

21.02.2024
Item No.9.
Court No.6.
AB

M.A.T. 1411 of 2023
With
CAN 1 of 2023
CAN 3 of 2023

The State of West Bengal & Others
Vs
Achinta Kumar Barik & Others

Mr. Lalit Mohan Mahata,
Mr. Supratim Dharfor the Appellants.

Mr. Shyama Prosad Purkait,
Ms. Moumita Mondal
.....for the Respondent No.1 /
Writ Petitioner.

Mr. Somnath Bose
.....for the Calcutta Port Trust.

Mr. S. M. Hassan,
Ms. Anupama Yasmin
.....for the Haldia Municipality.

In re : CAN 1 of 2023

This application has been filed for condonation of delay of 1779 days (although as per the note of the Stamp Reporter, the delay is of 1096 days) in presenting the Memorandum of Appeal against a judgment and order dated July 11, 2018, passed by a learned Judge of this Court in W. P. No.18440 (W) of 2015, being a writ petition filed by the respondent no.1 herein.

On January 30, 2024, when the condonation application was moved, we were of the view that sufficient explanation for the long delay is not there in the petition. Acceding to the request of learned State

Advocate, we had granted leave to the State to file a supplementary affidavit to give the State another opportunity to explain the delay. Such supplementary affidavit has been filed today. The respondent/writ petitioner has filed his written objection thereto.

In the supplementary affidavit, at paragraphs 9 to 23, it is stated as follows:

“9. On 23.07.2018, the Department received the order dated 11.07.2018 through the communication of the Learned Advocate for the writ petitioner.

10. On 01.08.2018, the Rehabilitation Advisory Committee, Haldia in its meeting decided to make an appeal against the order of the Hon’ble High Court dated 11.07.2018.

An extract copy of the proceeding dated 01.08.2018 is annexed hereto and marked with letter P-1 to this supplementary affidavit.

11. On 21.08.2018, a letter vide Memo No.298/LA(H) dated 20.08.2018 addressing to the Land Reforms Commissioner seeking kind instruction for preferring appeal against the order passed by the Hon’ble High Court on 11.07.2018 in WPA 18440 of 2015.

A true copy of the said Memo dated 20.08.2018 is annexed hereto and marked with letter P-2 to this supplementary affidavit.

12. On 13.12.2018, the Department received the formal appointment in respect of Sri Susovan Sengupta, the then Learned Senior Government Advocate with a junior of his choice for filing the appeal against the impugned order dated 11.07.2018 from the Deputy Secretary, to the Government of West Bengal Land and Land Reforms and Refugee Relief and Rehabilitation Department in terms of Memo No. DS- 2911-LA/9R-324/18 dated 14.11.2018.

A true copy of the said Memo dated 14.11.2018 is annexed hereto and marked with letter P3 to this supplementary affidavit.

13. On 22.01.2019, all the documents explaining the grounds of appeal in respect of WPA 18440 of 2015 was handed over to one Sri Prabir Roy, Clerk to Mr. Susovan Sengupta, Senior Government Advocate, as would be

evident from the note sheet in the application being CAN 1 of 2023.

14. On 19.03.2019, one of the official of the Department came to the Hon'ble High Court for submission of documents in another case and requested Mr. Susovan Sengupta to draft appeal and connected application at the earliest.

15. On 17.04.2019, one of the official of the L.A. Department, Haldia came before this Hon'ble Court for submission of document to Mr. Swapan Pal, Learned Advocate for the State, when he met the Learned Advocate who was entrusted to prefer the appeal.

16. On 24.07.2019, one of the official of the Department came to the Hon'ble High Court for filing Affidavit in opposition in WPA 17786 of 1998 and the matter was discussed verbally for preference of appeal at the earliest.

17. On 26.08.2019 one of the official came to this Hon'ble Court for affirmation of the affidavit in WPA 17786 of 1998 and made a query relating to preparation of Appeal from the learned Advocate and requested him verbally for preferring the Appeal.

18. On 02.12.2019, one of the official came to this Hon'ble Court for restoration of MAT 1882 of 2013 and knocked the Learned Advocate again to know the fate of preparation for preferring the instant Appeal.

19. On 11.02.2020, one of the official attended the Hon'ble High Court for submission of original L.A. case record on 13/62-63 and orally requested to the clerk of the Learned Advocate relating to filing of the appeal at the earliest.

20. On 24.03.2020 to February, 2022, due to pandemic COVID 19 the office was not in a position to communicate with the Learned Advocate and after the COVID period contacted with the office of the Learned State Advocate and requested him to file the appeal as the relief granted by the Hon'ble Single Judge is beyond the scheme of the Rehabilitation.

21. After the Covid-19 era was over and normalcy had started on 18.04.2022, one of the official came to this Hon'ble Court for submission of record in the case of Motilal Mondal and the clerk of the learned Advocate was requested to bring notice of the learned advocate that a considerable period has already elapsed but Appeal has not yet been preferred.

22. On 31.01.2023, one of the official came to this Hon'ble Court for submission of documents in the case of Motilal Mondal and again reminded the learned Advocate the entire matter as he claimed that he has forgotten the matter.

23. 02.03.2023, one of the official attended before this Hon'ble Court in connection with Motilal Mondal and requested the Learned Advocate for preferring the appeal without any further delay."

It is thereafter stated that the present learned Advocate was engaged in the place and stead of the erstwhile Advocate. Therefore, there was no intentional laches or delay on the part of the State in challenging the orders impugned.

We have extracted the relevant portion of the State's supplementary affidavit. We are not satisfied that the same adequately explains the inordinate delay. It is pertinent to note that in paragraph 10, it is stated that on August 1, 2018, the Rehabilitation Advisory Committee, Haldia in its meeting decided to prefer an appeal against the order dated 11.07.2018. In support of such statement, an extract of the Minutes of the Proceeding dated 1.8.2018 has been annexed to the affidavit and marked "P-1". That document reads as follows:

"Prasanta Adhikary, WBCS (Exe), Additional District Magistrate, Haldia takes the chair and presides over the meeting. The resolution of the last meeting dated 27.12.2017 was read out and confirmed to some extent after discussion and approved by the members present."

In other words, the statement of the deponent of the supplementary affidavit finds no support from Annexure “P-1”.

The statements made in the other paragraphs of the supplementary affidavit, which have been set out hereinabove, are not credible. Nothing has been disclosed in support of such statements. It gives us the impression that a story has been concocted to try and explain the inordinate delay. The stand that repeatedly the relevant department/office knocked on the doors of learned Advocates, who were engaged to prepare the appeal papers, without taking any step for engaging some other learned Advocate in view of the inability on the part of the former Advocate to prepare the appeal papers, is difficult to believe. Even if we give allowance for the Covid period, there is huge delay and as we have said, we are not satisfied with the explanation furnished for the delay.

Accordingly, this application is dismissed treating the same as on day's list.

In re : MAT 1411 of 2023, CAN 3 of 2023

In view of dismissal of the application for condonation of delay, this appeal is not entertained. The appeal and the connected applications are dismissed.

This will not prevent the State Government from approaching the learned Single Judge with an application for review and sufficient explanation for

the delay, if the State Government is entitled to do so in law.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(M. V. Muralidaran, J.)