

GAHC010008802012



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

Case No. : **WRIT PETITION (C) No. 4756/2012**

Sri Ritom Borah, Son of Late Arun Ch. Borah, Resident of
Nortomgaon, P.O. – Uriagaon, P.S. – Nagaon Sadar, District
– Nagaon, Assam.

.....Petitioner

-Versus-

1. The State of Assam, Represented by the Commissioner
& Secretary, Home, Government of Assam, Dispur,
Guwahati - 6.
2. The Deputy Commissioner, Nagaon, District - Nagaon.
3. The Superintendent of Police, Nagaon, District –
Nagaon.
4. The Manager, New India Assurance Company Ltd.,
Esplanade Road, Bombay, Mumbai, Maharashtra.

.....Respondents

Advocates :

Petitioner : Mr. P.J. Saikia, Advocate.

Respondent nos. 1, 2 & 3 : Mr. K. Gogoi,
Additional Senior Government Advocate, Assam.

Respondent no. 4 : Ms. S. Mushahary, Advocate.

Date of Hearing : 19.06.2023

Date of Judgment & Order : 19.06.2023

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
JUDGMENT & ORDER [ORAL]

Heard Mr. P.J. Saikia, learned counsel for the petitioner; Mr. K. Gogoi, learned Additional Senior Government Advocate, Assam for the respondent nos. 1, 2 & 3; and Mr. S. Dutta, learned Senior Counsel assisted by Ms. S. Mushahary, learned counsel for the respondent no. 4.

2. The petitioner has instituted the instant writ petition under Article 226 of the Constitution of India seeking a direction in the nature of mandamus to the respondent authorities to pay compensation to the petitioner, who has claimed to be the successor-in-interest of one Late Bapan Chandra Bora, for the alleged act of negligence on the part of the respondents in depriving the petitioner from getting the benefit of an insurance policy being Policy no. 41153 dated 18.08.1937.

3. The petitioner has projected that his grandfather, Bapan Chandra Bora was a renowned freedom fighter who took part in the independence movement and because of his participation in the independence movement, the erstwhile British rulers had put him behind bars on several occasions. Late Bapan Chandra Bora was kept under detention on one occasion from 28.12.1942 to 18.12.1943 as an under trial prisoner in the Nagaon Jail. Late Bapan Chandra Bora was an employee of M/s Kondoli Tea Estate, Nagaon under M/s Assam Company India Limited. It is stated that during his lifetime and during his employment in M/s

Kondoli Tea Estate, Bapan Chandra Bora had obtained an insurance policy from M/s New India Assurance Company Limited vide Policy no. 41153 on 18.02.1937. As per the Insurance Policy no. 41153, the date of commencement of the policy was 18.08.1937 and the payment of premium was quarterly. The sum assured under the policy was Rs. 1,000/-. Bapan Candra Bora was released from detention on 18.12.1943. After few days from his release from detention, Bapan Chandra Bora expired on 02.01.1944 leaving behind his son, Arun Chandra Bora as his successor-in-interest. The son of Bapan Chandra Bora and the father of the petitioner, Arun Chandra Bora expired on 05.11.2009. It is stated that the petitioner's grandfather was declared a political sufferer by the Sub-Divisional Officer, Sadar, Nagaon vide a certificate and his family received political pension, as reflected from a Pension Book bearing no. POL/2800 issued in the year 1960.

4. It is the further case of the petitioner that in the month of May, 2010, police officials visited the house of the petitioner and asked the petitioner to approach the jail authority of Nagaon District Jail. Accordingly, the petitioner approached the jail authority of Nagaon District Jail. On being so approached, the petitioner was handed over some documents relating to his grandfather, Bapan Chandra Bora. Amongst the documents so handed over, the insurance policy being Policy no. 41153 was also handed over. When after receipt of Policy no. 41153, the petitioner wrote to the office of the respondent no. 4, no reply was received. With the aforesaid projections, the instant writ petition has been preferred by the petitioner inter alia seeking a direction to the respondent no. 4 to pay the assured sum under Policy no. 41153.

5. From the facts presented in the writ petition and on perusal of the Insurance Policy no. 41153, it transpires that Bapan Chandra Bora obtained the policy in question as an employee of M/s Kondoli Tea Estate. It is not known whether after release from jail on 18.12.1943, the deceased who expired on 02.01.1944, lodged any claim in respect of the Insurance Policy during his lifetime. On his demise on 02.01.1944, the son of the deceased, Arun Chandra Bora survived him and Arun Chandra Bora lived for a period of about 65 years thereafter as he expired on 05.11.2009. The petitioner has not averred anything as regards lodgment of any claim by the petitioner's father before the employer of Bapan Chandra Bora i.e. M/s Kondoli Tea Estate and/or M/s Assam Company India Limited. The petitioner is also silent as to why either Bapan Chandra Bora or his son, Arun Chandra Bora had chosen not to approach the jail authority to claim the belongings of Bapan Chandra Bora for a period of 65 years till 05.11.2009. The petitioner has been able to bring any cogent material on record to substantiate his contention that it was only in the year 2010, he received the insurance policy from the jail authority. No document evidencing the jail authority to the petitioner has been annexed to the case papers to form a prima facie opinion in support of the same. There is no whisper in the writ petition as to whether the original insured or any of his successors-in-interest, at any point of time, had approached the employer of the original insured to find out about discharge of the insurance policy after maturity, etc.

6. The respondent no. 4 has filed a counter affidavit on 11.07.2017. In the said counter affidavit, the respondent no. 4 had averred that with the nationalization of Life Insurance Business in the year 1956, all the assets and liabilities of M/s New India Assurance Company Limited pertaining to its life insurance business

were transferred to M/s Life Insurance Corporation of India and as such, the respondent no. 4 had no records relating to the Policy in question since the year 1956. With the coming into force of the Life Insurance Corporation Act, 1956 on and from the appointed day, 01.09.1956, all the assets and liabilities to the respondent no. 4 relating to life insurance business of M/s New India Assurance Company Limited stood transferred to and vested in M/s Life Insurance Corporation of India. From such statements made in the counter affidavit of the respondent no. 4, it is clear that had any claim regarding the insurance policy in question been maintainable, the same would have been only against M/s Life Insurance Corporation of India. The petitioner despite knowing the said fact as far back as on 11.07.2017, has chosen not to implead the Life Insurance Corporation of India as a party-respondent in the instant writ proceedings. The petitioner has chosen not to implead the authorities of the Nagaon District Jail in the present writ petition. Both the afore-mentioned parties appear to be necessary parties in the instant writ proceedings.

7. Any record including the record pertaining to an insurance policy definitely has a preservation period. A writ petition making claim in respect of an insurance policy after substantial delay would definitely put the insurer at a disadvantageous position as the records might not be available and there is possibility of their destruction after the preservation period. It is well settled that if there is inordinate and inexplicable delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the writ court may decline to intervene and grant relief in the exercise of its writ jurisdiction. It has been observed by the Hon'ble Supreme Court of India in **Chennai Metropolitan Water Supply and Sewerage Board and others vs. T.T. Murali Babu**, reported in

[2014] 4 SCC 108, that the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The writ court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the writ court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the */is* at a belated stage should be entertained or not. It has observed that delay comes in the way of equity. It has been observed that in certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the */is*. In the case in hand, the delay is for a period of more than 60 years. It creates difficulty, in such a situation, for the insurer also to contest such a claim in view of non-availability of the records pertaining to such insurance policy. A writ court is not expected to give indulgence to such indolent persons – who compete with “Kumbhakarna” or for that matter “Rip Van Winke”. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petitioner overboard at the very threshold.

8. Though there is allegation of negligence on the part of the jail authority, it transpires that acts of negligence are also found attributable to the

predecessors-in-interest of the petitioner and the petitioner. The petitioner is silent as to what steps the predecessors-in-interest of the petitioner had taken to lodge the claim with regard to the insurance policy with the employer of Late Bapan Chandra Bora. Considering the elements of delay and laches on the part of the predecessors-in-interest of the petitioner which are clearly inordinate and inexplicable, the instant writ petition which is found to have been instituted in respect of an insurance policy obtained on 18.02.1937 has suffered from delay and laches, due to elapse of about 65 years in the interregnum.

9. In view of the above discussion and for the reasons assigned therein, this Court is of the considered view that such claim of more than 65 years should be given a quietus. Accordingly, the writ petition is dismissed. There shall be no order as to cost.

JUDGE

Comparing Assistant