

(2016) 05 MEG CK 0010
In the Meghalaya High Court
Case No : MC (WA) No. 46 of 2016

Shri Silseng R. Marak

APPELLANT

Vs

State of Meghalaya

RESPONDENT

Date of Decision : 25-05-2016

Acts Referred:

Citation : (2016) 4 NEJ 246

Hon'ble Judges : Mr. Dinesh Maheshwari, CJ. and Mr. Ved Prakash Vaish, J.

Bench : Division Bench

Advocate : Mr. P.T. Sangma, Advocate, for the Applicant; Mr. A.H. Hazarika, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Dinesh Maheshwari, C.J.(Oral) - These four similar nature applications for condonation of delay in filing the appeals relate to similar nature intra-court appeals arising out the common order dated 01.06.2015 passed by the learned Single Judge of this Court in a batch of seven petitions led by WP(C)No. 30 of 2014. Each of these appeals, filed on 19.05.2016, is reportedly time barred by 322 days.

2. After having heard the learned counsel for the appellants/writ petitioners at length and having perused the applications for condonation of delay as also the order impugned and the other material placed on record with reference to the law applicable, we are clearly of the view that the appellants/writ petitioners have not been able to show even a reasonably good cause what to say of sufficient cause for condonation of the excessive delay of 322 days in filing the appeals. Moreover, after a glance at the merits of the case, we are satisfied that the learned Single Judge has rightly declined to exercise writ jurisdiction in these matters after finding that the appellants/writ petitioners had been the fence-sitters and approached the Court after an inexplicably inordinate delay.

3. The relevant background aspects of the matter are that the present appellants/

writ petitioners, who had been the candidates in the selection process taken up by the respondents for the post of Assistant Teachers in the Government Lower Primary Schools under the advertisement dated 10.12.2008, ultimately remained unsuccessful and did not stand in the select list.

4. The said selection process had, however, been the subject of controversy and several writ petitions were filed in this Court, particularly in the year 2010 after publication of the list of qualified candidates on 23.12.2009. A batch of 9 (nine) such writ petitions was disposed of by the learned Single Judge of this Court by the common order dated 21.10.2011, directing the CBI to enquire into the allegations of malpractices in the selection process. The said order of the learned Single Judge was taken in writ appeals which were decided by the common judgment dated 16.08.2012 wherein, the Division Bench of this Court directed that a High Level Scrutiny Committee shall be constituted to review the records. It is an admitted position that against the judgment so passed by the Division Bench, a petition for Special Leave to Appeal has been filed before the Hon"ble Supreme Court and the Hon"ble Supreme Court has stayed the judgment of the Division Bench of this Court and the matter has been posted for final hearing.

5. Other aspects relating to such previous litigations do not require further elaboration in this order. Suffice it to notice for the present purpose that the appellants/writ petitioners filed their respective writ petitions in the year 2014 seeking similar directions as per the judgment of the Division Bench dated 16.08.2012. The learned Single Judge found no reason to entertain the writ petitions so filed by the appellants and dismissed the same with reference to several decisions of the Hon"ble Supreme Court that a person who would sit over the matter and wake up only after the decision of the Court is not entitled to similar nature relief, including that in *UP Jal Nigam and Anr v. Jaswant Singh and Anr*, (2006) 11 SCC 464. The learned Single Judge concluded as under:-

"14. For the foregoing reasons, this Court is of the considered view that the writ petitioners, who are the fence sitters, approached this Court after a considerable delay for questioning the said select list dated 23-12-2009 and also for extending them the benefit of the common judgment and order of the learned Division Bench dated 16-08-2012 passed in the said 11 (eleven) writ appeals which are confined only to the writ petitioners of the said 9 (nine) writ petitions who are vigilant of their right and promptly approached this Court. Accordingly, the relief sought for in the present writ petitions cannot be granted to the writ petitioners who are fence sitters and woke up after a considerable delay for taking hard earned benefits of others who are prompt and vigilance of their rights. Hence, all the writ petitions are dismissed."

6. As noticed, the aforesaid common order was passed as back as on 01.06.2015, but these writ appeals have been filed only on 19.05.2016. The appellants have moved applications for condonation of delay in filing the appeals while suggesting several such factors which are either irrelevant or are wholly unconnected with the issue i.e., cause for delay.

7. It has been suggested in the first place that the appellants/writ petitioners were staying in different parts of West Garo Hills and therefore, it took about one month's time before each of them could be communicated with the impugned order dated 01.06.2015. It is, then, suggested that though the appellants/writ petitioners decided to file the appeals against the order dated 01.06.2015 but then, they were not aware of technicalities of law and chose to wait for the final outcome of the other writ petitions, including WP(C) No.41 of 2015, that were ultimately decided on 27.08.2015. Thus, according to the appellants/writ petitioners, the period of three months i.e., June, July and August, 2015 was spent in this manner. Then, the appellants/writ petitioners would say that they received the information about the order dated 27.08.2015 (in other petitions) in the month of September, 2015 but then, they were busy with the election of Garo Hills Autonomous District Council ("GHADC") which was held on 19.10.2015. It is also suggested that there were lot of agitations and Bandhs called by various organisations against participation of the non-tribals in the election of GHADC and thus, the appellants/writ petitioner could not come together so as to file the applications and the appeals. This, according to the appellants/writ petitioners had been the cause for spending the time in the months of October, November and December, 2015. The applicants/writ petitioners would further suggest that thereafter, they purportedly took a decision to file the appeal but then, there were winter holidays in the High Court from 18.12.2015 to 27.01.2016 and their learned counsel also went off for the holidays. The appellants would yet further submit that after opening of the High Court, one of the Hon'ble Judges retired and there was no Division Bench until 24.02.2016 when the new Chief Justice took charge of the Office. This, according to the appellants/writ petitioners, is the explanation from the month of December, 2015 to February, 2016. According to the appellants/writ petitioners, after the month of February, 2016 they had tried to prefer the appeals but could not approach the Court for financial difficulties; and they gave the final instructions for filing the appeals only in the third week of April, 2016. The relevant contents of the affidavit as filed in MC (WA) No.46 of 2016 are as under:-

"3. That thereafter receiving the Judgment and order dated.01.06.2015 the appellant had the meeting and decided to prefer an appeal against the Judgment and order dated.01.06.2015 however due to their ignorance of law lack of awareness of the fact regarding the technicalities involves relating to the limitation for filing the appeal the appellant had made the resolution to wait for the final outcome of the WP(C) No.41/2014, WP(C) No. 42/2014 and WP(C) No. 219 of 2014 which were still pending for final hearing/disposal as the subject matter of the said writ petitions were identical and same in nature but final hearing of the WP(C) No. 41/2014, WP(C) No. 42/2014 and WP(C) No. 219 of 2014 took place only after two month from the dated of their resolution as the common Judgment and order was passed on 27.08.2015 whereby the Hon'ble Single Bench had passed Judgment and order dated, 27.08.2015 stating that the

present writ petitions are squarely covered by the earlier common Judgments and order dated 01.06.2015 and accordingly the writ petition i.e. W.P.(C) No. 41 of 2014 and W.P.(C)No. 42 of 2014 were summarily dismiss on the same ground, and thereby the period of three months i.e. June, July and August 2015, has already been completed without preferring the writ appeal.

4. It is also stated herein that writ appellant also received the information about the dismissal Judgment and Order dated. 27.08.2015 only on the month of September and thereafter receiving the information the writ appellant applied for certify copy of the order dated 27.08.2015 and had decided to preferred the instant writ appeal against the Judgment and order dated 01.06.2015 as well as judgment and order dated. 27.08.2015 but the writ appellants/applicants were busy with the election of the Garo Hills Autonomous District Council which was held on 19-10-2015. It is also mention herein that there were lot of agitation and bandit called by the various NGOs/Non Government Organisations as well as by the various groups of Garo Millitants/Garo rebel against the participants of the non-tribal to contest and to give vote to election to the GHADC, as such the writ appellants were not able to come together and discussed the matter to file the instant application and moreover they were staying in different parts of West Garo Hills, Tura, therefore it took another three and half months i.e month of September, October, November and December 2015 for the writ appellants to come together and to take the decision but unfortunately winter holiday of the High Court of Meghalaya had began from 18th December 2015 till 27th January 2016, and the council for the appellant also went for the winter holiday to Garo Hills and returned to Shillong only on 27.January 2016. And when the High Court of Meghalaya had resumed its offices from 27.01.2016 after 4 (four) days Hon"ble Judge Mr. T.N.K.Singh got retired on 31st January 2016 since then there was no Division Bench since from 31st January 2016 till 24 February 2016 when the Hon"ble Mr. Dinesh Maheshwari joined as new Chief Justice of the High Court of Meghalaya, and it took another considerable period of two and half month i.e. from the month of December till the end of February 2016.

5. That by the end of February 2016 the present appellant had again try to preferred the instant writ appeal but unfortunately at this time due to their financial difficulties the present writ appellant could not approached before this Hon"ble Court to filed this instant writ appeal and it was only by the third week of April 2016 the present writ appellant given the final instruction and hand over all the relevant document/documents to the counsel and the counsel for the writ appellant also took another two weeks to preferred the instant writ appeal. And hence since from the date passing an Order dated 01.06.2015 to prepare the instant writ appeal, the entire process till the filing of the appeal which took considerable period 322 days which cause delay in filing the present Writ Appeal."

8. A bare look at the reasons so stated by the appellants is sufficient to find that they are not even of good cause for condonation of an inordinate delay of 322 days in filing the appeals what to say of sufficient cause. It is difficult to

appreciate as to what the appellants seek to convey by their waiting for the decision in the other writ petitions (which were decided on 27.08.2015); and as to how the election in West Garo Hills could have at all operated as a prohibitive factor for them against filing of the appeals within time. The suggestions about the retirement of a Judge or joining of another Judge, to say the very least, are obviously misplaced and are neither of any effect nor of relevance. Nothing had prevented the appellants/writ petitioners from filing the appeals during that period except the period of winter holidays. But then, much delay had occurred before the Court closed for winter vacations; and even after winter vacations, the Court reopened in the last week of January, 2016, but these appeals were filed only in the month of May, 2016. In an overall view of the matter, the appellants cannot be said to have proceeded with due diligence for filing the appeals within reasonable time. Evident it is that the appellants/writ petitioners have jumbled up whenever irrelevant peripheral aspects they could refer to and then, seek condonation of delay on the basis of uncertain and rather irrelevant grounds. In our view, the submissions made by the appellants/writ petitioners are by themselves sufficient to show total want to due diligence; and no case for condonation is made out.

9. The learned counsel for the appellant has referred to the decision of the Hon''ble Supreme Court in *Maniben Devraj Shah v. Municipal Corporation of Brihan*: (2012) 5 SCC 157. In our view, the principles expounded and explained by the Supreme Court in the referred decision rather operate against the appellants/writ petitioners. Therein, the Hon''ble Supreme Court has specifically held that even when liberal approach is adopted in the matter of condonation of delay, the relevant factors cannot be ignored and only on being satisfied that there had been no negligence on the part of the applicant and the cause shown does not lack bona fide that the Court may condone the delay; and when the explanation is found to be concocted or when the applicant is thoroughly negligent, the delay may not be condoned.

10. As noticed, the appellant are found to be thoroughly negligent and the reasons as suggested are not of any reasonable cause towards inordinate delay in filing the appeals. This aspect of inordinate delay in filing the appeals get confounded when examined in the light of the fact that the learned Single Judge had declined to exercise writ jurisdiction in the petitions filed by the appellants specifically for the reason that they did not approach the Court within reasonable time and remained fence-sitters only. The approach of the learned Single Judges remains unexceptionable when it is noticed that the cause for filing the petitions accrued in the month of December 2009 and other writ petitions were indeed filed in the year 2010 and even the writ appeals arising from the said petitions were decided on 16.08.2012 but the appellants chose to file their petitions only in the year 2014.

11. Thus, so far the present appellants/writ petitioners are concerned, we find that the learned Single Judge has rightly declined to exercise writ jurisdiction in

their favour; and they have not been able to make out sufficient cause for condonation of delay in filing the appeals. The inevitable result is that the applications for condonation of delay deserve to be rejected and the appeals deserve to be dismissed.

12. Accordingly and in view of the above, the applications for condonation of delay (MC (WA) No.46 of 2016; MC (WA) No.47 of 2016; MC (WA) No.48 of 2016; and MC (WA) No.49 of 2016) stand rejected. Consequently, the appeals, being time barred, stand dismissed.