

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

CM APPL.68 of 2015 in MFA(W/C) 3 of 2015,
CM Appl.70 of 2015 in MFA(W/C) 4 of 2015,
CM Appl.72 of 2015 in MFA(W/C) 5 of 2015,
CM Appl.74 of 2015 in MFA(W/C) 6 of 2015,
CM Appl.76 of 2015 in MFA(W/C) 7 of 2015,
CM Appl.78 of 2015 in MFA(W/C) 8 of 2015,
CM Appl.80 of 2015 in MFA(W/C) 9 of 2015,
And CM Appl.82 of 2015 in MFA(W/C) 10 of 2015.

A) CM APPL.68 of 2015 in MFA(W/C) 3 of 2015.

Sri Gouranga Das,
S/o Late Krishna Kumar Das,
Village - Chandaur Colony,
P.O - Tripureswari Colony,
P.S - Radhakishorepur,
Sub-Division - Udaipur,
District - South Tripura.

..... *Applicant.*

- Vs -

1. The Head Geo-Physics,
ONGC Limited, 50 Chowrangy Road,
Kolkata - 71, West Bengal.
2. The Basin Manager, ONGC Limited,
50 Chowrangy Road, Kolkata - 71, West Bengal.
3. Oil and Natural Gas Corporation Limited, Tripura,
Project, (to be represented by its Project Manager),
Agartala, West Tripura.
4. The Deputy General Manager,
ONGC Limited, Tripura Project, Agartala,
West Tripura.
5. The Head (PSA)/(F & A),
ONGC Limited, Tripura project, Agartala,
West Tripura.

6. **Sri Amulya Chandra Das,**
S/O - Unknown, ONGC Contractor and Order Supplier,
Village + P.O + P.S - Amtali,
District - West Tripura,
C/O - ONGC Limited, Tripura Project, Agartala, West Tripura.

..... *Respondents.*

B) CM APPL.70 of 2015 in MFA(W/C) 4 of 2015.

Sri Harendra Das,
S/o Late Harmohan Das,
Village - Taxapara,
P.O - Taxapara,
P.S - Melaghar,
Sub-Division - Sonamura,
District - West Tripura.

..... *Applicant.*

- Vs -

1. **The Head Geo-Physics,**
ONGC Limited, 50 Chowrangy Road,
Kolkata - 71, West Bengal.
2. **The Basin Manager, ONGC Limited,**
50 Chowrangy Road, Kolkata - 71, West Bengal.
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Project, (to be represented by its Project Manager),
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4. **The Deputy General Manager,**
ONGC Limited, Tripura Project, Agartala,
West Tripura.
5. **The Head (PSA)/(F & A),**
ONGC Limited, Tripura project, Agartala,
West Tripura.
6. **Sri Amulya Chandra Das,**
S/O - Unknown, ONGC Contractor and Order Supplier,
Village + P.O + P.S - Amtali,
District - West Tripura,
C/O - ONGC Limited, Tripura Project, Agartala, West Tripura.

..... *Respondents.*

C) CM APPL.72 of 2015 in MFA(W/C) 5 of 2015.

Sri Kalipada Nama,
S/o Late Mangal Nama,
Village - Chandrapur,
P.O - Tripureshwari Colony,
P.S. - Radhakishorepur,
Sub-Division - Udaipur,
District - South Tripura.

..... *Applicant.*

- Vs -

- 1. The Head Geo-Physics,**
ONGC Limited, 50 Chowrangy Road,
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- 4. The Deputy General Manager,**
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West Tripura.
- 5. The Head (PSA)/(F & A),**
ONGC Limited, Tripura project, Agartala,
West Tripura.
- 6. Sri Amulya Chandra Das,**
S/O - Unknown, ONGC Contractor and Order Supplier,
Village + P.O + P.S - Amtali,
District - West Tripura,
C/O - ONGC Limited, Tripura Project, Agartala, West Tripura.

..... *Respondents.*

D) CM APPL.74 of 2015 in MFA(W/C) 6 of 2015.

Smt. Usha Rani Das,
S/o Late Subal Das, Village - Bagmara,
P.O - Bagmara, P.S. - Melaghar,
Sub-Division - Sonamura,
District - West Tripura.

..... *Applicant.*

- Vs -

1. **The Head Geo-Physics,**
ONGC Limited, 50 Chowrangy Road,
Kolkata - 71, West Bengal.
2. **The Basin Manager, ONGC Limited,**
50 Chowrangy Road, Kolkata - 71, West Bengal.
3. **Oil and Natural Gas Corporation Limited, Tripura,**
Project, (To be represented by its Project Manager),
Agartala, West Tripura.
4. **The Deputy General Manager,**
ONGC Limited, Tripura Project, Agartala,
West Tripura.
5. **The Head (PSA)/(F&A),**
ONGC Limited, Tripura project, Agartala,
West Tripura.
6. **Sri Amulya Chandra Das,**
S/O - Unknown, ONGC Contractor and Order Supplier,
Village + P.O + P.S - Amtali,
District - West Tripura,
C/O - ONGC Limited, Tripura Project, Agartala, West Tripura.

..... *Respondents.*

E) CM APPL 76 of 2015 in MFA(W/C) 7 of 2015.

Smt. Laxmi Bala Das,
W/o Rasaraj Das, Village - Taxapara,
P.O - Taxapara, P.S. - Melaghar,
Sub-Division - Sonamura,
District - West Tripura.

..... *Applicant.*

- Vs -

1. **The Head Geo-Physics,**
ONGC Limited, 50 Chowrangy Road,
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2. **The Basin Manager, ONGC Limited,**
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Project, (To be represented by its Project Manager),
Agartala, West Tripura.

4. **The Deputy General Manager,**
ONGC Limited, Tripura Project, Agartala,
West Tripura.
5. **The Head (PSA)/(F & A),**
ONGC Limited, Tripura project, Agartala,
West Tripura.
6. **Sri Amulya Chandra Das,**
S/O - Unknown, ONGC Contractor and Order Supplier,
Village + P.O + P.S - Amtali,
District - West Tripura,
C/O - ONGC Limited, Tripura Project, Agartala, West Tripura.

..... *Respondents.*

F) CM APPL.78 of 2015 in MFA(W/C) 8 of 2015.

Smt. Usha Rani Das,
W/o Late Dubal Das, Village - Bagmara,
P.O - Bagmara, P.S. - Melaghar,
Sub-Division - Sonamura,
District - West Tripura.

..... *Applicant.*

- Vs -

1. **The Head Geo-Physics,**
ONGC Limited, 50 Chowrangy Road,
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4. **The Deputy General Manager,**
ONGC Limited, Tripura Project, Agartala,
West Tripura.
5. **The Head (PSA)/(F & A),**
ONGC Limited, Tripura project, Agartala,
West Tripura.

6. **Sri Amulya Chandra Das,**
S/O - Unkwon, ONGC Contractor and Order Supplier,
Village + P.O + P.S - Amtali,
District - West Tripura,
C/O - ONGC Limited, Tripura Project, Agartala, West Tripura.

..... *Respondents.*

G) CM APPL.80 of 2015 in MFA(W/C) 9 of 2015.

Sri Nil Ratan Chakraborty,
S/o Late Tarak Chakraborty,
Village - Dudh Puskarani,
P.O - Jamjuri (Mog Pusharini),
PS - Radhakishorepur,
Sub-Division - Udaipur,
District - South Tripura.

..... *Applicant.*

- Vs -

1. **The Head Geo-Physics,**
ONGC Limited, 50 Chowrangy Road,
Kolkata - 71, West Bengal.
2. **The Basin Manager, ONGC Limited,**
50 Chowrangy Road, Kolkata - 71, West Bengal.
3. **Oil and Natural Gas Corporation Limited, Tripura,**
Project, (To be represented by its Project Manager),
Agartala, West Tripura.
4. **The Deputy General Manager,**
ONGC Limited, Tripura Project, Agartala,
West Tripura.
5. **The Head (PSA)/(F & A),**
ONGC Limited, Tripura project, Agartala,
West Tripura.
6. **Sri Amulya Chandra Das,**
S/o - Unknown, ONGC Contractor and Order Supplier,
Village + P.O + P.S - Amtali,
District - West Tripura,
C/O - ONGC Limited, Tripura Project, Agartala, West Tripura.

..... *Respondents.*

H) CM APPL.82 of 2015 in MFA(W/C) 10 of 2015.

Sri Narayan Das,
S/o Late Sachindra Das,
Village - Chandrapur Colony,
P.O - Tripureswari Colony,
R.S. - Radhakishorepur,
Sub-Division - Udaipur,
District - South Tripura.

..... *Applicant.*

- Vs -

- 1. The Head Geo-Physics,**
ONGC Limited, 50 Chowrangy Road,
Kolkata - 71, West Bengal.
- 2. The Basin Manager, ONGC Limited,**
50 Chowrangy Road, Kolkata - 71, West Bengal.
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Project, (To be represented by its Project Manager),
Agartala, West Tripura.
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ONGC Limited, Tripura Project, Agartala,
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- 6. Sri Amulya Chandra Das,**
S/O - Unkwon, ONGC Contractor and Order Supplier,
Village + P.O + P.S - Amtali,
District - West Tripura,
C/O - ONGC Limited, Tripura Project, Agartala, West Tripura.

..... *Respondents.*

_B_E_F_O_R_E_

THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

For the petitioner : Mr. P Roy Barman, Advocate,
Mr. S Bhattacharji, Advocate,
Mr. K Nath, Advocate.

For

Respondents 1 to 5 : Mr. S K Deb, Sr. Advocate,
Mr. P B Dhar, Advocate,

Respondent No. 6 : Mr. D R Choudhury, Advocate,
Mr. D Deb, Advocate.

Date of hearing & judgment: 27.4.2015.

Whether fit for reporting : Yes.

JUDGMENT & ORDER(ORAL)

All these applications are being disposed of by a common order since the facts involved are identical.

2. Briefly stated, the facts of the case are that as many as nine petitions were filed before the Commissioner, Workmen Compensation. The claim petitions were allowed but the Commissioner, Workmen Compensation while making the award has deducted certain amount which had been paid by the opposite parties. The dependants filed the appeals claiming that the Commissioner was not entitled to make such deductions from the awarded amount.

3. All the dependants filed one joint appeal being MFA(W/C) 23 of 2007 and this appeal was admitted on 30.11.2007 on the following substantial question of law :

“Whether the amount of compensation awarded can be reduced by the amount received by the legal heirs of the deceased under the Group Insurance Scheme relating to the workman?”

Notices were served on respondent No.6 in the year 2014. Thereafter the matter came up before this Court on 11.12.2014 when learned counsel for the appellants requested for an adjournment. Mr. S Deb learned senior counsel rightly submits that on that date he had raised an objection that a joint appeal was not maintainable. Thereafter the matter was adjourned to 13.01.2015 when again Mr. P Roy Barman learned counsel for the appellant requested for an adjournment. The matter was then listed on 29.01.2015 on which date an application was filed and the appeal was prosecuted only on behalf of Sunil Debnath and all the other appellants withdrew the appeal. Thereafter the fresh appeals were filed on 12.02.2015. Along with these appeals applications for condonation of delay have been filed and these applications were filed both under Section 5 and Section 14 of the Limitation Act, 1963.

4. Sri P Roy Barman submits that the appellants were under legal advice, diligently prosecuting a common appeal and it was only after the said objection was raised that the matter was examined and finally the application for withdrawal was filed. On the other hand, Mr. S Deb learned senior counsel, appearing for the respondents 1 to 5, submits that Section 14 has no applicability to this case because this Court did not lack jurisdiction to decide the appeals and it is not a case of lack of jurisdiction. He also submits that with regard to Section 5 no explanation has been given as to

how the delay occurred. On behalf of the respondent No.6 Mr. D R Choudhury submits that no steps were taken for serving the respondent for 6 long years and therefore, the delay cannot be condoned. As far as the objection raised by Mr. D R Choudhury is concerned that is without any merit and the same is rejected at the outset.

5. The question which arises is, whether Section 14 is applicable to the facts and circumstances of the case or not. Section 14 deals with exclusion of time spent by a litigant *bona fide* in a Court without jurisdiction.

Section 14(2) with which we are concerned reads as follows:

“(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.”

6. It is the case of Mr. Deb that since this Court did not lack inherent jurisdiction to decide the appeals of all the appellants Section 14 is not at all applicable. In this behalf he has placed reliance on the following observations of the Apex Court delivered in ***Consolidated Engineering Enterprises and another Vs. Principal Secretary, Irrigation Department and others, (2008) 7 SCC 169*** which reads as follows :

“21. Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without

jurisdiction. On analysis of the said Section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service :

- (1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;*
- (2) The prior proceeding had been prosecuted with due diligence and in good faith;*
- (3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;*
- (4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;*
- (5) Both the proceedings are in a court.”*

A bare reading of this paragraph clearly shows that the Supreme Court on analysis of the said Section found that there are 5 conditions which must be satisfied. Here we are concerned only with conditions 2 and 3 because there is no dispute with conditions 1, 4 and 5. However, before dealing with condition No.2 I will deal with condition No.3.

7. Though the Section is headed as ‘excluding time of proceeding spent *bona fide* in Court without jurisdiction’ a reading of Section 14(2) shows that it is not limited only to lack of jurisdiction because the words are “*prosecuted in good faith in a Court which, from defect of jurisdiction or other causes of like nature is unable to entertain it(emphasis supplied).*” It has been contended by Sri Deb that this phrase ‘*excluding time of proceedings spent bona fide in Court without jurisdiction*’ has to be read *ejusdem generis* with the words ‘*lack of jurisdiction*’ and, therefore, it will only be a defect of jurisdiction which would clothe the Court with jurisdiction to exclude time in terms of Section 14 of

the limitation Act. The very judgment relied upon by the petitioner has an answer to this query in the next paragraph. The opening line of para 22 reads as follows :

“22 The policy of the Section is to afford protection to a litigant against the bar of limitation when he institutes a proceeding which by reason of some technical defect cannot be decided on merits and is dismissed.”

The Supreme Court after analyzing this Section in the very next paragraph has said that when a matter has to be dismissed on a technical defect then Section 14 can be brought into play. Therefore, I am of the considered view that Section 14 applies.

8. Even otherwise, assuming for the sake of argument that Section 14 was not to be applied, I am of the considered opinion that even under Section 5 the claimants would have been entitled to claim condonation of delay. These claimants are poor persons who have come to Court claiming compensation on account of death of their bread earners. They have approached a counsel and the counsel in his wisdom advised them to file an appeal. A litigant cannot be expected to know whether one appeal is to be filed or separate appeals are to be filed. These are cases where even the counsel sometime may not be sure of what is the proper mode of filing appeal.

9. The objection as rightly put by Mr. Deb was raised for the first time on 11.12.2013. Thereafter, obviously the learned counsel had to contact his clients to get applications prepared,

withdraw the appeal and to file fresh appeals. Therefore, even if Section 5 alone was to apply I would not have hesitated to condone the delay even under the said Section. In view the aforesaid discussion, all the applications are allowed.

The delay is condoned. CM applications are disposed of.

CHIEF JUSTICE

Sukhendu