

GAHC030000932024



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

Case No. : I.A.(Civil)/30/2024

The State of Mizoram and 3 Ors.
Represented by the Chief Secretary to the Government of Mizoram, Aizawl 2:
The Secretary to the Govt. of Mizoram

3: The P.C.C.F

4: The Divisional Forest Office

VERSUS

Sh. Lalmangaihzuala and Anr.
S/o Manghlira, R/o Chaltlang Veng, Aizawl 2:Sh. Lalrodawnglian

Advocate for the Petitioner : Addl. AG/GA, Mizoram

Advocate for the Respondent : Mr A.R. Malhotra

ORDER

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

24.09.2024

Heard Ms. H. Lalmalsawmi, learned Govt. Advocate appearing for the applicants and Mr. A.R. Malhotra, learned counsel appearing for the respondents. By filing this application, the applicants seek condonation of 596 days delay in filing

the connected appeal against the Judgment & Order dated 31.03.2022 passed by the Court of Senior Civil Judge-I, Aizawl in Civil Suit No. 95/2011 by which the Civil Suit was allowed in favor of the respondents.

[2.] Before we proceed to examine the application, it may be noted that as per office note dated 19.02.2024, the number of days delay in filing the connected appeal was recalculated by the Registry and the same was found to be correct as reflected by the applicants in their application.

[3.] Referring to the application, the learned Govt. Advocate submits that a copy of the Judgment & Order of the learned Trial Court was forwarded to the applicant No. 2 by the learned Govt. Advocate, District Court, Aizawl on 06.04.2022 and the same was received by the addressee on 07.04.2022. Thereafter, the Deputy Conservator of Forest (Headquarters), Office of the Principal Chief Conservator of Forest (PCCF) wrote to the Divisional Forest Officer (DFO), Darlawn Forest Division on 20.04.2022 asking the said authority to submit parawise comments on the Judgment & Order of the learned Trial Court. Accordingly, the same was furnished to the PCCF on 05.05.2022.

[4.] The Deputy Conservator of Forest (Headquarters) in the Office of the PCCF thereafter vide his letter dated 18.05.2022 wrote to the Under Secretary to the Govt. of Mizoram, Environment, Forest & Climate Change Department requesting

that an appeal be filed against the Judgment of the learned Trial Court. However, as annexures to the parawise comments had not been annexed in the Communication dated 18.05.2022 of the Deputy Conservator of Forest (Headquarters), the PCCF was asked to submit the same by the Under Secretary of the same Department for vetting by the Law & Judicial Department through letter dated 26.05.2022. The Office of the PCCF in turn requested the DFO, Darlawn Forest Division for the required annexures vide letter dated 07.06.2022. However, since the DFO was attending to other urgent Court matters pertaining to his Division, he could not immediately send the annexures and he could only send the same through his letter dated 09.09.2022.

[5.] The Office of the PCCF thereafter vide letters dated 16.09.2022 and 20.09.2022 wrote to the Under Secretary to the Govt. of Mizoram, Environment, Forest & Climate Change Department requesting additional time for taking necessary action as per the direction of the District Court and also furnishing detail observation and recommendation of the Department on the decision of the Trial Court. Thereafter, the Under Secretary to the Govt. of Mizoram, Environment, Forest & Climate Change Department wrote to the Addl. Govt. Advocate, District Court, Aizawl requesting the Govt. Advocate to file an appeal in the High Court. Similarly, the said authority wrote to the PCCF that all necessary documents be submitted to the Addl. Govt. Advocate, District Court, Aizawl for filing the appeal.

[6.] However, realizing that the request for filing an appeal should be made to the Addl. Advocate General/Govt. Advocate of the High Court, the Under Secretary vide his letters dated 26.10.2022 and 07.11.2022 wrote to the Addl. Advocate General to file an appeal in the High Court. The Addl. Advocate General thereafter informed the respondent No. 2 that the matter has been endorsed to the Govt. Advocate concerned and all further correspondence be made to the said counsel.

[7.] The Deputy Conservator of Forest (Headquarters) thereafter on 07.03.2023 and 17.03.2023 enquired the up-to-date status from the Govt. Advocate who was entrusted in drafting and filing of the appeal and in response, the Govt. Advocate through her letter dated 21.03.2023 requested the Deputy Secretary to the Govt. of Mizoram, Environment, Forest & Climate Change Department to furnish original certified true copy of the Judgment & Order, the reasons for the delay and the ad-valorem Court fees of Rs. 11,000/- to enable her to file an appeal before the High Court. The requirements were furnished to the Govt. Advocate on 16.05.2023, 02.06.2023, 04.07.2023 and 17.08.2023 whereafter, the Govt. Advocate could start drafting the appeal. However, the appeal which was been prepared was lost since the computer crashed in the month of October, 2023. Thereafter, the Govt. Advocate had to redraft the appeal from the beginning. The appeal was finalized in the month of December, 2023 but due to some difficulties of the Govt. Advocate, the appeal could finally be filed only on 15.05.2024.

[8.] The learned Govt. Advocate submits that the factors which contributed in the delay for filing the appeal was due to various communications within the Departments and also, in collecting the required documents and the Court fees to draft and file the appeal. She also submits that there was also some difficulties on the part of the Govt. Advocate to finalize the appeal, firstly due to the crash of the computer which required redrafting from the beginning and also some personal difficulties faced between December and the date of filing the appeal by the Govt. Advocate concerned. She therefore submits that the delay which has occasioned in filing the appeal is only due to reasons beyond the control of the applicants and for bonafide reasons and therefore, the delay of 596 days in filing the connected appeal may be condoned. In support of her submission, the learned Govt. Advocate relies upon the following authorities:-

(1) Sheo Raj Singh (Deceased) Through Legal Representatives & Ors.

-Vs- Union of India & Anr. (2023) 10 SCC 531

(2) State of Nagaland -Vs- Lipok Ao & Ors., (2005) 3 SCC 752

(3) State of Rajasthan & Anr. -Vs- Bal Kishan Mathur (2014) 1 SCC 592

and

(4) State of Manipur & Ors. -Vs- Koting Lamkang (2019) 10 SCC 408.

[9.] Mr. A.R. Malhotra, learned counsel for the respondents on the other hand by

referring to the various letters enclosed in the application submits that it can be seen that although the Judgment was pronounced by the learned Trial Court on 31.03.2022 but a certified copy of the same was applied for by the applicants only on 14.10.2022. He submits that when the annexures to the parwise comments was requisitioned from the DFO, Darlawn on 07.06.2022, the same could only be furnished on 09.09.2022. He submits that while furnishing the said documents, the said authority had nowhere mentioned that he could not furnish the same earlier on account of his engagement in some other Court cases relating to the Division. Therefore, he submits that the submission made against paragraph No. 1(iv) is only an afterthought.

[10.] The learned counsel further submits that when the Department had written to the learned Addl. Advocate General/Govt. Advocate of the High Court to file an appeal on 26.10.2022 and on 07.11.2022, they did not pursue the matter with promptitude which can be seen from their letter dated 07.03.2023. He submits that it was only on 07.03.2023 that the Department had made some query regarding to the status of the filing of the appeal. He submits that when all the requisite materials to draft and file the appeal had been requisitioned by the Govt. Advocate on 21.03.2023 from the applicants, all the requisite materials could be furnished in various stages by 17.08.2023 only. He submits that this only goes to show that the applicants have failed to pursue their case with diligence and consequently, leading

to the delay in filing the appeal by 596 days. He submits that since the time taken to file the appeal after a delay of 596 days has not only been explained with sufficient reasons and explanations but reflects the negligence of the applicants, the delay that has occasioned can only be terms as inordinate delay. Under the facts and circumstance, the learned counsel submits that no ground for condonation of the delay has been made by the applicants and the application should be dismissed. In support of his submission, Mr. A.R. Malhotra relies upon the case of *State of Madhya Pradesh & Ors. -Vs- Bherulal*, (2020) 10 SCC 654.

[11.] I have heard the submissions made by the counsels for the rival parties and I have perused the materials available on record. In the Communication dated 18.05.2022, written to the Deputy Conservator of Forest (Headquarters) to the Under Secretary of the same Department, a requisition for filing appeal against the Order of the Trial Court was made but however, it appears that the same was made without any annexures to the parawise comments and for which, the Under Secretary requested for the annexures vide his letter dated 26.05.2022 to the PCCF. The Office of the PCCF vide letter in turn requested the DFO concerned vide letter dated 07.06.2022 for the annexures, which however was furnished only on 09.09.2022. No explanation has been made as to why the annexures could not be furnished immediately since it took over two (2) months to furnish the said annexures.

[12.] That ultimately, when the required materials were received, the Addl. Govt. Advocate of the District Court, Aizawl was informed through letter dated 12.10.2022 by the Under Secretary to the Govt. of Mizoram, Environment, Forest & Climate Change Department to file an appeal before the High Court. When the appeal is requested to be filed before the High Court, it is not understood as to how a request has been made to the Addl. Govt. Advocate of the District Court. This goes to show that the Department is not even aware or rather oblivious about the functioning of the Govt. Advocates in various Courts. It may further be seen that despite writing to the Addl. Advocate General on 26.10.2022 and 07.11.2022 for filing an appeal before the High Court, no further follow up action was taken on the part of the Department and it was only on 07.03.2023 that a status report was sought from the Govt. Advocate concerned.

[13.] The Addl. Advocate General through his letter dated 09.11.2022 had informed the applicant No. 2 that the matter was entrusted to a particular Govt. Advocate. From the letter dated 07.03.2023 and 17.03.2023 of the Deputy Conservator of Forest (Headquarters) and the Deputy Secretary to the Govt. of Mizoram, Environment, Forest & Climate Change Department asking about the status of the appeal, it can be seen that they were aware of the fact that drafting and preparation of the appeal was entrusted to a particular Govt. Advocate but despite that, as already stated, no follow up action was taken after 7th

November, 2022 upto 07.03.2023 or 17.03.2023. It is further seen that requisite documents and materials to draft and file the appeal was requested by the Govt. Advocate entrusted with the case from the Department on 21.03.2023 but the requisites have been furnished through different letters dated 16.05.2023, 02.06.2023, 04.07.2023 and 17.08.2023, which goes to show that the Department took their own time to furnish the requisite materials.

[14.] What transpire after 17.08.2023 has been explained by the applicants in paragraph No. 1 (xi) to (xiv). The same is abstracted hereunder:-

“(xi) That on receiving the aforesaid materials, the Counsel for the applicants started drafting the appeal. Researching and studying of the case, drafting and compilation of the documents have taken time in which some more delay has occasioned.

(xii) That in the month of October, unfortunately due to some technical problem the appeal which was already drafted and prepared was lost and since it could not be retrieved due to the crashed of the computer, the Govt. Advocate had to re-draft the whole appeal from the beginning.

(xiii) That an appeal was finalized in the month of December, However, it could not be filed due to some personal difficulty of the concern Government Advocate. And that the appeal can finally be filed on 15.2.2024.

(xiv) It is pertinent to mention here that the

Applicant/appellant has taken necessary actions for filing an appeal as soon as they received the copy of Judgment & Order.”

[15.] From the above abstract, it can be seen that what had happened after 17.08.2023 has been sought to be explained but however the explanation is not substantiated by facts and figures. The learned Govt. Advocate has relied upon the case of *State of Nagaland -Vs- Lipok Ao* (supra) wherein it may be seen that in that case, the number of days delay was 57 days compared to the delay of 596 days in the instant case. It is a settled case that number of days delay may not be relevant in all cases but the cause and the explanation given for the delay is what is relevant. In the instant case, it is noticed that the explanations given is basically without the facts and figures or the details. Reliance has been placed to the case of *Sheo Raj Singh* (supra) wherein it was held that the expression ‘sufficient cause’ is elastic enough for courts to do substantial justice. Further, when substantial justice and technical considerations are pitted against one another, the former would prevail.

[16.] The Apex Court in *State of Madhya Pradesh & Ors. -Vs- Bherulal* (supra), had also taken into consideration the decision of the same Court in the case of *Postmaster General -Vs- Living Media (India) Ltd.*, (2012) 3 SCC 563 wherein it was held that the liberal concession has to be adopted to advance substantial justice but Department cannot take advantage of various earlier decisions of the same

Court to claim that the inherent impersonal machinery and bureaucratic methodology of making several notes contributes to delay. The same cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government. The Court therefore notice that since the said decision, eight (8) years have passed since then and the decision of the Apex Court remains unheeded. The Court also observed that the preposterous proposition is sought to be propounded that if there is some merit in the case, the period of delay is to be given a go-by. If a case is good on merits, it will succeed in any case. It is really a bar of limitation which can even shut out good cases but this does not however take away the jurisdiction of the Court in an appropriate case to condone the delay. The Court also observed that if the Government suffers losses, it is time when the concerned officer responsible for the same bears the consequences. Consequently, the Apex Court dismissed the Special Leave Petition and at the same time imposed cost on the petitioners State.

[17.] Coming back to the present case, it is noticed that the Department concerned has not been prompt enough in taking necessary steps to ensure that the appeal is filed within the time prescribed and if not as expeditiously as possible. Filing of appeal without inordinate delay will be possible if the Department is prompt to coordinate with the officials concerned including the Government Counsels. As already noted earlier, the Department appears to lack knowledge as

to which of the Government Counsels will be responsible to take care of their case and in which Court. While noticing the shortcomings as stated herein above, it is further noticed that there has also been laxity on the part of the assigned Government Advocate in dealing with the matter which can be seen from the explanations abstracted herein above.

[18.] Upon considering the submission and upon perusing the materials available on record and the authorities relied upon, this Court is of the considered view that the applicants despite noticing the shortcomings should not be deprived of a forum to ventilate their grievance for the ends of justice.

[19.] In view of above, the delay in filing the connected appeal is condoned which is however subject to the applicants depositing a sum of Rs. 15,000/- (*Rupees fifteen thousand*) only before the Registry of this Court within 15 days from today. The amount so deposited shall be remitted to the account of the High Court Legal Services Committee, Aizawl Bench.

[20.] With the above observations and directions, the application stands disposed of.

JUDGE

Comparing Assistant