

Party Name : T.S.E.C. LTD & ANR Vs JAGANNATH HRISHI DAS & ANR

HONBLE THE CHIEF JUSTICE DEEPAK GUPTA THE HONBLE MR. JUSTICE S.TALAPATRA

By this order, we shall deal with the two applications i.e. (i) CM. Appl. No.118 of 2015 for condonation of delay and (ii) CM. Appl. No.117 of 2015 for restoration of the appeal being RFA No.11 of 2009 (D/O), which was dismissed in default on 01.12.2014.

The undisputed facts are that this case was being dealt on behalf of the Tripura State Electricity Corporation Ltd. by Mr. D.K. Biswas, learned counsel of this Court. On 28.10.2014 Mr. Biswas, learned counsel made a statement before this Court that the Tripura State Electricity Corporation Ltd. had written a letter to him withdrawing the matter from him. We had adjourned the matter to 1st December, 2014 and we had requested to Mr. Biswas, learned counsel to inform the authorities of the date fixed.

On 01.12.2014, none appeared for the petitioners and therefore, we had dismissed the appeal for default.

CM. Appl. No.117 of 2015 has been filed for restoration of the appeal being RFA No.11 of 2009 (D.O) and CM. Appl. No.118 of 2015 for condoning the delay in filing the application for restoration of the appeal.

In the order dated 28.10.2014, we had clearly mentioned that Mr. Biswas, learned counsel stated that the Tripura State Electricity Corporation Ltd. had withdrawn the case from him. A copy of this order was also sent to the Tripura State Electricity Corporation Ltd.

According to the corporation, it received the copy of the order on 07.11.2014. The date fixed in the appeal was on 01.12.2014. There was almost more than 3(three) weeks time available to engage another counsel. But no counsel was engaged by the corporation and the appeal was dismissed in default on 01.12.2014. According to the affidavit filed by the corporation, on 04.12.2014, Ms. N. Guha, learned counsel was asked to conduct the case and she on verification, came to know that the case had been dismissed in default on 01.12.2014. She thereafter, applied for a certified copy of the order dated 01.12.2014 which was received by her on 19.01.2015.

Then she moved the corporation for supply of certain documents to enable her to file a restoration application.

It is stated that Ms. N. Guha, learned counsel was not well and finally, since she did not take steps, Ms. S. Deb Gupta, learned counsel was engaged to file the case and the same was prepared and filed on 18th March, 2015.

At the outset, we may notice that though we had given time to file supplementary affidavit also, the Tripura State Electricity Corporation Ltd. has not denied the correctness of the statement made by Mr. Biswas, learned counsel that the corporation had withdrawn the file from him. If the corporation had withdrawn the file from him, it was the duty of the corporation to engage a counsel in place of Mr. Biswas, learned counsel. It was by way of indulgence that this Court had sent a copy of the order and requested to Mr. Biswas, learned counsel to inform the corporation about the order, but still the corporation did not take any steps in the matter within the time prescribed. At the same time, we are clearly of the view that for the negligence of the officers of the corporation, the public should not suffer because finally public money is involved.

We, therefore, allow both the CM. applications even though we are not fully satisfied with the reasons given therein only in the larger public interest, subject to payment of Rs.10,000/- as cost. Cost to be paid to the High Court Bar Council, Tripura and to be utilized only for purchase of books.

The Tripura State Electricity Corporation Ltd. shall recover the cost paid by it from the erring officials. Cost to be deposited within 4(four) weeks from today.

The CM. Applications stands disposed of.