2024 LiveLaw (SC) 318

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
PAMIDIGHANTAM SRI NARASIMHA; J., ARAVIND KUMAR; J.
April 18, 2024
CIVIL APPEAL NOs. 5027 of 2024 (@ SPECIAL LEAVE PETITION (CIVIL) NO. 30152 OF 2018)
MRINMOY MAITY *versus* **CHHANDA KOLEY AND OTHERS**

Constitution of India; Article 226 – Delay defeats equity – Writ petition dismissed on grounds of Delay or Laches – An applicant who approaches the court belatedly or in other words sleeps over his rights for a considerable period of time, wakes up from his deep slumber ought not to be granted the extraordinary relief by the writ courts. The High Court may refuse to invoke its extraordinary powers if laxity of the applicant to assert his right has allowed the cause of action to drift away and attempts are made subsequently to rekindle the lapsed cause of action. The High Court ought to dismiss the petition on that sole ground itself, in as much as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own wrong. It is not gainsaid that in all cases of delay the petition is to be dismissed and in certain circumstances depending on the facts of each case, if the court thinks fit can on its discretion condone the delay. For filing a writ petition, there is no fixed period of limitation prescribed but the High Court will have to necessarily take into consideration the delay and laches of the applicant in approaching a writ court. *(Para 9, 10 & 11)*

(Arising out of impugned final judgment and order dated 13-09-2018 in CAN No. 809/2018 passed by the High Court At Calcutta)

For Petitioner(s) Mr. Pijush K. Roy, Sr. Adv. Mr. Pritthish Roy, Adv. Ms. Kakali Roy, Adv. Mr. Rajan K. Chourasia, AOR

For Respondent(s) Mr. Zoheb Hossain, AOR Ms. Asha Gopalan Nair, AOR Ms. Nivedita Nair, Adv.

J U D G E M E N T

Aravind Kumar, J.

1. Leave granted.

2. The short point that arises for consideration in this appeal is:

"Whether the writ court was justified in entertaining the writ petition filed by the respondent No.1 herein challenging the approval dated 03.06.2014 granted in favour of the appellant herein for starting LPG distributorship at Jamalpur, District Burdwan?"

3. The facts in brief which has led to filing of the present appeal are as under:

4. An advertisement came to be issued on 09.09.2012 calling for application for distributors to grant LPG distributorship under GP Category at Jamalpur, District Burdwan. From amongst the applications so received, the application submitted by the appellant as well as respondent No.1 were found to be in order. Since both the appellant and the respondent No.1 were held to be eligible from amongst the six (6) candidates, draw of lots was held on 11.05.2013 and appellant was found successful candidate and was selected for verification of the documents. A letter of intent was issued to the appellant on 24.02.2014 and on 03.06.2014 the approval was granted by the BPCL in favour of the appellant for starting LPG distributorship at the notified place.

5. After a lapse of 4 years, the respondent No.1 filed a complaint with the BPCL alleging that land offered by the appellant was a Barga land and same cannot be considered. Subsequently application having been filed by the appellant offering an alternate land, the Corporation allowed the prayer of the appellant to construct the godown and showroom on the alternate land offered by the appellant.

6. The respondent No.1 being a rival applicant for grant of distributorship, having participated in submitting the application and being unsuccessful in the draw of lots held way back in the year 2013 and being aggrieved by the decision of the Corporation to permit the appellant to commence the construction of godown and showroom on the alternate land offered, filed a writ petition in the year 2017 i.e., on 10.04.2017. Initially, there was an order of status quo passed by the Learned Single Judge and on receiving the report from the Corporation the writ petition came to be dismissed vide order dated 18.01.2018 on the ground that the writ petitioner (respondent No.1 herein) had no locus standi since she had participated in the selection process. Being aggrieved by the same the intra-court appeal came to be filed and the appellate court by the impugned judgment allowed the appeal on the ground (a) that the successful applicant had not offered unencumbered land for construction of godown and showroom; (b) the land offered by the appellant was in contravention of clause 7.1(vi) and (vii) of the guidelines for selection of regular LPG Distributors; (c) the amendment of the said guidelines brought about subsequently, cannot be made applicable retrospectively. The allotment made in favour of the (appellant herein) was set aside by the impugned order and as a consequence of it, the letter of intent, the letter of approval accepting the alternate land offered by the (appellant herein) and all subsequent permissions, licences and no objections issued in his favour were held to be of no effect. Hence, this appeal.

7. We have heard Shri Pijush K. Roy, learned Senior Counsel appearing for the appellant and Shri Zoheb Hossain, learned counsel appearing for respondent No.1 and Shri Shekhar Naphade, learned Senior Counsel for the Corporation. Learned counsel for the appellant would vehemently contend that Learned Single Judge had rightly dismissed the writ petition on the ground of lack of locus standi of the writ petitioner and had dissolved the interim order granted earlier. It is also contended that by the time the interim order of status quo came to be passed by the Learned Single Judge on 20.07.2017, the appellant herein had already submitted an application for accepting the alternate land offered and which request came to be processed and the applicant (appellant herein) had been allowed to construct the godown and showroom on the alternate land so offered. These facts though being available, the Division Bench ignoring the same had proceeded on tangent in accepting the plea of the writ petitioner without examining the aspect of delay and giving a complete go by for laches exhibited on the part of the writ petitioner and extended the olive branch on surmises and conjectures and as such the impugned order is liable to be set-aside and consequently, writ petition which came to be dismissed by the Learned Single Judge has to be upheld**.** Shri Shekhar Naphade, learned Senior Counsel appearing on behalf of the Corporation has fairly submitted that in the light of the appellant herein being successful in the allotment by draw of lots, had been issued with the letter of intent and the prayer for offering the alternate land was also accepted and having regard to the subsequent development namely the subsequent notification dated 30.04.2015 issued by the appropriate government directing the Oil Marketing Companies to provide flexibility in the selection guidelines by providing an “opportunity to offer alternate land in response to the advertisement” which clarified the position with regard to alternative land offered had been acted upon by the Corporation in the instant case and being satisfied with the *bona fides* of the applicant/appellant, the Corporation had permitted the

construction, and accordingly the construction has been put up along with building, the godown and the showroom and as such he has prayed for suitable orders being passed.

8. On the contrary, Shri Zoheb Hossain, learned counsel appearing for the respondent No.1 vehemently opposed the prayer of the appellant herein and supported the order passed by the Division Bench. He would contend that issue of delay in filing the Writ Petition has been rightly ignored by the Division Bench and same has to recede to background in the facts obtained in the present case, in as much as the blatant violation of the guidelines would go to the root of the matter and the inherent defect cannot be allowed to be rectified, that too by relying upon an amendment to the guidelines which has come into force subsequent to the advertisement in question or in other words rules of the game could not have been changed after the commencement of the game which was exactly the exercise undertaken by the Learned Single Judge and rightly found to be improper by the Division Bench. Hence, he prays for dismissal of the appeal.

9. Having heard rival contentions raised and on perusal of the facts obtained in the present case, we are of the considered view that writ petitioner ought to have been non-suited or in other words writ petition ought to have been dismissed on the ground of delay and laches itself. An applicant who approaches the court belatedly or in other words sleeps over his rights for a considerable period of time, wakes up from his deep slumber ought not to be granted the extraordinary relief by the writ courts. This Court time and again has held that delay defeats equity. Delay or laches is one of the factors which should be born in mind by the High Court while exercising discretionary powers under Article 226 of the Constitution of India. In a given case, the High Court may refuse to invoke its extraordinary powers if laxity on the part of the applicant to assert his right has allowed the cause of action to drift away and attempts are made subsequently to rekindle the lapsed cause of action.

10. The discretion to be exercised would be with care and caution. If the delay which has occasioned in approaching the writ court is explained which would appeal to the conscience of the court, in such circumstances it cannot be gainsaid by the contesting party that for all times to come the delay is not to be condoned. There may be myriad circumstances which gives rise to the invoking of the extraordinary jurisdiction and it all depends on facts and circumstances of each case, same cannot be described in a straight jacket formula with mathematical precision. The ultimate discretion to be exercised by the writ court depends upon the facts that it has to travel or the terrain in which the facts have travelled.

11. For filing of a writ petition, there is no doubt that no fixed period of limitation is prescribed. However, when the extraordinary jurisdiction of the writ court is invoked, it has to be seen as to whether within a reasonable time same has been invoked and even submitting of memorials would not revive the dead cause of action or resurrect the cause of action which has had a natural death. In such circumstances on the ground of delay and laches alone, the appeal ought to be dismissed or the applicant ought to be non-suited. If it is found that the writ petitioner is guilty of delay and laches, the High Court ought to dismiss the petition on that sole ground itself, in as much as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own wrong. It is true that there cannot be any waiver of fundamental right but while exercising discretionary jurisdiction under Article 226, the High Court will have to necessarily take into consideration the delay and laches on the part of the applicant in approaching a writ court. This Court in the case of **Tridip Kumar Dingal and others v. State of W.B and others., (2009) 1 SCC 768** has held to the following effect:

"56. We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.

57. If the petitioner wants to invoke jurisdiction of a writcourt, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhume matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime (vide State of M.P. v. Bhailal Bhai [AIR 1964 SC 1006 : (1964) 6 SCR 261] , Moon Mills Ltd. v. Industrial Court [AIR 1967 SC 1450] and Bhoop Singh v. Union of India [(1992) 3 SCC 136 : (1992) 21 ATC 675 : (1992) 2 SCR 969]). This principle applies even in case of an infringement of fundamental right (vide Tilokchand Motichand v. H.B. Munshi [(1969) 1 SCC 110] , Durga Prashad v. Chief Controller of Imports & Exports [(1969) 1 SCC 185] and Rabindranath Bose v. Union of India [(1970) 1 SCC 84]).

58. There is no upper limit and there is no lower limit asto when a person can approach a court. The question is one of discretion and has to be decided on the basis of facts before the court depending on and varying from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose."

12. It is apposite to take note of the dicta laid down by this Court in **Karnataka Power Corportion Ltd. and another v. K. Thangappan and another, (2006) 4 SCC 322** whereunder it has been held that the High Court may refuse to exercise extraordinary jurisdiction if there is negligence or omissions on the part of the applicant to assert his right. It has been further held thereunder:

"6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in *Durga Prashad* v. *Chief Controller of Imports and Exports* [(1969) 1 SCC 185 : AIR 1970 SC 769] . Of course, the discretion has to be exercised judicially and reasonably.

7. What was stated in this regard by Sir Barnes Peacockin *Lindsay Petroleum Co.* v. *Prosper Armstrong Hurd* [(1874) 5 PC 221 : 22 WR 492] (PC at p. 239) was approved by this Court in *Moon Mills Ltd.* v. *M.R. Meher* [AIR 1967 SC 1450] and *Maharashtra SRTC* v. *Shri Balwant Regular Motor Service* [(1969) 1 SCR 808 : AIR 1969 SC 329] . Sir Barnes had stated:

"Now, the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy."

8. It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation to Article 32 of the Constitution. It is apparent that what has been stated as regards that article would apply, a fortiori, to Article 226. It was observed in *Rabindranath Bose* v. *Union of India* [(1970) 1 SCC 84 : AIR 1970 SC 470] that no relief can be given to the petitioner who without any reasonable explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution-makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay.

9. It was stated in *State of M.P.* v. *Nandlal Jaiswal* [(1986) 4 SCC 566 : AIR 1987 SC 251] that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction."

13. Reiterating the aspect of delay and laches would disentitle the discretionary relief being granted, this Court in the case of **Chennai Metropolitan Water Supply & Sewerage Board and others v. T.T. Murali Babu, (2014) 4 SCC 108** has held:

"16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant — a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis."

14. Having regard to the afore-stated principles of law enunciated herein above, when we turn our attention to facts on hand, it would not detain us for too long for accepting the plea of the appellant in affirming the order of the Learned Single Judge and dismissing the writ petition on the ground of delay and laches. We say so for reasons more than one, firstly, it requires to be noticed that the writ petitioner was a rival applicant along with the appellant herein for grant of LPG distributorship and she along with the appellant herein, were found to be eligible and the appellant herein was held to be successful by virtue of draw of lots. This factual aspect would reflect that the writ petitioner was aware of all the developments including that of the allotment of distributorship having been made in favour of the appellant herein way back in 2014, yet did not challenge and only on acceptance of the alternate land offered by the appellant in March, 2017 and permitting him to construct the godown and the showroom. Same was challenged in the year 2017 and thereby the writ petitioner had allowed his right if at all if any to be drifted away or in other words acquiesced in the acts of the Corporation and as such on this short ground itself the appellant has to succeed. Secondly, another fact which has swayed in our mind to accept

the plea of the appellant herein is that, undisputedly the appropriate government had felt the need of permitting the Oil Marketing Companies to be more flexible and as such modification to the guidelines had been brought about on 15.04.2015 whereby the applicants were permitted to offer alternate land where the land initially offered by them was found deficient or not suitable or change of the land, subject to specifications as laid down in the advertisement being met. There being no stiff opposition or strong resistance to the alternate land offered by the appellant herein not being as per the specifications indicated in the advertisement, we see no reason to substitute the court's view to that of the experts namely, the Corporation which has in its wisdom has exercised its discretion as is evident from the report filed in the form of affidavit by the territory manager (LPG)/ BPCL whereunder it has been stated:

"13. On the basis of xxxxxxxxxxxxxxxxxxxxx to nonagricultural. In his application form the said Respondent no. 9 had provided the Land for godown at Plot No 3732, Khatian No LR 2585, 2586, 2587 JL No 34, Mouza Kolera, Jamalpur, Distt Burdwan admeasuring 33 decimal. The same was cleared based on Registered Lease Deed, which was found to have been genuine in all respects as confirmed by the ADSR Jamalpur.

16. The land offered by the successful candidate, namely the Respondent no.9 was found to be eligible by relying on the abovementioned clauses, which determine eligibility of the land based on the status of ownership. The fact that the said land was a "Barga" land is not a material condition on the basis of which the Respondent no. 9's candidature could be cancelled.

24. Subsequently, FVC of the said newly offered land bythe LOI holder, Respondent no. 9 was conducted and the same was found suitable for construction of LPG Godown. A letter being DGP:LPG OMP: Jamalpur dated 21.03.2017 was provided to the said LOI holder informing him that the alternate land provided is found suitable and therefore his request to construct LPG Godown in the said alternate land has been approved. A copy of the said letter dated 21.03.2017 is annexed hereto and is marked as "R-5".

25. It is therefore submitted that the steps taken by the Respondent no. 3 in allowing the LOI holder, Respondent no. 9, to provide alternate land for construction of godown, have been in consonance. with the change in policies and no favoritism or nepotism, as suggested by the petitioner has been in play.

32. It is further clarified that the FVC conducted on the original land offered by the Respondent no. 9 was found to be satisfactory on all counts, and only on the basis of this, his request for provision of alternate land wall accepted."

15. Hence, we are of the considered view that the order of the Learned Division Bench is liable to be set aside and accordingly, it is set aside. The order of the Learned Single Judge stands restored for the reasons indicated herein above and the appeal is allowed accordingly with no order as to costs.