

**HIGH COURT OF TRIPURA
AGARTALA**

IA NO. 01 of 2024

In WA No.48 of 2024

Sri Nikhil Kumar Paul,
S/O Lt. Nitya Nanda Paul,
R/O H.G Basak Road, Opp. of Rabindra Palli,
Agartala, District-West Tripura, Pin-799001.

..... Applicant(s)

V E R S U S

1. The State of Tripura,
Represented by the Principal Secretary,
Department of Industries and Commerce,
Government of Tripura, New Secretariat Complex,
Gukhabasti, Agartala, PO-Kunjaban,
PS- New Capital Complex,
Sub Division-Sadar, District- West Tripura,
Pin-799010.
2. Agartala Municipal Corporation (AMC),
Represented by its Municipal Commissioner,
Agartala Municipal Corporation,
Agartala, West Tripura, Pin-799001.
3. The Municipal Commissioner,
Agartala Municipal Corporation,
Agartala, West Tripura,
Pin-799001.
4. The Secretary,
Department of Finance, Government of Tripura,
New Secretariat Complex, Gurkhabasti, Agartala,
PO-Kunjaban, PS-New Capital Complex,
Sub-Division-Sadar, District-West Tripura,
Pin-799001.

..... Respondent(s)

For Applicant(s)	:	Mr. P Roy Barman, Sr. Advocate. Mr. S Bhattacharjee, Advocate. Mr. K Nath, Advocate. Mr. D Paul, Advocate.
For Respondent(s)	:	Mr. A Bhaumik, Advocate. Mr. Kohinoor N Bhattacharjee, GA.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**

JUDGMENT & ORDER (ORAL)

13.05.2024

Heard Mr. P Roy Barman, learned senior counsel assisted by Mr. K Nath, learned counsel appearing for the applicant as well as Mr. A Bhaumik, learned counsel appearing for the Agartala Municipal Corporation and Mr. Kohinoor N Bhattacharjee, learned GA appearing for the State respondents.

2. The prayer of the writ petitioner made through WP(C) No.773 of 2022 for release of gratuity on account of services rendered under the Agartala Municipal Corporation was dismissed on the ground of delay and laches by the learned Writ Court by the impugned judgment dated 6th September, 2022.

3. The petitioner had retired in 2014 and had approached the Writ Court in the year 2022. Therefore, the writ petition was dismissed for delay and laches. The present appeal has been preferred on 2nd May, 2024 with a delay of 571 days.

4. The learned Sr. counsel for the petitioner has drawn the attention of this Court to the averments made in the instant IA and submitted that the petitioner was suffering from Cerebral illness which incapacitated him for such a length of time in approaching this Court after dismissal of the writ petition. He was admitted in ILS Hospital at Agartala on 1st August, 2020 with complaints of headache and right side weakness. The CT Scan of the brain revealed Acute Lacunar Infarct. Later, it was revealed that he is having complete occlusion of the left middle cerebral artery, partial opacification of the intracranial carotid artery as per Cerebral Angiography and MDCT Neck report dated 2nd August, 2020.

5. The petitioner was under medication and observation of doctors. He also went for follow up on 2nd July, 2021 before one Dr. Bijit Lodh. One Dr. SB Nath, who had examined him also certified on 5th September, 2022 that he had been suffering from Right Side Weakness for last 2 years and he cannot walk properly or is unable to write properly with his right hand. Later, Dr. Bijit Lodh, has issued a certificate dated 8th February, 2023 that the applicant was suffering from Neurological voiding dysfunction.

6. The applicant/appellant had filed Writ Petition No.773 of 2022 along with one Gayetri Chakraborty. Due to his illness, he could not contact her to assail the impugned judgment. Vide certificate dated 8th April, 2024 issued by Dr. S.B. Nath, AGMC & GBP Hospital, Agartala, it has been opined that he was suffering for Post CVA Weakness in right half of the body from 06.09.2022 and he cannot write or walk.

7. Learned counsel for the petitioner submits that the applicant/appellant is unable to move his hands and legs properly and is able to move from here to there with great difficulty. The applicant/appellant's son, however, met his engaged counsel and asked for signing of the Vakalatnama. His father was not in a position to sign the Vakalatnama and, therefore, his thumb impression has been given.

8. After the necessary formalities, the instant writ appeal has been filed. Therefore, delay may be condoned and similar benefits of gratuity and enhanced limit of gratuity be granted as in the case of *Samir Kr. Ghosh vs. State of Tripura and Ors.* [WP(C) No.1091 of 2017]. The petitioner has also relied upon the case of *Smt. Ratna Roy vs. The State of Tripura & Ors* (WP(C) No.218 of 2021 & connected matters) decided by judgment dated 27th June, 2022.

9. Mr. A Bhaumik, learned counsel appearing for the Agartala Municipal Corporation-respondents, has strongly opposed the prayer and submits that the appeal suffers from gross delay and latches. The writ petition was also dismissed on the ground of delay and latches. It is submitted that the appellant has relied upon his medical condition for preferring the instant appeal after 571 days of delay. However, the papers which have been annexed from Annexure-1 to Annexure-5 dated 1st August 2020, 2nd August, 2020, 12th August, 2020, 2nd July, 2021 and 5th September, 2022 are all those which convey the medical condition of the appellant during the period he was physically capable and had filed the writ petition. Annexure 6 & 7 are simple medical certificates issued by the concerned doctor dated 8th December, 2023 and 8th April, 2024 which have been obtained only to offer an explanation for the huge delay in preferring this appeal. There are no other medical treatment papers or investigation report which suggests that the writ petitioner was severely incapacitated in filing the appeal after September, 2022 when the writ petition was dismissed.

10. It is submitted that there is no explanation worth its name for condoning the delay in preferring this appeal after the writ petition was dismissed on 6th September 2022 also on grounds of delay and latches. The petitioner is a fence-sitter and should not be allowed to claim the benefit which has been rendered in cases of others who have been diligent in approaching this court.

11. We have considered the submission of the learned counsel for the appellant and the respondents-Agartala Municipal Corporation and the State. On perusal of the instant IA, it is but clear that investigation reports and treatment papers concerning the illness of the petitioner are for the period of 1st

August, 2020 till 2nd September, 2021 (Annexures-1 to 4) whereas Annexure-5 is a certificate dated 5th September, 2022 by one Dr. S.B. Nath, which indicates that the petitioner was suffering from Right Sided Weakness for last two years. He cannot walk properly or also able to write properly with his hands.

12. The petitioner has not enclosed any paper regarding his continued treatment or investigation for such a medical condition as stated from which he was suffering thereafter. There are only two certificates issued by two doctors dated 8th December, 2023 and 8th April, 2024 which are annexed to support the plea that petitioner was incapacitated since September, 2022 in preferring this appeal.

13. Learned counsel for the respondents-Corporation is right in his submission that the writ petition was filed in the year 2022. During the period, the petitioner claims to be suffering from the instant cerebral disease as would be revealed from the investigation report and treatment papers from Annexures-1 to 4.

14. If the petitioner could prefer the writ petition despite suffering from such ailment during that period, in the absence of any proper explanation of such a huge delay, this Court is not inclined to allow the prayer.

The instant IA is dismissed.

Consequently, the appeal being WA 48 of 2024 also stands dismissed.

15. The learned Sr. counsel for the appellant submits that the appellant may be allowed to pursue his claim for release of gratuity as it is a statutory duty of the respondents-Corporation. The petitioner is at liberty to pursue such

a claim before the respondents which may be considered in accordance with law.

(S. DATTA PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ



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