

GAHC040015212022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : Review Pet. 12/2022

1: The Union of India and 3 Ors.
Through Cabinet Secretary to the Govt. of India, New Delhi

2: The Secretary
Ministry of Defence
Govt. of India
New Delhi.

3: The Director General
Defence Estates
RakshaSampada Bhawan
Ulaanbaatar Road
Ministry of Defence
Delhi Cantt. 110010

4: The Commanding Officer
23rd Grenadier Regiment
Tuting Camp
Upper Siang District
Arunachal Pradesh

VERSUS

1: Kesang Dorjee and 31 Ors.
S/o Lt. Ten Dorjee, Vill Bona, PO and PS Tuting, Dist. Upper Siang, Arunachal Pradesh.

2: Ngroup Dorjee
S/o Lt. Nima Norbu

R/o Vil. Bona

PO and PS Tuting
Dist. Upper Siang
Arunachal Pradesh.

3:Kejang Dorjee
S/o Lt. Purpa Tsering

R/o Vill Bona
PO and PS Tuting
Dist. Upper Siang
Arunachal Pradesh.

4:Pema Wanchen
S/o Mindu

R/o Vill Bona
PO and PS Tuting
Dist. Upper Siang
Arunachal Pradesh.

5:Tsering Tsomo
S/o Lt. Tsering Cheje

R/o Vill Bona
PO and PS Tuting
Dist. Upper Sang
Arunachal Pradesh.

6:Kunjang Tsomo
S/o Lt. Nima Norbu

R/o Vill Bona
PO and PS Tuting
Dist. Upper Siang
Arunachal Pradesh.

7:Tashi Dorjee Kampa
S/o Lt. Tasi

R/o Vill Bona
PO and PS Tuting
Dist. Upper Siang
Arunachal Pradesh.

8:Londur Mayung
S/o Lt. Nakpola

R/o Vill Bona
PO and PS Tuting
Dist. Upper Siang
Arunachal Pradesh.

9:Sangje Dorje
S/o Lt. Nima Norbu

R/o Vill Bona
PO and PS Tuting
Dist. Upper Siang
Arunachal Pradesh.

10:Dorjee Jurme
S/o Shri Kesang Dorjee

R/o Vill Bona
PO and PS Tuting
Dist. Upper Siang
Arunachal Pradesh.

11:Gajong Bomong
S/o Lt. Nima Bomong

R/o Vill Mayung
PO and PS Tuting
Dist. Upper Siang
Arunachal Pradesh.

12:Jobang Taron
S/o Lt. P. Taron
R/o Vill Mayung
PO and PS Tuting
Dist. Upper Siang
Arunachal Pradesh.

13:Anchut Mayung
S/o Lt. Baring Mayung

R/o Vil Mayung
PO and PS Tuting
Dist. Upper Siang
Arunachal Pradesh.

14:Chenga Mayung
S/o Lt. Nakpo Mayung

R/o Vill Mayung
PO and PS Tuting
Dist. Upper Siang
Arunachal Pradesh.

15:Chelling Bomong
S/o Lt. Kaki Bomong

R/o Vill Mayung
PO and PS Tuting
Dist. Upper Siang
Arunachal Pradesh.

16:Nyolo Bomong
S/o Lt. Kibo Bomong

R/o Vill Mayung
PO and PS Tuting
Dist. Upper Siang
Arunachal Pradesh.

17:Halung Doron
S/o Lt. Galuk Doron

R/o Vill Mayung
PO and PS Tuting
Dist. Upper Siang
Arunachal Pradesh.

18:Rajong Bomong
S/o Lt. Moje Bomong

R/o Vill Mayung
PO and PS Tuting

Dist. Upper Siang
Arunachal Pradesh.

19:Namsay Doron
S/o Lt. Sange Doron

R/o Vill Mayung
PO and PS Tuting
Dist. Upper Siang
Arunachal Pradesh.

20:Akkang Medo
S/o Lt. Tasi Bomong

R/o Vil Mayung
PO and PS Tuting
Dist. Upper Siang
Arunachal Pradesh.

21:Parden Mayung
S/o Lt. Tasi Bomong

R/o Vill Mayung
PO and PS Tuting
Dist. Upper Siang
Arunachal Pradesh.

22:Naleng Sibbo
S/o Lt. Kuyit Sibbo

R/o Vill Mayung
PO and PS Tuting
Dist. Upper Siang
Arunachal Pradesh.

23:Dugging Mayung
S/o Lt. Tensing Mayung

R/o Vill Mayung
PO and PS Tuting
Dist. Upper Siang
Arunachal Pradesh.

24:Gepak Sibo
S/o Lt. Kuyit Sibo

R/o Vill Mayung

PO and PS Tuting
Dist. Upper Siang
Arunachal Pradesh.

25:The Principal Director
Defence Estates Eastern Command
Ministry of Defence
13 Camac Street
7th Floor
Kolkata 70017.

26:The Director
Directorate of Defence Estates
Ministry of Defence
Eastern Command
13 Camac Street
7th Floor
Kolkata 700013

27:The Defence Estates Officer
Itanagar Circle
Model Village Naharlagun
Arunachal Pradesh. 791110

28:The State of Arunachal Pradesh
Represented by the Chief Secretary
Govt. of Arunachal Pradesh
Itanagar.

29:The Secretary
Land Management
Govt. of Arunachal Pradesh
Itanagar.

30:The Deputy Commissioner
Yingkiong

Upper Siang District
Arunachal Pradesh.

31:The Addl. Deputy Commissioner
Tuting
Upper Siang District
Arunachal Pradesh.

32:The District Land Record and Settlement Officer
Yingkiong
Upper Siang District

Advocate for the Petitioner : Marto Kato

Advocate for the Respondent : Nikita Danggen

BEFORE

HON'BLE MR. JUSTICE NELSON SAILO

HON'BLE MRS. JUSTICE MARLI VANKUNG

Dates of hearing : **28.02.2023 &
02.03.2023**

Date of judgment : **09.03.2023**

JUDGMENT & ORDER (CAV)

(Nelson Sailo, J)

Heard Mr. Y.Doloi, learned Senior Panel Counsel for the Review Petitioners, Ms. N. Danggen, learned counsel appearing for the respondent Nos. 1-24 and Ms. K. Wangmo, learned Government Advocate for the State respondents through online mode.

[2]. By filing this review petition, the petitioners have sought review of the Order dated 16.11.2022 passed by this Court in IA(C) No.65/2022, by which the said Interlocutory Application was dismissed. Be it stated herein that IA(C) No. 65 of 2022 was filed by the petitioners seeking condonation of 824 days delay in filing the connected writ appeal against the Judgment & Order dated 18.12.2019 passed by the learned Single Judge in WP(C) No. 181(AP)/2019.

[3]. To begin with his submission, Mr. Y. Doloi, learned Senior Panel Counsel has drawn our attention to paragraph Nos. 3 and 4 of the order sought to be reviewed to contend that due to the prevailing Covid-19 Pandemic at the relevant time, there was restriction of movement and further, due to landslide, the road connectivity from Tuting to Yingkiong was disturbed from 4.10.2020 to 15.10.2020 and because of which, the department could not take prompt steps for filing the writ appeal. He also submits that the petitioners at the initial stage made attempts to comply with the direction of Writ Court by initiating processes, such as survey and verification of area of land concerned but after getting the legal opinion of their Legal Counsel, the petitioners decided to file an appeal, as was advised to them. The appeal therefore could be filed only on 08.04.2022 after a delay of 824 days.

[4]. Mr. Y. Doloi, learned Senior Panel Counsel further submits that due to the prevailing Covid-19 Pandemic at the relevant time, the Apex Court in *SuoMotu Writ Petition (C) No. 3 of 2020 (Cognizance for extension of limitation In Re)* vide Order dated 23.03.2020, ordered that the period of limitation in all such proceedings, irrespective of the limitation prescribed under the General Law or Special Laws, whether condonable or not would stand extended w.e.f. 15.03.2020 till further orders to be passed by the Apex Court in the said

proceedings. The learned Senior Panel Counsel submits that subsequently, through various orders passed by the Apex Court, the limitation period was extended from time to time. Finally, vide Order dated 10.01.2022, limitation was extended up to 28.02.2022. The Apex Court further directed that in cases where limitation expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons will have a limitation period of 90 days from 01.03.2022. In the event the actual balance of limitation remaining w.e.f. 01.03.2022 is greater than 90 days, the longer period would apply. The learned Senior Panel Counsel therefore submits that in view of the extension of the limitation period by the Apex Court, the actual delay in filing the writ appeal is only 56 days.

[5]. The learned Senior Panel Counsel has also drawn our attention to the Communication dated 14.12.2020, which is at page 132 of the review petition to contend that the list of action initiated by the petitioners in chronological sequence has been listed after the passing of the Judgment and Order dated 18.12.2019 by the Writ Court. The learned Senior Counsel submits that a pragmatic approach should be taken in considering condonation of delay application and that the law of limitation is not to destroy the rights of the parties. The length of delay is not relevant but the acceptability of the explanation for the delay. He also submits that in appropriate cases, Courts have been liberal in condoning the delay and in taking a liberal view, Courts have also been imposing cost upon the party concerned. Therefore, given in the present case, Court may consider adopting such approach. In support of his submissions, the learned Senior Panel Counsel has relied upon the following authorities:-

- i) State of Maharashtra Vs. Kamla Mills Limited & Others, 1995 Suppl (1) SCC 419.*
- ii) State of Haryana Vs. Chandra Mani & Others, (1996) 3 SCC 132.*
- iii) The Special Tehsildar, Land Acquisition, Kerala Vs. K.V. Ayisumma, (1996) 10 SCC 634.*
- iv) N. Balakrishnan Vs. M. Krishna Murthy, 1998(7) SCC 123.*
- v) State of U.P. Vs. Heera N. Gurgani & Others, (2004) 13 SCC 582.*
- vi) State of Nagaland Vs. Lipok Ao & Others, (2005) 3 SCC 752.*
- vii) S. Ganesharaju (Dead) Through LRS & Another Vs. Narasamma (Dead) Through LRS. & Others, (2013) 11 SCC 341.*
- viii) M.K. Prasad Vs. P. Arumugam, (2001) 6 SCC 176.*
- ix) Cognizance for Extension of Limitation, In Re, (2020) 19 SCC 10.*
- x) Cognizance for Extension of Limitation, In Re, (2022) 3 SCC 117.*

[6]. Mrs. N. Dungen, learned counsel for the respondent Nos. 1 to 24 on the other hand submits that the review petition is not maintainable, inasmuch as, all the grounds urged in the review petition were already raised by the Review petitioners in their Interlocutory Application and which was considered and rejected by this Court. The petitioners have merely repeated what they had stated earlier and therefore, the present review petition only being an appeal in disguise, it should be rejected. She further submits that the three main

ingredients for considering a review petition is that there should be i.e. an error apparent on the face of the record, discovery of new and important matter for evidence which after the exercise of due diligence was not within the knowledge of the petitioner or could not be produced before the Court and lastly, for any other sufficient reason. None of these ingredients are shown in the present review petition and therefore, the Review Petition should be dismissed.

[7.] Ms. N. Duggen further submits that the petitioners cannot avail the extension of the period of limitation by the Apex Court in the SuoMotu writ petition i.e., *Cognizance for Extension of Limitation, In Re* in view of the fact that the Judgment and Order of the Single Judge in WP(C) No. 181(AP)/2019 was passed on 18.12.2019 and that a writ appeal should have been filed within the limitation period of one month. She submits that prior to the extension of period of limitation by the Supreme Court w.e.f. 15.03.2020, vide Order dated 23.03.2020, the petitioners had clear 67 days to file their writ appeal. However, they failed to file the writ appeal not only within the period of limitation but also prior to passing of the order by Apex Court. As such, they cannot avail of the extension of limitation. She also submits that the stand of the petitioners that they could not file the appeal on time in view of the Covid-19 pandemic cannot be accepted in view of the fact that the petitioners could easily file their show cause reply to the contempt notice issued by this Court for non-compliance of the Judgment and Order dated 18.12.2019 passed by the Writ Court against which the writ appeal was filed. She therefore submits that the review petition should be dismissed. In support of her submission, Mrs. N. Duggen, learned counsel relies upon the following authorities:-

i) Kamlesh Verma Vs. Mayawati & Others, (2013) 8 SCC 320.

ii) Lily Thomas & Others Vs. Union of India & Others, (2000) 6 SCC 224.

iii) V. Nagarajan Vs. SKS Ispat & Power Limited & Others, (2022) 2 SCC 244.

iv) Cognizance for Extension of Limitation, In Re, (2020) 19 SCC 10.

v) Cognizance for Extension of Limitation, In Re, (2022) 3 SCC 117.

[8]. Ms. K. Wongmo, learned Government Advocate, Arunachal Pradesh appears for the State respondents and submits that she has nothing to submit in the matter.

[9]. We have heard the submissions made by the learned counsels for the rival parties and we have perused the materials available on record.

[10]. In filing this review petition, the petitioners have invoked Section 114 read with Order XLII Rule 1 of the Code of Civil Procedure, 1908 (CPC). As per the said provisions, review can be applied for by a party aggrieved from a decree or an order upon –

(i) discovery of new and important matter or evidence which after exercise of due diligence was not within the knowledge of the party or could not be produced at the time when the order was passed

(ii) on account of some mistake or error apparent on the face of the record or

(iii) for any other sufficient reason.

[11]. The petitioners in their review petition have taken as many as 24

grounds for filing of the review petition. However, on careful perusal of the grounds taken, we do not find any new materials for consideration. Whatever has been submitted by the learned senior Panel Counsel and the grounds taken in a instant review petition had been considered when the Interlocutory Application was heard and the Order dated 16.11.2022 passed. As can be seen, the learned Senior Panel Counsel has submitted that in view of the Orders of the Apex Court in SuoMotu Writ Petition (C) No. 3/2020, there is actually only 56 days delay in filing the writ appeal. This aspect of the matter too was already considered in our Orders dated 16.11.2022. The Apex Court in the case of *V.Nagarajan (Supra)* in the given facts of that case had observed that the extension of a period of limitation as per the SuoMotu writ petition was only in those cases where the period of limitation had not ended before 15.03.2020. In the present case, the Judgment and Order of the Writ Court was passed on 18.12.2019 and the limitation period for filing writ appeal i.e., 1 month ended on 18.01.2020. The first order of the Apex Court in the SuoMotu writ petition was passed on 23.03.2020 wherein limitation period was extended w.e.f. 15.03.2020. In the present case, the Review Petitioners despite the Judgment & Order having been passed by the Writ Court on 18.12.2019, filed their writ appeal only on 08.04.2022. Therefore, the extension of limitation period by the Apex Court in SuoMotu writ petition cannot be availed of by them.

[12]. The submissions and grounds taken by the petitioners that Court should take a liberal view of the matter to condone the delay had already been considered by us in our Order dated 16.11.2022. Paragraph Nos. 15, 16 and 17 of the Order dated 16.11.2022 may be abstracted hereunder for ready perusal:-

“[15.] Since the rival parties have relied upon the various Apex Court decision on the

subject, we may refer some of them. In N. Balkrishnan (Supra), the Apex Court in the given facts of the case observed that it is axiomatic that condonation of delay is a matter of discretion of the Court. The limitation Act does not provide that such discretion can be exercised only if the delay is within a certain limit. Length of delay is not the question but the acceptability of the explanation is the criteria for such consideration. It was also observed that rule of limitation are not meant to destroy the rights of the parties. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned and therefore, if the explanation put-forth is found to be satisfactory, the exercise of the discretion of the Court to condone the delay would be justified.

[16.] In the case of ManibenDevraj Shah (Supra), the Apex Court had also observed that in cases involving the State and its agencies/instrumentalities, the court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and/or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that such dismissal would cause harm to the public interest. The Apex Court also observed that the whatcolour 'sufficient cause' would get in the factual matrix of a given case would largely depend on bonafide nature of the explanation. Similar observation has been made by the Apex Court in the case of PundlikJalamPatil as well. In the case of State of Haryana-vs- Chandra Mani &Ors. (Supra), the Apex Court had also observed that Court generally adopts liberal approach on condonation of delay finding somewhat sufficient cause to decide the appeal on merits. The expression 'sufficient cause' should therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay.

[17.] From the above authorities, what can be seen is that the grounds taken for condoning the delay or the explanations tendered must invariably have explanations for construing sufficient cause. What sufficient cause is would have to be in relation to

the factual matrix of the case. It is also important that the bonafide of the parties seeking such condonation has also to be taken into consideration. A liberal approach is given when the litigant is a State but at the same time there is no hard and fast rule that in each and every case filed by the State, the Court should adopt a liberal approach and condone the delay. In the present case, we have seen that the applicants have not made any attempt to explain as to what transpired between 18.12.2019 to 15.03.2020 except that copy was furnished to the Headquarter 103 Infantry Brigade vide letter, dated 24.12.2019 by the Defence Estate Officer, Itanagar Circle. The same in our considered view cannot be construed as sufficient explanation or sufficient cause to overcome the delay for the said period. No doubt there was a nationwide lockdown during the relevant period but there is not dispute to the fact that Courts were functioning in between on offline and online mode and that the Registry was not closed at all times to prevent the applicants from filing the appeal. In other words, movements were restricted but it was not stopped altogether. Even after, the Apex Court order extending the period of limitation expired on 28.02.2022, the applicants could not file the connected appeal and what was the reason for preventing them from filing such appeal before 08.04.2022 is also not discernible from the explanation tendered both in the application as well as in the additional affidavit. Therefore, under the facts and circumstances of the case, we are unable to take a liberal view in the matter to condone the delay as prayed for by the applicants. In the result, the application is rejected."

[13]. From the above abstract, it may be seen that this Court was also aware of the fact that numbers of days delay was not the main concerned but the explanation tender for the delay to show that there was sufficient cause for the delay should be the consideration. After considering the explanation made by the petitioners in their application for condonation of delay, this Court did not find the explanations to be acceptable and accordingly, the application was rejected. Likewise, the submission of the learned Senior Panel Counsel about

the chronological sequence on the list of action initiated by the petitioners after the passing of the Judgment and Order dated 18.12.2019 by the Writ Court as recorded in paragraph No.5 above had also been considered while dealing with the Interlocutory Application. In fact, the same was annexed as Annexure-II (series) by the present respondent Nos.1 to 24 (writ petitioners) in their Affidavit-in-opposition to the Interlocutory Application for condonation of delay. Therefore, the petitioners by filing the instant review petition cannot be allowed to raise similar and identical submissions for reconsidering the Order dated 16.11.2022 passed in the Interlocutory Application without pointing out any such new and important discovery or evidence which they could not produced at the relevant time.

[14]. The Apex Court in the case of *Kamlesh Verma (Supra)* in the given facts of that case had summarised the principles governing review. Paragraphs 20, 20.1 and 20.2 of the said Judgment may be gainfully abstracted below:-

“20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words “any other sufficient reason” have been interpreted in Chhajju Ram v. Neki and approved by this Court in Moran Mar Basselios Catholicos V. Most Rev. Mar

Poulose Athanasius to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India Vs. Sandur Manganese & Iron Ores Ltd.

20.2. When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated."

[15]. The Apex Court also in the case of *Lily Thomas & Others (Supra)* in a given facts of that case had also held that a power of review can be exercise for correction of a mistake but not to substitute a view. The power can be exercised within the limits of the statute dealing with the exercise of power.

The review cannot be treated like an appeal in disguise. The mere possibility of two views on a subject is not a ground for review.

[16]. Applying the above principles to the present case, we do not find any ground for reviewing the order dated 16.11.2022. As already stated in the preceding paragraphs, the petitioners are also not entitled to the benefit of the extension of the limitation period as ordered by the Apex Court in the SuoMotu writ petition in view of the observation made in the case of *V. Nagarajan (Supra)*, which in fact was already taken note of while passing the Order dated 16.11.2022 in the Interlocutory Application. In view of the conclusion arrived at, we do not find it necessary to refer to the remaining authorities relied upon by the parties.

[17]. Thus upon due consideration, we do not find any merit in the Review Petition and accordingly, dismiss the same.

JUDGE

JUDGE

Comparing Assistant