacharjee***, supra, the Hon'ble Supreme Court referred to some of its judgments regarding Law of Limitation. It may be useful to extract paragraphs 10, 11 and 12, which read as follows:

"10. In this context, we may refer with profit to the authority in Oriental Aroma Chemical Industries Limited v. Gujarat Industrial Development Corporation and another, 2010

(5) SCC 459, where a Two-Judge Bench of this Court has observed that 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. Thereafter, the learned Judges proceeded to state that this Court has justifiably advocated adoption of liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate.

11. In Improvement Trust, Ludhiana v. Ujagar Singh and others, 2010 (6) SCC 786, it has been held that while considering an Application for condonation of delay no straitjacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not. It has been further stated therein that each case has to be weighed from its facts and

the circumstances in which the party acts and behaves.

12. A reference to the principle stated in Balwant Singh (dead) v. Jagdish Singh and others, 2010 (8) SCC 685 would be quite fruitful. In the said case the Court referred to the pronouncements in Union of India v. Ram Charan, AIR 1964 SC 215; P.K. Ramachandran v. State of Kerala, 1997 (2) CTC 663 (SC) : 1997 (7) SCC 556; and Katari Suryanarayana v. Koppiseti Subba Rao, 2009 (4) CTC 286 (SC): 2009 (11) SCC 183 and stated thus:

“We may state that even if the term sufficient cause has to receive liberal construction, it must squarely fall within the concept of reasonable time and proper conduct of the party concerned. The purpose of introducing liberal construction normally is to introduce the concept of reasonableness as it is understood in its general connotation.

The Law of Limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done

to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly."

20. In ***Maniben Devaraj Shah v. Municipal Corporation of Brihan Mumbai***, (2012) 5 SCC 157, the Hon'ble Supreme Court held thus:

"24. What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.

21. In ***Maniben Devaraj Shah***, supra, the Hon'ble Supreme Court, upon perusal of the application for condonation of delay and the affidavit on record, came to hold that certain necessary facts were conspicuously silent and, accordingly,

reversed the decision of the High Court which had condoned the delay of more than seven years. In the present case, the delay is more than one-and-half years.

22. As stated supra, in the present case, the explanation for the delay given by the petitioners is not acceptable. Though liberal approach is to be taken in a petition under Section 5 of the Limitation Act, the petitioners have not shown semblance of bona fide for the delay on their part in preferring the writ appeal within the period of limitation.

23. We are in full agreement with the proposition that refusal to condone the delay would result foreclosing a suitor from putting forth his cause and there is no presumption that delay in approaching the Court is always deliberate. But at the same time the other side should not be suffered.

24. In the instant case, the first respondent has filed the writ petition seeking for a direction on the petitioners for payment of remuneration in favour of the members of the Village Authority of Kambang Khunou Village, who were duly appointed by the villagers under the provisions of the Manipur (Village Authorities in Hill Areas) Act, 1957 and related Rules, 1957, in view of the duties discharged under the statute. Though the petitioners have resisted the writ petition contending that neither the Act nor the

Rules provide for payment of remuneration to the members of the Village Authority, having found that the said explanation given by the petitioners is unacceptable for the reason that no authority who is exercising certain statutory duties of certain body created by the statute should be deprived of any such remuneration unless specifically stated to that effect in the statute, the learned Single Judge of this Court held that it is the duty of the State Government to give adequate remuneration commensurate with the status and duties discharged by the members of the Village Authorities constituted under the Act.

25. On a reading of the order of the learned Single Judge, we find that taking note of the duties discharged by the members of the Village Authorities constituted under the Act, the learned Single Judge directed the authorities of the State Government, the petitioners herein, to work out appropriate remuneration for the members of the Village Authorities not only in respect of Kambang Khunou village but also in respect of all the other Village Authorities constituted under the Act in the State of Manipur. We find that the learned Single Judge after considering the larger interest involved has issued such a direction and we find no fault in it, as the petitioners herein have failed to substantiate their plea. However, they had filed the writ

appeal on their own with a delay of 538 days without showing the sufficient cause.

26. It is to be pointed out that if a litigant chooses to approach the Court long after the time prescribed under the relevant provisions of law, he/she cannot say that no prejudice would be caused to the other side by the delay being condoned. The other side would have in all probability destroyed the records thinking that the records would not be relevant as there was no further proceedings in the matter.

27. In the case on hand, the length of the delay is a relevant matter to be taken into account while considering whether the delay should be condoned or not. Further, the failure of the petitioners in applying the certified copy of the order of the learned Single Judge would disentitle for condonation of the delay. It is not open to any litigant to fix his own period of limitation for instituting proceedings for which law has prescribed periods of limitation.

28. From a reading of the averments, it is seen that the petition seeking to condone the delay of 538 days has been filed in a casual manner without giving proper reasons, much less

acceptable reasons and, therefore, the same cannot be sustained in law.

29. At the cost of repetition, it is reiterated that the petitioners have not shown sufficient cause to condone the delay as contemplated in the decisions of the Hon'ble Supreme Court, *supra*. The petitioners are seriously lacking to apply the provision of Section 5 of the Limitation Act, as the affidavit filed by the petitioners in support of the petition is very vague and bereft of material particulars without any convincing explanation for the period commencing from the date of the order passed and/or the expiry of statutory period till the date of filing of the petition. In the case on hand, the inordinate delay of 538 days in filing the appeal has not been properly explained by the petitioners.

30. Applying the ratio laid down by the Hon'ble Supreme Court to the facts and circumstances of the case on hand, we are of the view that the petitioners have failed to explain each and every day delay and the explanation given by the petitioners is not convincing and only to maintain the present petition, the petitioners have invented such explanation.

31. For the foregoing discussions, MC (WA) No.48 of 2020 is dismissed. In view of the dismissal of MC (WA) No.48 of

2020, the question of considering the stay of operation of the order of the learned Single Judge in W.P.(C) No.308 of 2015, dated 6.8.2018 does not arise. Accordingly, MC (WA) No.75 of 2021 fails and it is also dismissed. No costs.

JUDGE

ACTING CHIEF JUSTICE

FR/NFR

Sushil