

GAHC030003222024



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

Case No. : I.A.(Civil)/94/2024

Power Grid Corporation of India Ltd.
R/b the Chief Manager, Power Grid Corporation of India Ltd. North Eastern Region,
Tuivamit, Aizawl, Mizoram

VERSUS

Dr Lalsiampara and 9 Ors.
S/o Thangtinliana R/o
Zarkawt, Aizawl, Mizoram

Advocate for the Petitioner : Mr. Ali Hussain

Advocate for the Respondent : Mr A.R. Malhotra

Linked Case : CRP/6/2024

Power Grid Corporation of India Ltd. r/b The Chief Manager
North Eastern Region
Tuivamit
Aizawl

VERSUS

Dr. Lalsiampara And 9 Ors.
S/o Thangtinliana
R/o Zarkawt
Aizawl
Mizoram

2:Lalhriatpuia Sailo
R/o Mc Donald Hill
Zarkawt

Aizawl

3:R. Lalengzika
S/o R. Tlangruala
R/o Chaltlang
Aizawl

4:Lalnunringa
S/o Lalzamlova
R/o Chawnpui Veng
Aizawl

5:Zasanga
S/o Zatluanga (L)
R/o Tuikhuahtlang
Aizawl

6:R. Romawia
S/o Chula (L)
R/o Dawrpui Vengthar
Aizawl

7:Lalremruati
D/o Sangzuala (L)
R/o Chaltlang Mual Veng
Aizawl

8:Vanlalchama
S/o Lalzuala (L)
R/o Chaltlang Venglai
Aizawl

9:Lalsawrnliani
W/o Zasanga
R/o Tuikhuahtlang
Aizawl

10:The District Collector
Aizawl District
Aizawl
Aizawl

Advocate for the Petitioner : Mr. Ali Hussain
Advocate for the Respondent : Mr A.R. Malhotra for R1-R9

ORDER
BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

22.07.2024

Heard Mr. C. Lalramzauva, learned Senior Counsel assisted Mr. N. Khera, learned counsel for the applicant and Mr. A.R. Malhotra, learned counsel appearing for the respondent Nos. 1 to 9 and Mr. Samuel Vanlalhriata Chhangte, learned Addl. Advocate General, Mizoram for the respondent No. 10.

[2.] By filing this application, the applicant seeks condonation of 700 days delay in filing the connected Civil Revision against the Judgment & Order dated 21.03.2022 passed by the Court of Addl. District & Sessions Judge, Aizawl in Civil Application No. 1/2020. The learned Senior Counsel by referring to the application submits that a copy of the Judgment & Order dated 21.03.2022 was furnished to the applicant by their appointed counsel in the Lower Court through his letter dated 27.03.2023. He submits that the Clerk of the conducting counsel who was maintaining all the documents and records of the counsel died of critical illness on 17.09.2022 and due to which the copy of the Judgment & Order dated 21.03.2022 got misplaced. It was only when the Execution Petition No. 23/2023 was filed that the conducting counsel sometime in the 2nd week of August, 2023 came to know about the Judgment & Order. After making a search in his office, the conducting counsel

found the copy of the Judgment & Order which was misplaced.

[3.] The learned Senior Counsel submits that upon receiving the Judgment & Order through the Covering Letter dated 27.03.2023 from their appointed counsel, the applicant forwarded the same to the Regional Headquarters of the applicant at Shillong. However, the Law Officer concerned who was looking after the case got transferred on 31.05.2023 and was released on 25.06.2023 from his posting. After the new Officer joined on 30.06.2023, he directed that a certified copy of the Judgment & Order be obtained. Accordingly, an application was made on 07.07.2023 and a certified copy obtained on 01.08.2023. Thereafter, discussions took place in the Department and around the 2nd week of August, 2023, the matter was taken up before the next higher authority of the applicant Organization and consequently, on 29.11.2023, an authority letter was issued to the concerned Manager, Power Grid to challenge the Judgment & Order through the then Chief Manager, Aizawl Sub-Station, Aizawl.

[4.] The learned Senior Counsel further submits that prior to filing of the connected Revision Petition, the applicant filed WP(C) No. 151/2023 before this Court on 05.12.2023. However, due to certain defects in the writ petition, the same was withdrawn by the applicant on 12.12.2023 with liberty to file afresh. Thereafter on 06.03.2024 WP(C) No. 13/2024 was filed again before this Court but the same was dismissed as withdrawn vide Order dated 13.05.2024 with liberty to

file appropriate petition. Consequently, the connected Revision Petition was filed by the applicant on 20.05.2024. The learned Senior Counsel submits that the applicant had pursued for a remedy against the Judgment & Order of the Lower Court by filing two (2) writ petitions with due diligence and in good faith and therefore, the benefit of Section 14 of the Limitation Act, 1963 (Limitation Act) is available to the applicant. That in view of the Section 14 of the Limitation Act, a period of 166 days should be excluded from calculating the time taken to file the connected Revision Petition. The learned Senior Counsel submits that there is merit in the Revision Petition of the applicant and involvement of huge amount of public money. Therefore, unless the delay in filing the connected Revision is condoned, gross injustice will be caused and it will also result in huge loss of public money and set wrong precedent. The learned Senior Counsel also submits that the applicant has shown its bonafide by depositing the entire amount assessed by the District Collector before the Lower Court who is considering the Execution Case filed by the respondent Nos. 1 to 9. He therefore submits that the delay in filing the connected Revision Petition may be condoned. In support of his submission, the learned Senior Counsel relies upon the case of *Sheo Raj Singh (Deceased) Through LRS. & Ors. -Vs- Union of India & Anr*, reported in 2023 INSC 885.

[5.] Mr. A.R. Malhotra, learned counsel for the respondent Nos. 1 to 9 on the other hand submits that the applicant has failed to make out any ground for

condoning the delay in filing the connected Civil Revision Petition. Referring to the affidavit-in-opposition filed by the respondent Nos. 1 to 9, the learned counsel submits that the applicant has failed to specify as to when the copy of the Judgment & Order of the Lower Court was misplaced by the Clerk of the conducting counsel. According to the applicant, the said Clerk expired on 17.09.2022 whereas, the Judgment & Order was passed by the Lower Court on 21.03.2022. Therefore, there was clearly 180 days between the period 21.03.2022 and 17.09.2022 and for which, no explanation has been given by the applicant. The learned counsel submits that the conducting counsel of the applicant as well aware of the Judgment & Order dated 21.03.2022 even before the Execution Petition was filed by the respondent Nos. 1 to 9 in view of the fact that nowhere in the application for condonation of delay as the applicant stated that the counsel for the applicant was not aware or had no knowledge of the Judgment & Order dated 21.03.2022.

[6.] The learned counsel further submits that a plain reading of the letter dated 27.08.2023 written by the conducting counsel for the applicant does not state anything about obtaining a copy of the Judgment & Order in folio as stated in paragraph No. 6 of the application for condonation of delay. The applicant has also failed to specify when a copy of the Judgment & Order was forwarded to the Regional Headquarters at Shillong even though the concerned Law Officer was transferred on 31.05.2023 and released on 25.06.2023. The learned counsel also

submits that the counsel for the applicant applied for a certified copy of the Judgment & Order on 07.07.2023 and the certified copy although signed by the Chief Administrative Officer, Aizawl Judicial District, Aizawl on 14.07.2023, the same was received by the applicant only on 01.08.2023 raising suspicion as to why there was delay in making over the copy to the applicant. At any rate, the certified copy of the Judgment & Order was applied for much after the period of limitation had expired. The learned counsel submits that the explanation given by the applicant for the delay in filing of the connected Revision Petition, are only concocted and made up. Therefore, the explanations given should be rejected.

[7.] The learned counsel also submits that the benefit of Section 14 of the Limitation Act is not available to the applicant inasmuch as, they have not pursued the remedy available to the applicant in law with due diligence and in good faith. He submits that when the first writ petition filed by the applicant on 05.12.2023 was withdrawn on 12.12.2023, the applicant filed the second writ petition only on 06.03.2024 and which again was withdrawn on 13.05.2024. He therefore submits that there was as many as 75 days gap between the two (2) writ petitions filed by the applicant i.e., from the date of withdrawing till the date of refiling. Therefore, the benefit of Section 14 of the Limitation Act cannot be available to the applicant. The learned counsel thus submits that the application of the applicant should be rejected and dismissed. The learned counsel in support of his submissions relies

upon the following authorities:-

- (i) Suryachakra Power Corporation Limited -Vs- Electricity Department Represented by Its Superintending Engineer, Port Blair & Ors. (2016) 16 SCC 152.*
- (ii) State of Madhya Pradesh & Ors. -Vs- Bherulal (2020) 10 SCC 654.*
- (iii) State of Madhya Pradesh & Anr. -Vs- Chaitram Maywade (2020) 10 SCC 667.*
- (iv) Maniben Devraj Shah -Vs- Municipal Corporation of Brihan, Mumbai, (2012) 5 SCC 157.*
- (v) Union of India & Ors. -Vs- Vishnu Aroma Pouching Private Limited & Anr., (2022) 9 SCC 263.*
- (vi) State of Uttar Pradesh & Ors. -Vs- Sabha Narain & Ors., (2022) 9 SCC 266.*

[8.] Mr. Samuel Vanlalhriata Chhangte, learned Addl. Advocate General appearing for the respondent No. 10 submits that the respondent No. 10 basically is a proforma respondent and therefore, he has nothing to say except that Court may consider and pass appropriate order as it deems fit.

[9.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. The Judgment & Order sought to be challenge by the applicant was passed by the Lower Court on 21.03.2022 whereas, the connected Civil Revision Petition was filed by the applicant on 20.05.2024. According to the applicant, the delay in filing the connected Revision Petition is 700 days. The applicant has however maintained that the applicant initially filed WP(C) No. 151/2023 before this Court on 05.12.2023 but the on account of certain defects, the same was withdrawn on 12.12.2023 with liberty to file afresh. The second writ petition i.e., WP(C) No. 13/2024 came to be filed on 06.03.2024 after the passage of about 75 days from the date of withdrawal of the earlier writ petition. The second writ petition however was again withdrawn on 13.05.2024 with liberty to file afresh petition. Thereafter, as already stated, the connected Revision Petition came to be filed on 20.05.2024. The learned Senior Counsel had submitted that the applicant is entitled to be given the benefit of Section 14 of the Limitation Act by excluding the time spent in prosecuting the two (2) writ petitions with due diligence and in good faith. Under Section 14(1) of the Limitation Act 'due diligence' and 'good faith' are the ingredients required for having the benefit of excluding the time taken in prosecuting the case before the wrong forum. Section 2(h) defines 'good faith' to

be an act which is done with due care and attention. We have already noticed that it took about 75 days for the applicant to re-file the second writ petition after withdrawing the first writ petition. Whatever defects that may have occurred could have been cured by the applicant immediately and if not, within a reasonable time but not after 75 days. There is also no explanation by the applicant to this aspect. In the case of *Suryachakra Power Corporation Limited -Vs- Electricity Department Represented by Its Superintending Engineer, Port Blair & Ors.* (supra), the Apex Court held that the two (2) main ingredients required for attracting the principles under Section 14 of the Limitation Act are that the party should be prosecuting another civil proceedings with due diligence and that the prosecution should be in good faith. It is not enough that one part is satisfied but both due diligence and good faith must be established. In the given facts of that case, the Apex Court was of the view that after withdrawal of the Review Petition by the appellant on 07.05.2015, the appeal could have been filed before the closure of the Supreme Court for summer vacation on 16.05.2015. However, the appellant filed the appeal only on 07.07.2015, after the re-opening of the Court on 01.07.2015. Under the circumstance, the benefit of the principles of Section 14 of the Limitation Act was held to be not available to the appellant. Consequently, the appeal was dismissed on the ground of delay. In the considered view of this Court, the ratio laid down by the Apex Court is found to be squarely applicable to the present case as well.

[10.] Apart from the availability of Section 14 of the Limitation Act to the instant case, what remains to be considered is the explanation given by the applicant since the passing of the Judgment & Order by the Lower Court on 21.03.2022 till the filing of the writ petition. In the application for condonation of delay, the applicant at paragraph No. 4 has stated that the Clerk of the conducting counsel who was maintaining all the documents and records of the counsel expired on account of critical illness on 17.09.2022 and for which reason, copy of the Judgment & Order was misplaced. It is however noticed that in the Covering Letter of the conducting counsel dated 27.03.2023 annexed to the application as Annexure-I, by which a copy of the Judgment & Order was forwarded to the applicant, there is no explanation for the delay in furnishing a copy of the Judgment & Order. There is also not whisper as regards the copy of the Judgment & Order being misplaced on account of the death of the Clerk of the conducting counsel.

[11.] It may further be noticed that after the Judgment & Order was furnished to the applicant as aforesaid, the applicant has taken the stand that the same was processed and forwarded to the Regional Headquarters of the applicant at Shillong for further necessary direction/action, if any. However, there is no mention as to when the same was sent to Shillong. It also appears from the pleadings of the applicant that the Law Officer who was dealing with the matter although

transferred on 31.05.2023 was released only on 25.06.2023. The relieving Officer as per Order No. 116/2023 dated 03.07.2023 (appended to Annexure-II of the application) is stated to have joined the new place of posting on 30.06.2023 and thereby, leaving a gap of only about five (5) days between the exit of the transferred officer and the joining by the new Officer. Further, as pointed out by the learned counsel for the respondent Nos. 1 to 9, it is not understood as to how the certified copy of the Judgment & Order applied on 07.07.2023 and which was ready for delivery on 13.07.2023 was handed over only on 01.08.2023. Be that as it may, according to the applicant, the matter was taken up before the higher authority of the Organization sometime in the 2nd week of August, 2023 and finally, an authority letter was issued to challenge the Judgment & Order on 29.11.2023. What had transpired between the 2nd week of August, 2023 and 29.11.2023 has not been substantiated by any statements and not to speak of any documents or communications of the applicant Organization.

[12.] The learned Senior Counsel for the applicant by relying upon the case of *Sheo Raj Singh (Deceased) Through LRS & Ors.* (supra) has submitted that as held by the Apex Court, each case has to be considered on the particularities of its own special facts and that ‘sufficient cause’ mentioned in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no

gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay. The Apex Court in the given facts of that case agreed to the decision of the High Court in condoning the delay for reasons including distinction to be drawn between inordinate unexplained delay and explained delay. However, as already observed earlier, the applicant has failed to explain with relevant materials as to when the Judgment & Order of the Lower Court was forwarded to the Regional Headquarters at Shillong for further steps and also, what transpired within the Organization with supporting materials between the 2nd week of August, 2023 and 29.11.2023. Therefore, the instant case also falls under the category of “inordinate and unexplained delay” and thus detrimental to the applicant. The learned Senior Counsel has also submitted that there is merit in the Revision Petition filed by the applicant but the same has not been pleaded or addressed by the learned Senior Counsel except for there being a plain statement in paragraph No. 9 of the application to the effect that unless the delay is condoned, it would result in a meritorious matter being thrown out at the very threshold. The same in the considered view of this Court cannot be accepted on its face value.

[13.] Therefore, upon due consideration, this Court finds that the applicant has failed to explain the delay in filing the connected Revision Petition with sufficient cause and accordingly, the application is found to be without any merit and is

therefore dismissed. Having arrived at such conclusion, it will not be necessary to dwell upon the other authorities that has been relied upon.

JUDGE

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