



IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

I.A. (Civil) No.1778 of 2021

In W.A. No.4423/2021 (Filing Number)

1. Shri Ananta Kalita,
.....

2. Shri Ajit Kumar Bhuyan,
.....

.....Applicants

-Versus-

1. Shri Prafulla Kumar Mahanta,
.....

2. The State of Assam, through the Chief Secretary, Government of Assam, Dispur, Guwahati, Assam-781006.

3. The Secretary to the Government of Assam, Home & Political Department, Dispur, Guwahati, Assam-781006.

4. The Commissioner & Secretary to the Government of Assam, Home & Political Department, Dispur, Guwahati, Assam-781006.

5. The Commissioner & Secretary to the Chief Minister, Assam, Dispur, Guwahati, Assam-781006.

6. The Deputy Secretary to the Government of Assam, Political (A) Department, Dispur, Guwahati, Assam-781006.

7. The Secretary, Assam Legislative Assembly, Dispur, Guwahati, Assam-781006.

8. Justice K.N. Saikia Commission of Inquiry (now defunct), C/o Commissioner & Secretary to the Govt. of Assam, Home & Political Department, Dispur, Guwahati, Assam-781006.

9. The Hon'ble Chief Minister of Assam, Dispur, Guwahati, Assam-781006.

.....Respondents

- B E F O R E -
HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE MITALI THAKURIA

For the Applicants : Mr. C. Gonsalves, Sr. Advocate (through video-conferencing), assisted by Ms. D. Ghosh, Advocate.

For the Respondents : Mr. R. Barua, Advocate for respondent No.1.

: Ms. M. Bhattacharjee, Additional Senior Government Advocate, Assam for respondent Nos.2 to 6.

: Mr. B. Bora, Advocate for respondent No.7.

Dates of Hearing : 03.05.2023.

Date of Order : **12.06.2023.**

ORDER

[Sandeep Mehta, C.J.]

The instant interlocutory application has been filed by the applicants/appellants herein under Section 5 of the Limitation Act seeking condonation of delay of 531 days occasioned in filing of the connected writ appeal which is directed against the judgment and final order dated 03.09.2018 passed by the learned Single Bench in WP(C) No.746/2008. By the aforesaid order, the learned Single Bench, accepted the petition filed by the respondent No.1 under Article 226 of the Constitution of India laying challenge to the legality and validity of the constitution of Justice (Retd.) K.N. Saikia Commission of Inquiry vide notifications dated 22.08.2005 and 03.09.2005 and the report submitted by the Commission as a consequence to the constitution of the Commission of Inquiry.

2. As per the pleadings of the application seeking condonation of delay, the applicants portrayed the following grounds in support of the application seeking condonation of delay, (i) that the applicants were not party to the proceedings before the learned Single Judge by the respondent No.1 and were thus unaware of the proceedings of the writ petition or its result and (ii) that, before approaching this Court, the applicants had approached the Hon'ble Supreme Court of India by filing a Special Leave Petition i.e. SLP(Civil) Diary No.13672/2020 with the same cause of action and the said SLP was

withdrawn with liberty to approach the High Court vide order dated 18.12.2020.

3. However, before the application could be taken up, the applicants/appellants filed an additional affidavit dated 02.11.2021 for supplementing the grounds for condonation of delay. In this affidavit, it was claimed that the applicant No.2 belatedly learnt about the result of the writ petition and the final order passed by the learned Single Judge dated 03.09.2018. Thereafter, the applicant No.2 sought legal counsel to appeal against the said order. When the appeal was sought to be prepared, challenges were faced in obtaining the relevant documents as the applicants were not party to the proceedings before the learned Single Judge. Thus, the delay was now sought to be explained on the ground that significant time was consumed for obtaining the documents; to get them typed which led to the delay. Another ground was set out that the applicant No.2 wanted to contact a directly affected person who had faced a personal physical attack during the secret killings and thus had *locus standi* in the instant matter. Thus, it took few months for the applicant No.2 to identify and contact the applicant No.1 who had been abducted and shot in the head during the secret killings in relation where to, the Inquiry Commission was constituted. Thereafter, the Covid pandemic struck and the SLP came to be filed on 18.12.2020.

4. The respondent No.1 filed an affidavit-in-opposition dated 17.02.2022 seeking dismissal of the petition seeking condonation of delay. In this affidavit, the respondent No.1 has refuted the claim of the applicants that they were unaware of the proceedings of the writ petition because the judgment dated 03.09.2018 passed in WP(C) No.746/2008 was widely published in the print and electronic media, local as well as national. The applicant No.1, the alleged victim participated in the inquiry commission and thus, the plea of ignorance is totally unacceptable. Along with this affidavit, copies of the newspaper reports have been annexed wherein, the judgment dated 03.09.2018 was widely reported. The applicants thereafter filed a rejoinder affidavit on 04.06.2022 wherein, it has been pleaded that there wasn't much discussion in the media about the impugned order and its consequences. The respondent No.1 submitted copies of only two newspaper publications dated 04.09.2018 i.e. one day after passing of the impugned order which as per the applicants is ample proof of the fact that there wasn't continued discussion of the matter in the media. Further averment is made that the applicant No.2 was travelling around at the time the impugned order was passed and he became aware about it only in December, 2018. Thereafter, he waited in the expectation that the State of Assam which had sanctioned the Saikia Commission of Inquiry to appeal against the impugned order. However, when the State did not file appeal for a number of months, the applicant No.2 sought legal

assistance to file an appeal against the impugned order in June, 2019. Thereafter, significant time was consumed in collection of documents/records. In March, 2020, the COVID pandemic struck and finally, the SLP came to be filed in December, 2020.

5. The respondent No.1 filed an affidavit-in-opposition against the rejoinder affidavit filed by the applicants. It has been alleged that the applicants have made divergent pleadings in their three affidavits. Copies of various newspaper reports dated 04.09.2018 – The Telegraph Guwahati, 11.09.2018 – The Indian Express, 04.09.2018 – Hindustan Times, 04.09.2018 and The Sentinel – 05.09.2018 have been annexed to demonstrate that there was extensive and continued coverage of the judgment in the media.

6. Mr. C. Gonsalves, learned senior counsel assisted by Ms. D. Ghosh, learned counsel representing the applicants vehemently and fervently contended that the applicants were not arraigned in the writ petition and thus, they were genuinely and bonafide prevented from filing the appeal in time. Mr. Gonsalves tried to convince the Court to go into the merits of the matter by examining the impugned judgment. However, since the matter is still under consideration on the application for condonation of delay, this would not be the appropriate stage to enter into such an exercise. Learned senior counsel for the applicants urged that as the allegations which were inquired by the

K.N. Saikia Inquiry Commission pertain to mass scale secret killings, quashing of the Commission's report has led to great public discontent and hence, the application seeking condonation of delay merits acceptance and it should not be dismissed on technical grounds.

7. Per contra, Mr. R. Barua, learned counsel representing the respondent No.1 vehemently and fervently opposed the submissions advanced by the applicants' counsel. It was contended that the applicant No.2 was a renowned journalist at the relevant point of time and since 2020, he is a sitting member of Rajya Sabha from Assam and hence, the plea of ignorance taken by the applicants in support of the prayer for condonation of delay is totally unconvincing and untenable. It was submitted by the learned counsel representing the respondents that the divergent pleas made in the three affidavits filed on behalf of the applicants makes it clear that the grounds set out for explaining the delay of 531 days occasioned in filing the writ appeal are contradictory, conjectural and cooked up and hence, deserves to be discarded.

8. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the pleadings of the parties and the material placed on record.

9. At the outset, we may note that from the pleadings of the application it is crystal clear that the litigation (the connected intra-Court appeal) seems to be

sponsored by the applicant No.2 who is a well-known journalist of yesteryears and presently is a serving Rajya Sabha Member. Copies of the newspaper reports which have been annexed with the affidavits of the respondent No.1 make it clear that the information regarding the judgment dated 03.09.2018 rendered by the learned Single Bench was published extensively and the publications continued over a prolonged period. Thus, the plea put forth by the applicants regarding they not being aware of the impugned order is absolutely false and thus, unacceptable. That apart, in the rejoinder affidavit filed on behalf of the applicants on 03.06.2022, it has been clearly stated that the applicant No.2 became aware of the judgment dated 03.09.2018 in December 2018. Thus, this assertion in the affidavit is in complete divergence with the averment made in the original application dated 08.04.2021, wherein it has been claimed that the applicants were not made parties to the proceedings before the Single Bench and thus, they were unaware of the proceedings of the writ petition or its result.

10. Law is well-settled by catena of Supreme Court judgments that the grounds for condonation of delay must be fully and convincingly explained. The party seeking condonation is required to explain each day's delay satisfactorily.

11. Keeping in view the observations made above, it is apparent that not only have the applicants failed to

convincingly explain the gross delay of 531 days occasioned in filing of the appeal but they have also made inconsistent and contradictory pleadings in the three affidavits. It may further be noted that the applicants, directly approached the Hon'ble Supreme Court for assailing the order dated 03.09.2018 rendered by the learned Single Bench. The said SLP was withdrawn on 18.12.2020 with liberty to file a writ appeal before the High Court but while doing so, no prayer was made on behalf of the applicants to seek any leniency on condonation of delay in filing the writ appeal in this Court.

12. Thus, we are of the view that the application for condonation of delay is not based on bonafide assertions and grounds and hence, the same does not merit acceptance. As a consequence, the I.A.(Civil) No.1778/2021 is dismissed as being devoid of merit.

13. As the prayer for condonation of delay has been refused, the connected writ appeal [W.A. No.4423/2021 (Filing Number)], which is yet to be numbered, would fail automatically.

JUDGE

CHIEF JUSTICE

Comparing Assistant