Yumkham Rother
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IN THE HIGH COURT OF MANIPUR
AT IMPHAL

MC(Review Petition (J2)) No. 1 of 2020
Ref:- Arbitration Petition (J2) No. 2 of 2014

1. The Loktak Development Authority represented by Member Secretary/Project Director, Loktak Development Authority, Second Floor, Susu Home, Opposite to First Manipur Rifles, Babupara, Imphal-795001, Manipur.

2. The Surveyor of works, Loktak Development Authority, 2nd Floor, Susu Home, Opposite 1st Manipur Rifles, Babupara, Imphal-795001.

3. Superintending Engineer, Loktak Development Authority, Second Floor, Susu Home, Opposite to First Manipur Rifles, Babupara, Imphal-795001, Manipur.

4. Executive Engineers, Loktak Development Authority, Second Floor, Susu Home, Opposite to First Manipur Riles, Babupara, Imphal-795001, Manipur.

…….*Applicants*

-Versus-

1. M/S K. Pro Infra Works Pvt. Ltd. Registered under the Companies Act, 1956 having its registered office at 704 Nilgiri Apartments, 9 Barakhamba Road New Delhi-110001 through its authorized signatory at Babupara, Imphal-795001, Manipur.

2. The Central Bureau of Investigation, represented by Head of Branch, ACB, Guwahati, Opposite Balaji Temple, NH-37, PO- Gorchuk, Guwahati-781035.

……. *Respondents.*

BEFORE
HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the Applicants	::	Mr. Athouba Khaidem, GA
For the Respondents	::	Mr.Pasham Mohith Reddy, Advocate Mr. Ch. Momon, Advocate. Mr. W. Darakishwor, Sr.PCCG
Date of Hearing	::	16.10.2020
Date of Judgment &Order	::	**23.11.2020.**

JUDGMENT AND ORDER
(CAV)

[1] This petition has been filed by the petitioners to condone the delay of 234 days in filing the Review Petition to review the order dated16.10.2019 passed in Arbitration Petition (J2) No.2 of 2014.

[2] The case of the petitioners is that the first respondent filed Arbitration Petition (J2) No. 2 of 2014 praying for appointment of an Arbitrator and this Court, by an order dated 16.10.2019, appointed Hon'ble Justice Asok Potsangbam, a retired Judge of

Gauhati High Court as the sole Arbitrator to adjudicate upon the dispute between the parties. The arbitration proceedings has been initiated since 16.12.2019 and the petitioner has to file statement of defence and counter claims. According to the petitioners, all the relevant documents are in the custody of CBI for investigation in connection with FIR No.5(3) 2018 of V & ACPS under Section 420/120B IPC and Section 13(2) read with Section 13(1)(d) of PC Act, 1998.

[3] Further case of the petitioners is that without taking into consideration of the existence of the FIR, which is being handled by the CBI, the order dated 16.10.2019, came to be passed by this Court. Hence, the petitioner has filed the review petition with a delay of 234 days delay in filing the Revision Petition. According to the petitioners, the delay has been caused beyond the control of the petitioners and the delay is not deliberate, but due to the reasons explained in the affidavit filed in support of the petition. If the delay is not condoned and reviewed the order, irreparable loss would be caused to the petitioners as well as public. Hence, prayed for condoning the delay of 234 days in filing the review petition.

[4] The first respondent filed affidavit-in-opposition stating that pursuant to the appointment of an Arbitrator, the first respondent filed its statement of claim before the Arbitrator and the petitioners were scheduled to file its statement of defence. However, the petitioners sought several adjournments before the Arbitrator and had thereafter resorted to file the review petition with a delay of 234 days. It is stated that the order passed under Section 11 of the Arbitration and Conciliation Act, 1996 is not amenable to a review and hence, the review proceedings are liable to be dismissed in limine. Further, no sufficient cause has been shown to condone the delay of 234 days in filing the review application. Hence, prayed for dismissal of the petition.

[5] The learned counsel for the petitioners submitted that the order dated 16.10.2019 in Arbitration Petition (J2) No. 2 of 2014 was passed without taking into consideration of the existence of the FIR which is being handled by the CBI. Hence, the order dated 16.10.2019 is liable to be reviewed by this Court. As far as the delay in filing the review application is concerned, the learned counsel explained the delay as under:

(1)	16.10.2019	Order of the High Court in Arbitration Petition (J2) No. 2 of2014
(2)	28.02.2020	CBI came to the office of the first respondent for search and on this day, the officials of the first respondent came to know that the matter has been handled by the CBI, ACB, Guwahati.
(3)	25.03.2020	National lockdown imposed till31.5.2020 and in few places till 30.6.2020 with certain relaxation.
(4)	13.06.2020	Learned Government counsel entered appearance for all the respondents in the Arbitration Case No. 1 of 2019.
(5)	17.06.2020	First respondent wrote letter to the Additional Chief Secretary (Forest & Environment) seeking advice of the Advocate General, Manipur with regard to the matter.
(6)	19.06.2020	Secretary (Law) issued order for filing review petition against the judgment dated 16.10.2019.
(7)	27.06.2020	Relevant documents were furnished to the office of the Government Advocate (High Court), Manipur

[6] The learned counsel submits that there is a delay of 234 days after deducting the statutory period of 30 days in filing the review petition which has been caused beyond the control of the petitioners and the delay is not deliberate. He would submit that when the State is an applicant praying for condonation of delay, the Court should take a lenient view as the State represents collective cause of the community and if the review brought by the State is lost on the ground of delay, no person is individually affected but only affect the public interest at large. Hence, this is a fit case for condonation of the delay. Accordingly, prays for condoning the delay of 234 days in filing the review petition.

[7] Per contra, the learned counsel for the first respondent submits that the petition for condonation of the delay is liable to be dismissed on the ground that the review petition ought to have been filed within 30 days from the date of passing the order and therefore, the petition for condonation of the delay filed by the petitioners is an afterthought and is filed to delay and derail the arbitral proceedings conducted by the sole Arbitrator. Since the order passed under Section 11 of the Arbitration and Conciliation Act is not amenable to a review, the review petition is liable to be rejected.

[8] The learned counsel further submits that when the delay is not justified to the fullest, the petition to condone the delay is liable to be rejected as the allowing of the petition would put to the other parties to the extreme hardship and injury. Further, the learned counsel submits that the administrative difficulties and delays cannot be a reason for any Government Institution to seek condonation of delay. In the instant case, the petitioners are seeking to only depict administrative delays illegally and has not rendered any reasons and justifications before this Court for the delay in filing the petition. Thus, prayed for dismissal of the petition.

[9] Mr. Darakeshwor, who appears for the second Respondent has made no objection for allowing the M.C. (Review Petition(J2)) No. 1 of 2020.

[10] This Court considered the submissions made counsel appearing on either side and also perused the materials available on record.

[11] The grievance of the petitioners is that the order dated16.10.2019 was passed without taking into consideration of the FIR No.5(3) 2018 of V & ACPS under Section 420/120 IPC

and Section 13(2) read with Section 13(1)(d) of the PC Act, 1988, which is being handled by the CBI. Since the said order is liable to be reviewed, the petitioners have filed the review application with a delay of 234 days and the delay is neither willful nor wanton. According to the petitioners, they came to know the investigation done by the CBI only on 28.2.2020 and in view of the lockdown imposed, the Government counsel entered appearance in the Arbitration Case No. 1 of 2019 only on 13.6.2020 and after writing to the Additional Chief Secretary seeking advice of the learned Advocate General, the Secretary (Law) issued an order for filing the review petition against the order dated 16.10.2019 only on 19.6.2020 and thereafter, after collecting all the documents, they handed over the same before the Government Advocate on 27.6.2020 and thereafter, the Government Advocate has filed the review petition. Therefore, the delay is not intentional, but due to the reasons explained above.

[12] This Court by the order dated 16.10.2019 in Arbitration Petition (J2) No. 2 of 2014, appointed Hon'ble Mr. Justice Asok Potsangbam, a retired Judge of Gauhati High Court as the sole Arbitrator to adjudicate upon the disputes between the

parties. While appointing the Arbitrator, in paragraphs 16 to 18, this Court also observed as under:

> *"16. The parties have agreed that they shall not challenge the composition and impartiality of the Arbitrator.*
>
> *17. The commensurate remuneration preferably on consolidated basis shall be fixed by the Arbitrator at the first sitting of the arbitration. All costs, charges and expenses including the remuneration of the Arbitrator shall be borne by the parties in equal measures.*
>
> *18. The Arbitrator is requested to complete the proceeding within 6 (six) months from the date of entering upon the reference.*
>
> *Arbitration Petition (J2) No. 2 of 2014 is accordingly disposed of."*

[13] While appointing the Arbitrator, this Court in paragraph (11) stated that though the petitioners contended that the main issue to be decided is interpretation of the agreement dated 2.11.2009, the same cannot be adjudicated by this Court in the present proceedings and it is for learned Arbitrator to decide the same. Anyhow, the petitioners requested this Court to appoint

Arbitrator who is well acquainted in the field of law, particularly a retired High Court Judge of Gauhati High Court and has given two names of the Hon'ble Judges. Thus, it is clear that the appointment of an Arbitrator is by consent of parties, particularly the petitioners herein.

[14] Pursuant to the order dated 16.10.2019, the learned Arbitrator took up the case in Arbitration Case No. 1 of 2019 and on 13.6.2020, after hearing the respective counsel, the learned Arbitrator adjourned the case to 20.6.2020. While adjourning the case, the learned Arbitrator stated that the learned counsel for the respondents i.e., the present petitioners herein to inform the Arbitrator on the next date as to the steps taken by the LDA including its administrative department to procure copies of the documents required for preparing their defence statement even resorting to Video Conferencing. While so, on 17.6.2020, the first respondent wrote a letter to the Additional Chief Secretary seeking advice of the learned Advocate General in the matter stating that in the two Public Interest Litigations filed earlier with a prayer for causing an investigation to the irregularities, impropriety and illegal embezzlement as well as misappropriation of money meant for clearing up the Loktak Lake by the first respondent herein. The

aforesaid two Public Interest Litigations were closed vide order dated 21.8.2018 and the CBI has already ceased up all the documents related to the contract work. In such situation, the first petitioner sought advice of the learned Advocate General in the matter for further course of action. According to the petitioners, on 19.6.2020, the Secretary (Law) issued an order for filing a review petition against the order dated 16.10.2019.

[15] The aforesaid review petition has been filed by the petitioners with a delay of 234 days. Admittedly, the petitioners have not given valid reasons for the delay. In the instant petition, the petitioners stated that they came to know the CBI case on 28.2.2020. However, when the Arbitration Case No. 1 of 2019 was taken by the learned Arbitrator on 13.6.2020, the petitioners have not stated anything about the CBI investigation and/or case. If really, the petitioners knew about the CBI case against the first respondent on 28.2.2020, they would have informed the same before the learned Arbitrator and requested the learned Arbitrator not to proceed with the matter further, as CBI case is pending against the first respondent. But the petitioners have failed to do so and after waiting for nearly three and half months, suddenly wrote a letter to the Additional Chief Secretary seeking advice of

the learned Advocate General for filing a review petition. This clearly shows the administrative delay on the part of the petitioners. The nationwide lockdown dated 25.3.2020 imposed cannot be a ground to condone the delay.

[16] The submissions of the learned counsel for the petitioners that when the State is an applicant praying for condonation of delay, the Court should take a lenient view as the State represents collective cause of the community and if the review brought by the State is lost on the ground of delay, no person is individually affected but only affect the public interest at large cannot be countenanced. Having consented for appointment of an Arbitrator and having participated in the Arbitrary proceedings, now the petitioners cannot turn around and contend that the order dated 16.10.2019 is to be reviewed.

[17] It is to be noted that the petitioners admit that they have committed a delay in approaching this Court. It is the duty of the petitioners to discharge their burden of proof that the delay was not willful and the same was unintentional. As stated supra, during February, 2020 itself the petitioners have knowledge about the CBI investigation.

[18] It is settled that the sole administrative difficulties and/or delays cannot be a reason for any Government institution to seek condonation of delay.

[19] As rightly submitted by the learned counsel for the first respondent the petitioners are at best seeking to only depict administrative delays illegally and have not rendered any reasons and justifications before this Court for the delay in filing the instant petition.

[20] There is no dispute that while considering the scope of expression “sufficient cause” within the meaning of Section 5 of the Limitation Act, the said expression “sufficient cause” is to receive liberal construction so as to advance substantial justice.

[21] Elaborately dealing with the subject and holding that proof of sufficient cause is condition precedent for exercising extraordinary discretion vested in the Court and what counts is not the length of delay, but sufficiency of the cause and observing that what constituted sufficient cause cannot be laid down by hard and fast rules, in ***State of Nagaland Vs. Lipok Ao and others, reported in (2005) 3 SCC 752***, the Hon’ble Supreme Court held, the expression “sufficient cause” should be considered with

pragmatism in a justice oriented approach rather than the technical objection of sufficient cause for explaining every day's delay.

[22] In the instant case, the cause shown by the petitioners herein is not sufficient to condone the delay. Further, each and every day delay has not been properly explained by the petitioner. Since the petitioners have failed to explain the delay properly and the explanation given by the petitioners is not convincing, this Court is of the view that the delay cannot be condoned. Hence, the instant petition is liable to be dismissed.

[23] Coming to the merits of the review application, since the order dated 16.10.2019 is a consent order, the same cannot be reviewed on the ground now raised by the petitioners.

[24] It is reiterated that no valid explanation has been given by the petitioners to condone the delay and no valid grounds made out to review the order dated 16.10.2019 made in Arbitration Petition (J2) No. 2 of 2014 as well.

[25] For the foregoing discussions, the petition to condone the delay in filing the review petition is dismissed.

Consequently, the review petition is rejected. However, the petitioners are permitted to file an appropriate petition before the learned Arbitrator and the learned Arbitrator is at liberty to decide the same on merits and in accordance with law. No costs.

JUDGE

FR/NFR

Sushil