

Item No.12

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

MC(Review Pet.)No.37 of 2019
Ref: Review Pet./2019

1. The State of Manipur through the Principal Secretary (Finance), Government of Manipur PO & PS Imphal, Imphal West District, Pin-795001.
2. The Chairman, High Powered Committee, Government of Manipur PO & PS Imphal, Imphal West District, Pin-795001.
3. The Commissioner (Power) Government of Manipur PO & PS Imphal, Imphal West District, Pin 795001.
4. The Under Secretary (Finance)/PIC), Government of Manipur PO & PS Imphal, Imphal West District, Pin-795001.
5. The Managing Director, Manipur State Power Supply Corporation Limited PO & PS Imphal, Pin-795001, Manipur

Applicants.

- Versus -

1. Shri Soubam Premananda Singh, aged about 65 years old, S/o (L) S. Ibochouba Singh of Moirang Kampu Tinsid Road, PO & PS Porompat, Imphal East District, Manipur
2. Smt. Lalzawni, aged about 65 years, w/o V. L. Mawia, Former Under Secretary (Power), Government of Manipur, PO & PS Imphal, Pin-

795001 at present residing at Hmuia Veng, Tiddim Road,
Churachandpur-795128, Manipur

...Respondents

BEFORE
HON'BLE THE ACTING CHIEF JUSTICE MR. M.V.MURALIDARAN
ORDER

13.10.2023

[1] Heard Mr. H. Samarjit, learned Government Advocate for the applicants and Ms. N. Prista, learned counsel junior to Mr.S. Biswajit Meitei, learned counsel for the respondents.

[2] These miscellaneous cases have been filed by the applicants to condone the delay of 973 days in filing the review petition to review the common order dated 7.3.2017 passed in W.P.(C) 546 of 2012.

[3] Mr. H. Samarjit, the learned Government Advocate appearing for the applicants submitted that as soon as the order dated 7.3.2017 passed in the writ petitions, the Finance Department issued notice dated 10.4.2017 stating that a meeting of the High Powered Committee under the Manipur Public Servants' Personal Liability Rules, 2006 will be held on 10.4.2017 at 5.00 P.M. in the Chamber of the Chief Secretary, Government of Manipur to consider the irregularities in release of CDA by the Power Department and requested all the members to make it convenient to attend

the meeting. Accordingly, the meeting was held and, in the meeting, it was decided to initiate fresh enquiry in terms of Personal Liability Act, 2006 and the Rules framed thereunder against the alleged officers.

[4] The learned Government Advocate further submitted that the Committee vide its letter dated 29.4.2017 addressed to the Senior Government Advocate, Manipur High Court, requested to take necessary action for filing appropriate application for modification of the order and, accordingly, discussions were held with the Senior Government Advocate and, in that process, the delay occurred in filing the review application. According to the learned Government Advocate, the delay is neither willful nor wanton. In view of the larger public interest involving misappropriation of money from the public exchequer, this Court may condone the delay by taking a lenient view and decide the matter on merits.

[5] Per contra, the learned counsel for the respondents/writ petitioners submitted that no sufficient cause has been shown for the inordinate delay. The alleged explanation given by the applicants is concocted and the same cannot be entertained.

[6] Insofar as the merit of the review application is concerned, the learned counsel for the writ petitioners submitted that the present review application is arising out of the common order dated 7.3.2017 passed in a

batch of writ petitions. In some of the writ petitions in the said batch, the State has already filed review applications and, this Court, vide common order dated 21.10.2022, dismissed all the review applications holding that there was no ground to review the order dated 7.3.2017.

[7] The learned counsel urged that only to delay the direction given by this Court dated 7.3.2017 in the writ petitions, the applicants have filed the present review application with an application for condonation of the delay. The delay is very huge and no proper explanation is given. Therefore, both the miscellaneous case and the review application are liable to be dismissed.

[8] This Court considered the rival submissions and also perused the materials available on record.

[9] The applicants have filed the present miscellaneous case to condone the delay of 973 days in filing the review application. The reasons for delay in filing the review application have been set out by the applicants in the affidavit filed in support of the application and the same read thus:

- On 7.3.2017, this Court passed order in the writ petitions.
- The last week of March (on different dates), the Finance Department received certified copies of the order from different counsels who had appeared in the 29 writ petitions.

- All the cases relating to recovery to be made from the officials as per the decision of the High Powered Committee were conducted by a private counsel, namely Shri Ibotombi Namoiyam, senior advocate engaged by the State Government. As such, all the files relating to all the writ petitions were in the custody of the said senior advocate. Therefore, necessary process for consideration of this Court's order cannot be initiated immediately.
- On 1.4.2017, File was processed for placing the matter before the High Powered Committee.
- On 10.4.2017, meeting of the High Powered Committee was held wherein it was decided to hold fresh enquiry.
- On 18.4.2017, the Minutes of Meeting dated 10.4.2017 was circulated to all concerned.
- From 20.4.2017 to 28.4.2017, the matter was considered thoroughly and finally decided to file an appropriate application for modification of the order dated 7.3.2017.
- From 30.4.2017 to 21.5.2017, discussions and deliberations on the matter held with the Senior Government Advocate with the relevant case records and the Files.
- On 22.5.2017 and 23.5.2017 – certified copies of the order passed in the writ petitions were applied.

- The office of the Government Advocate (High Court), Manipur has taken time for preparation of the review applications.
- On 22.7.2019, as many as 5 review petitions being W.P.(C) No.17 of 2017; 33 to 36 of 2017 along with 2 or 3 writ petitions were transferred to the office of the Additional Advocate General to conduct the case.
- On 8.11.2019, the case was listed for argument. At the time of conducting the case, it has been discovered that only 5 review petitions have been filed by the State Government.
- On 9.11.2019, the present conducting counsel has apprised the fact of non-filing of the review petitions in the remaining cases to the Chief Secretary, Government of Manipur.
- On 20.11.2019, the present counsel has written to the Additional Government Advocate as well as the Commissioner (Power) requisitioning the case records.
- Since the Additional Government Advocate has not furnished the case records, the present conducting counsel obtained information about the remaining case records from the Registry.

- On 2.12.2019, draft review applications along with miscellaneous cases for condonation of delay have been sent for vetting.
- On 5.12.2019, the review applications along with miscellaneous cases have been filed in Court.

[10] Admittedly, the aforesaid reasons stated by the applicants are not satisfactory. The aforesaid explanation of the applicants would itself show that they have not taken keen interest between the years 2017-2019 for filing the review application. In fact, each and everyday delay has not been properly explained by the applicants.

[11] When the applicant has not come to the Court with clean hands and when the affidavit is devoid of truth lacking in bona fide, the rule of liberal approach formula cannot be adopted in matters relating to condonation of delay.

[12] If a litigant chooses to approach the Court long after the time prescribed under the relevant provisions of the law, he 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. Each case has to be decided on the facts and circumstances of the case. Length of the delay is a relevant matter to be taken into account while considering whether the delay should be condoned or not. It is not open to any litigant to fix his own period of limitation for institution of proceedings for which law has prescribed periods of limitation.

[13] The word "*sufficient cause*" cannot be construed liberally merely because the party in default is the Government. In order to take a practical view of the working of a Government to the slow motion process of its wheels, there must be sufficient explanation from the source at which the delay occurred and the reasons for such delay. In the absence of satisfactory explanation of the delay by the Government the delay need not be condoned.

[14] "*Sufficient cause*" must be a cause which is beyond the control of the party invoking the aid of the Section. A cause for delay, which a party could have avoided by the exercise of due care and attention cannot be a sufficient cause. In other words, in showing sufficient cause for condoning the delay, the party may be called upon to explain for the whole of the delay covered by the period between the last day prescribed for filing the review and the day on which the review is filed. As stated supra,

between 2017 and 2019, the applicants have not shown much interest in taking steps to file the review application.

[15] In *Postmaster General and Others Vs. Living Media India Limited and another*, (2012) 3 SCC 563, the Apex Court held as under:

"29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay."

[16] While considering the application under Section 5 of Limitation Act, the Court has to examine whether there was sufficient cause to

condone the delay and whether the delay has been satisfactorily explained. As stated supra, the explanation offered by the applicants is not satisfactory. According to the applicants, the certified copy itself was applied after two months, which itself shows that the applicants have not shown keen interest in the matter. In view of the above, the matter cannot be liberally considered in condoning the delay.

[17] Elaborately dealing with the subject and holding that proof of sufficient cause is condition precedent for exercising extraordinary discretion vested in the Court and what counts is not the length of delay, but sufficiency of the cause and observing that what constituted sufficient cause cannot be laid down by hard and fast rules, in *State of Nagaland Vs. Lipok Ao and others*, reported in (2005) 3 SCC 752, the Apex Court held that the expression '*sufficient cause*' should be considered with pragmatism in a justice oriented approach rather than the technical objection of sufficient cause for explaining every day's delay.

[18] In the instant case, the cause shown by the applicants herein is not sufficient to condone the delay. Further, each and every day delay has not been properly explained by the applicants. Since the applicants have failed to explain the delay properly and the explanation given by them is not convincing and also the fact remains that the delay is about 973 days,

this Court is of the considered view that such an inordinate delay cannot be condoned.

[19] It is pertinent to note that similar review applications with applications for condonation of delay in MC (Review Pet.) Nos.25, 29 and 34 of 2019 came up for consideration before this Court. This Court, vide common order dated 2.8.2023, dismissed the said MC (Review Pet.) Nos.25, 29 and 34 of 2019 holding that the methodology adopted by the State Government is not appreciable. Further, in the said order, it has been pointed out that filing of review applications after the dismissal of the similar set of review applications which would arise out of the same order by the State Government amounts to an abuse of process of Court. In paragraphs 19 and 20 of the order dated 2.8.2023, this Court held as under:

“19. It appears that as against the order in some of the writ petitions which were disposed under the common order dated 7.3.2017, the State had filed review applications bearing Review Application Nos.17, 33, 34, 35 and 36 of 2017. The said review applications were heard by this Court along with W.P.(C) No.524 of 2018. By the common order dated 21.10.2022, this Court dismissed all the review applications. While dismissing the review applications, this Court, in paragraphs 35 and 36, observed as under:

“35. Admittedly, the respondent State is wants this court to re-hear the writ petitions in the nature of appeal. It at all they have aggrieved, they ought to have filed an appeal. Having given consent for setting aside the orders impugned in W.P.(C) No.538 of 2022 etc. batch, the review petitioners now cannot plead that there is an error in the order dated 7.3.2017. As

stated supra, since the order passed in the writ petitions is a consensual order, as mutually agreed by all the parties in the open Court, there is no ground to file review petitions to review and/or modify the order dated 7.3.2017 passed in W.P.(C) No.538 of 2017 etc. batch.

36. The subsequent Minutes of the meeting of the High Powered Committee dated 10.4.2017 and issuance of notice dated 2.5.2017 is not a ground for reviewing the order dated 7.3.2017 passed in W.P.No538 of 2012 etc. batch. Further, the respondent State/review petitioners by these review petitions totally turned the order dated 7.3.2017 passed in W.P.(C) No.538 of 2012 only in their favour even though the Government Order dated 3.8.2012 which was challenged by the writ petitioners in W.P.(C) No.538 of 2012 was set aside with the consent of the respective counsel. In view of the above, the review petitions are liable to be dismissed, as there is no error apparent on the face of the record. More so, the order under review was passed by consent of the parties to the writ proceedings.”

20. It is to be noted that as against the order dated 21.10.2022 passed in the aforesaid review applications along with the writ petition, no appeal has been preferred by the State and allowed the said order to attain finality. Once this Court has taken a view that the order dated 7.3.2017 is a consensual order/mutually agreed by the parties in open Court and no review and/or modification would lie against the said order, the similar is the view herein also. The judicial propriety is also to follow the earlier view taken by this Court. That apart, filing of the review applications after the dismissal of the similar set of review applications which arose out the same order by the State Government amounted to an abuse of process of Court. In fact, knowing fully well that the connected review applications were already dismissed by this Court under order dated 21.10.2022, still the State wants to pursue the review applications filed with a huge delay of 973 days. Such

methodology adopted by the State Government is not appreciable. Therefore, this Court is of the view that the filing of the present review applications by the State along with applications for condonation of the inordinate delay is for the purpose of re-hearing the disposed writ petitions, which cannot be permitted, as the order under review is a mutually agreed order by the parties. There is also no merit in the review applications and therefore, the review applications are liable to be dismissed.”

[20] The aforesaid observation made in the order dated 2.8.2023 passed in Miscellaneous Case (Rev. Pet.) Nos. 25, 29 and 34 of 2019 is squarely apply to the present miscellaneous case, as the order which was sought to be reviewed by the State in the present review application is covered with the common order dated 7.3.2017. The State cannot file review application for re-hearing of the disposed writ petition, as the said order is a mutually agreed order by the parties. On overall analysis, this Court is of the view that no sufficient cause is shown by the State for condonation of the inordinate delay and also there are no valid grounds to review the order passed in the writ petition, being W.P.(C) No.546 of 2012. Thus, the present miscellaneous case and the review application are liable to be dismissed.

[21] In the result, M.C. (Review Pet.) No.37 of 2019 is dismissed. Consequently, the review application SR is rejected. There will be no order as to costs.

ACTING CHIEF JUSTICE

John Kom