

Serial No. 04
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 35 of 2023

Date of Decision: 15.11.2023

Smti. Tharsita R. Marak

Vs.

G.H.A.D.C & 4 Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Chief Justice (Acting)

Appearance:

For the Petitioner/Appellant(s) : Mr. P.T. Sangma, Adv.

For the Respondent(s) : Mr. S. Dey, SC GHADC (For R 1-3)
Mr. A.G. Momin, Adv. (For R 4 & 5)

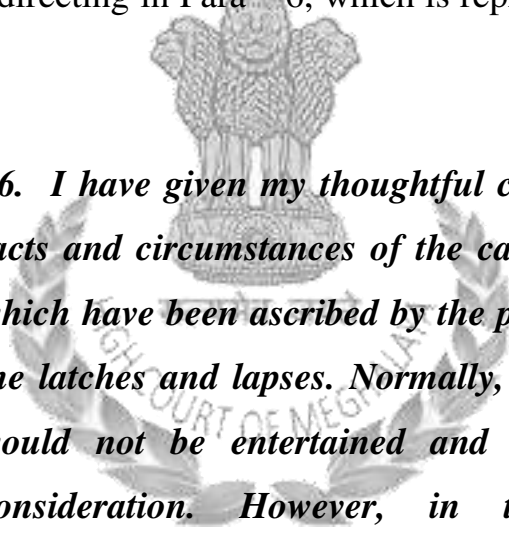
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| i) | Whether approved for reporting in Law journals etc.: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |

Oral:

1. Without dwelling on the facts of the case, the short point in question in this writ petition is the legality of the impugned order dated 14.12.2022, passed by the respondent No. 2, whereby delay was condoned without any application for the same, in the face of an order

of this Court dated 09.07.2019, passed in WP(C) No. 150 of 2017. In that writ petition, the respondents No. 4 and 5 herein, had assailed the orders passed by the respondents No. 2 and 3, which has been passed in connection with a Nokma dispute of an Akhing known as Wakso IV 51(A) belonging to the Rangso clan, wherein they had failed to contest the matter in both the forums before the respondents No. 2 and 3.

2. This Court, then by the order dated 09.07.2019, had disposed of the matter by directing in Para — 6, which is reproduced herein below as follows.



“6. I have given my thoughtful consideration to the facts and circumstances of the case and the reasons which have been ascribed by the petitioner to explain the latches and lapses. Normally, petitions like these would not be entertained and would deserve no consideration. However, in the instant case considering the situation of the petitioner who is illiterate, and in the interest of justice, in spite of the fact that much time has elapsed since passing of the impugned orders, the writ petitioner is permitted to go before the Chief Executive Member, G.H.A.D.C. by way of an application seeking condonation for the long delay and seek for recall of the order dated 12th March 2010 for re hearing of the appeal. The Chief Executive Member in his discretion shall examine the

same on its merit and pass orders thereon. It is made clear that the impugned orders herein shall not be disturbed till the proceedings are finally concluded. It is further made clear that this case will not serve as a precedent in other similar matters.”

3. Thereafter it appears, the respondents No. 4 and 5, approached the respondent No. 2 on 14.08.2019, but did not prefer an application for condonation as directed by this Court, nor was an application for recall of the order dated 12.03.2010, for re-hearing the appeal filed, but instead filed a Misc. Appeal, without any specific prayer, nor reasons for the delay in filing the application was filed. This fact has been recorded in the impugned order dated 14.12.2022, which however, inspite of these lapses, the delay was condoned and the respondents No. 4 and 5 herein, allowed to file an application for recall of the order dated 12.03.2010. Para – 7 and 8 of the impugned order, which is relevant is reproduced herein below.

“7. In spite of Hon’ble High Court direction in its order dated 09.07.2019 the counsel for the appellants have chosen to file this Misc. appeal petition dated 14th August 2019 only and no application for condonation of delay. Appeal petition would not be necessary if he files a petition for recalling order dated 12th March

2010 of the CEM as directed by the Hon'ble High (sic). However, the counsel for the appellants have chosen to file this Misc. appeal petition only wherein he without any specific prayer or commitment uttered words like condonation or recall, there is no mention how many days of delay to be condoned and no reasons for such long delay provided. Section 5 of limitation strictly entails all these things to be specifically mentioned delay of each day should be properly explained. Appellants also willfully omitted to file a separate petition to recall the order dated 12th March 2010 of the CEM which cannot be simply overlooked by this Court when there is a standing order of the Hon'ble High Court.

8. The above being the situation of the case therefore this Court viewed all these things in mind and consider that legally these lapses cannot be condoned yet looking at the difficulties and problems being faced by the appellants due to illiteracy and poverty hence this Court relieve the appellants who should not suffer due to faults and slackness of the counsel hence the delay is condoned to enable the appellants to file a recall petition of the order dated 12.3.2010 of the CEM however with cost of Rs.3,000/- for causing prolonged delay in disposal of this case. This amount shall be paid to the respondents. Further it is also directed that

appellants are to file a petition to recall the order dated 12.3.2010 strictly within 15 days of this order.”

4. Looking into the entire facts and circumstances of the case, it can be clearly seen that the respondents No. 4 and 5, have not complied with the orders of this Court dated 09.07.2019, while approaching the respondent No. 2, and the respondent No. 2, also in a summary manner without considering the matter in its correct perspective, especially the order of this Court, had passed the impugned order. On the face of the record itself, the impugned order is unsustainable and is liable to be set aside.

5. Accordingly, it is directed that, the respondents No. 4 and 5 are to strictly abide by the order dated 14.07.2019, by filing an appropriate application before the respondent No. 2, who shall on receipt of the said applications after due notice to the petitioner herein, shall decide the matter afresh, in accordance with law.

6. As observed above, the impugned order is set aside and quashed, and the respondents No. 4 and 5 are directed to file the applications as allowed by order dated 14.07.2019, within 6(six) weeks' from today.

7. Matter stands allowed to the extent indicated above, and is accordingly disposed of.

Chief Justice (Acting)

Meghalaya
15.11.2023
"D.Thabab-PS"

