



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No.30/2024

Reserved on : 07.06.2024

Pronounced on: 14.06.2024

Priyanchi R. Marak

.....Appellant

- Versus -

1. State of Meghalaya, represented by
the Chief Secretary to the Government of Meghalaya,
Shillong.
2. Deputy Commissioner (Revenue),
North Garo Hills District,
Resubelpara, Meghalaya.
3. The Deputy Secretary,
Revenue & Disaster Management Department,
Meghalaya, Shillong.
4. The Joint Secretary,
Revenue & Disaster Management Department,
Meghalaya, Shillong.
5. District A.H. and Veterinary Officer,
North Garo Hills,
Resubelpara, Meghalaya.

.....Respondents

Coram:

Hon'ble Mr. Justice S. Vaidyanathan, Chief Justice

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Appellant : Mr. H.L. Shangreiso, Sr. Adv. with
Mr. T. Dkhar, Adv.

For the Respondents : Mr. A. Kumar, AG with
Ms. A. Thungwa, GA

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



J U D G M E N T

(Made by Hon'ble, the Chief Justice)

The present appeal has been preferred against the judgment and order of the learned Single Judge dated 26.04.2024.

2. The learned Single Judge has gone into the merits of the matter and come to the conclusion that there is a disputed question of fact even though A. Kumar, learned AG submitted that there is a delay of seven years and that in order to overcome the laches in approaching the civil court as any civil suit that may be filed is time-barred, the writ petition had been filed to bypass the limitation and get the grievance redressed, more so, the disputed question of fact.

3. We are not inclined to accept the contention of learned AG as the learned Single Judge in paragraph 31 of the judgment has categorically discussed with the plea taken by learned AG in paragraph 21. For the sake of convenience, paragraphs 21 and 31 are extracted below:

“21. The learned AG has also submitted that the petitioners has approached this Court only in the month of October, 2021, that is after almost seven years of the alleged supply with a prayer for direction to make payment of the bill amounting to ₹ 2,20,00,000/- (Rupees two crore twenty lakh) only and in the other case, for payment of the bill amounting to ₹ 6,00,00,000/- (Rupees six crore) only. These petitions are therefore not maintainable solely on the ground of delay and laches. ”



31. The argument of the petitioner in this regard is found acceptable by this Court and the authority in the case of P.C. Sethi (supra) at para 22 of the same is also found relevant wherein the Hon'ble Supreme Court has observed that "*The learned Counsel for the respondents strenuously contended that the petition may be dismissed on account of delay and laches. In view of the entire circumstances of the case and the hopes held out by the Government from time to time we are not prepared to accede to this submission*". Therefore, there is no question of delay or laches while filing this petition."

4. This Court has specifically posed a question to the learned Senior Counsel as to whether an amount of 2.21 crore is liable to be paid by the respondents and whether there is any admission. Admittedly, the appellant is not in a position to state that there is admission. The fact of payment by the respondents to the appellant is being disputed.

5. Alternative remedy may not be a bar to approach if the facts are not disputed. The Apex Court in the case of **Hindustan Petroleum Corporation Ltd. v. Dolly Das** reported in **(1999) 4 SCC 450** has considered the question of delay and alternative remedy as follows:

"8. So far the contention regarding laches of the respondent in filing the writ petition is concerned, delay, by itself, may not defeat the claim for relief unless the position of the appellant had been so altered which cannot be retracted on account of lapse of time or inaction of the other party. This aspect being dependent upon the examination of the facts of the case and such a contention not having been raised before the High Court, it would not be appropriate to allow the appellants to raise such



a contention for the first time before us. Besides, we may notice that the period for which the option of renewal has been exercised has not come to an end. During the subsistence of such a period certainly the respondent could make a complaint that such exercise of option was not available to the appellants and, therefore, the jurisdiction of the High Court could be invoked even at a later stage. Further, the appellants are not put to undue hardship in any manner by reason of this delay in approaching the High Court for a relief.

9. ...Where interpretation of a contract arises in relation to immovable property and in working such a contract or relief thereof or any other fallout thereto may have the effect of giving rise to an action in tort or for damages, the appropriate remedy would be a civil suit. But if the facts pleaded before the court are of such a nature which do not involve any complicated questions of fact needing elaborate investigation of the same, the High Court could also exercise writ jurisdiction under Article 226 of the Constitution in such matters. There can be no hard and fast rule in such matters. When the High Court has chosen to exercise its power under Article 226 of the Constitution we cannot say that the discretion exercised in entertaining the petition is wrong.”

6. Learned Senior Counsel has referred to page 63 of the typed set of papers, namely, the communication of the District Animal & Husbandry and Veterinary Officer, North Garo Hills District, Resubelpara to state that if necessary papers or receipts, payment will be made as and when funds are available. It cannot be said that there is admission. After going through the papers or receipts, it is open to the Government to refuse to accede to the request. Learned Senior Counsel has also taken a stand in paragraphs 8 & 10 of the affidavit dated



13.04.2022. Paragraphs 8 and 10 of the affidavit dated 13.04.2022 is extracted below:

“8. That it is submitted that the writ petition is also bereft of material except for the minutes of the meeting allegedly took place on 05.12.2014 for approving rate of supply of feed. It is also relevant to note here that no document has been shown that the approval of the Government of Meghalaya has been obtained for approving rate of supply of feed. Further, perusal of the minutes of the meeting dated 05.12.2014 allegedly shows that in the alleged meeting chaired by Shri. D.D. Sangma, MCS, Additional Deputy Commissioner, Revenue, what was the basis of approving the three firms/suppliers supply of cattle and poultry feed. It is matter of record that the empanelment of supplier/firm for supply of feed to Government have to be carried out in a fair and transparent manner as per the Govt. of Meghalaya memorandum it is clearly stated that any purchase above, 50,000/- has to be done in fair and transparent manner. Even assuming without admitting that the order was placed by Deputy Commissioner, Revenue, in violation of the above Government order, the same is illegal and without any authority and it cannot bind the State Government.”

“10. That it is submitted that a bare perusal of letter of Deputy Commissioner, Revenue dated 05.12.2014 (Annexure A2) shows that the petitioner has given a letter on 24.11.2014 even prior to the meeting of the Committee to allegedly approve the rate. It appears that the entire transaction is shrouded in mystery and has not been carried out in fair and transparent manner. That it is further submitted that even a perusal of a letter of Animal Husbandry and Veterinary Officer dated 08.12.2014, it is not clear as to how Animal Husbandry and Veterinary reached or arrived at the quantity of cattle feed and pig feed. There is no assessment to how many animal are stranded or requiring cattle feed/pig feed after 73 days of flood. Similarly, the order dated 21.01.2015 placing further order from the supplier to supply poultry feed is also without any basis and no reason has been given as to why poultry feed having quantity of 1428,571 quintal is required.”



7. Learned Senior Counsel further submitted that by an order dated 27.03.2023, the Government has sanctioned a sum of Rs.1,34,39,437/- to the other suppliers being the partial cost of supply of medicine and livestock feeds and that non-payment of the amount to the appellant is discriminatory and that the amount due to them has got to be paid.

8. Learned AG reiterated that there is a delay in seven years and that the facts are disputed. The learned Single Judge has referred to the contention of the petitioners in paragraph 21 of the judgment and finally rendered a finding with regard to delay in paragraph 21 and the same are extracted supra. It is very clear that the learned Single Judge had not condoned the delay as such. The learned Single Judge has condoned the period of delay during which the matter is pending before this Court needs to be excluded. Reading of paragraph 40 of the judgment would make it very clear that while excluding the period of limitation during which the matter was pending before the Court, the petitioner needs to approach the civil court seeking damages and the writ petition cannot be entertained on the ground of disputed question of facts. Paragraph 40 the judgment is extracted below:

“40. It is the considered opinion of this Court that the remedy for redressal of the petitioners’ grievances seeking damages would only lie with a civil court. To this extent, discounting the



period spent in these proceedings for which condonation is hereby accorded, the parties may approach such forum, if so advised.”

9. In view of the above, we find no error apparent on the face of the records and the order of the learned Single Judge is sustained and the writ appeal is dismissed.

(B. Bhattacharjee)
Judge

(S. Vaidyanathan)
Chief Justice

Meghalaya
14.06.2024

SYLVANA LIZ KHARBHIH
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PRE-DELIVERY JUDGMENT IN
WA No.30 of 2024