

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.47 of 2024

Tripura State Electricity Corporation Ltd. and others

..... Petitioner (s).

Versus

Smt. Gouri Ghosh and others

..... Respondent(s).

For Petitioner (s) : Mr. Nepal Majumder, Advocate.

For Respondent(s) : None.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

11/07//2024

Heard Mr. Nepal Majumder, learned counsel for the petitioners.

[2] The impugned judgment and award is dated 17.01.2022 passed in Civil Misc. No.67 of 2015 by the learned Court of the District Judge, West Tripura, Agartala whereby the application under Section 16(3) of Indian Telegraph Act, 1885 for granting compensation to the respondents for extending high voltage 132 k.v. overhead electric line over the jote land of the claimant petitioner and proforma respondent causing damage and loss to the claimant petitioner and the proforma respondent was allowed in their favour by directing the respondents No.3 to 5 who are the Tripura State Electricity Corporation Ltd. and its officials to pay compensation of Rs.18,00,000/- (Rupees Eighteen Lakhs) to the claimant within 2(two) months from the date of the order failing which it would carry an interest @9% per annum from the date of filing of the said application till payment of compensation.

[3] The present revision petition under Article 227 of the Constitution of India has been filed after approximately two years and four months of the passing of the impugned judgment. It is not that the case was decided ex parte in their favour. The respondents No.3 to 5 who are the petitioners herein had also contested the case by filing written statement where they denied and disputed the claim that the claimant had sustained in loss of damage due to laying down of 132 k.v. overhead electric line over her land. But the instant revision petition does not contain even a semblance of explanation for the delay of approximately two years and four months in filing this revision petition under Article 227 of the Constitution of India. Though no limitation period is prescribed to invoke the jurisdiction of this Court under Article 227 of the Constitution of India but it is expected that the party approaching this Court is required to satisfactorily explain the delay, if any, in approaching this Court. The petition does not contain any explanation for the delay. The opinion of the Apex Court in *Tridip Kumar Dingal and Others Vs. State of West Bengal and Others*, reported in (2009) 1 SCC 768, paragraphs 56 & 57 is extracted hereunder:

“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 writ court, 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 exhumed 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 Prasad v. Chief*

Controller of Imports & Exports [(1969) 1 SCC 185] and Rabindranath Bose v. Union of India [(1970) 1 SCC 84].”

[4] This view has been later referred to in the case of *Chanchali Gowrinaidu vs Indian Coast Guard and Others*, reported in (2024) SCC Online SC 551 at para 11 which is also quoted hereunder:

“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 v. State of W.B.*, (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 writ court, 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 Prasad 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 as to 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.”

[5] Mr. Nepal Majumder, learned counsel for the petitioners has during submission, however, sought to explain the delay on account of the reason that it took time for collecting relevant documents related to the instant case for preparation and filing of the instant petition.

[6] Though the matter was adjourned on the first date for two weeks on the prayer of the learned counsel for the petitioners to file an amendment application to explain the delay but no such application has either been filed. In such circumstances, this Court is not inclined to enter into the merits of the case of the petitioners in the absence of any explanation for such an inordinate delay in approaching this Court in its supervisory jurisdiction.

[7] As such, the instant petition is dismissed. Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ

