

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.37101 of 2016

O R D E R:

Heard counsel for the petitioner.

2. Petitioner in this Writ Petition has assailed the award passed by the Industrial Tribunal at Warangal in I.P.No.47 of 2010 dt.21.09.2012 and seeks to quash the same.

3. In the affidavit filed in support of this Writ Petition, no reasons are assigned as to why the challenge to the award passed on 21.09.2012 is made in October, 2016. However, on the Court insisting of such a reason, an affidavit is filed on behalf of the petitioner which states as under:

“It is respectfully submitted that the Award passed by the Hon'ble Industrial Tribunal-III, Hyderabad in I.D.No.47 of 2010 dated 21.09.2012, was published on 03.12.2012. The Respondent Depot Manager, Sharadnagar received copy of the order in the due course of time. The file was mixed with other bundles at concerned office. It is submitted that the copy of order was not traced at the office of Regional Manager. Meanwhile the respondent approached the office of Regional Manager on 20.08.2016 after a lapse of 3 years and submitted an application dt.19.8.2016 to implement the award of Labour Court. It is submitted that the case was referred to law department on 24.08.2016 for further option. Thus there was a delay of 3 years, 6 months in filing the present writ petition was not intentional nor wanton.”

4. Counsel for the petitioner contended that the Court should accept the aforesaid reason and take note of the decision of the Supreme Court in ***State of Haryana v. Chandra Mani and others***¹ and ignore the latches in filing the Writ Petition.

¹ 1996(3) Supreme Court Cases 132

5. No doubt, in the above decision the Supreme Court took a very liberal view about the delays on the part of the State on the ground that the State Machinery is impersonal, that the inherited bureaucratic methodology makes it difficult to take decisions to file cases within time and that there is a procedural red tape whose existence cannot be ignored.

6. This decision has been subsequently considered in a later judgment of the Supreme Court in ***Postmaster General and others v. Living Media India Limited and another***² wherein it noted the judgments in ***CWT v. Amateur Riders Club***³ and ***Pundlik Jalam Patil v. Jalgaon Medium Project***⁴ and has taken a slightly different view keeping in view the passage of time and the need to ensure that the State or State entities do not take advantage of their negligence or deliberate inaction. The Court held as follows:

“27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions.

² 2012(3) Supreme Court Cases 563

³ 1994 Supp (2) SCC 603

⁴ 2008(17) SCC 448

The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeal are liable to be dismissed on the ground of delay.”

7. In the present case, admittedly the 1st respondent had received copy of the award, but when it is received by it, is not mentioned. It is stated that the file containing the said order copy or the award copy was mixed up with the other file in the Office of the Regional Manager, that the copy of the order was not traced and when the respondent approached the Office of Regional Manager on 20.08.2016 and gave application dt.19.08.2016 to implement the award of Labour Court, then the matter was referred to Law Department on 24.08.2016 for further opinion and thereafter the Writ Petition was filed.

8. These facts indicate that there was gross negligence on the part of the petitioner in taking steps immediately to approach this Court to question the award.

9. Counsel for the petitioner also relied upon the judgment of the Supreme Court in ***M/s Tilokchand and Moti Chand & others v. H.B.Munshi and another***⁵ wherein it was opined that it is a question of discretion whether or not to ignore delay. It was observed therein that where there is appearance of avoidable delay and this delay affects the merits of the claim, the Court will consider it and in proper case hold the party disentitled to invoke the extraordinary jurisdiction. It held that in an appropriate case, the Supreme Court may entertain a petition under Article 32 even after long lapse of time. It also stated that it will all depend on what the breach of the Fundamental Right and the remedy claimed are, when and how the delay arose.

10. Therefore no hard and fast rule exists in regard to entertaining Writ Petitions which are filed with delay and it would depend on the question, whether there is negligence or valid cause for delay.

11. In the facts and circumstances of the present case, I am satisfied that the petitioner acted negligently in not taking steps to file the Writ Petition within the reasonable time challenging the award passed by the Industrial Tribunal.

⁵ 1969(1) Supreme Court Cases 110

12. Therefore, I am not inclined to entertain the Writ Petition on the ground of laches, and it is accordingly dismissed. There shall be no order as to costs.

13. Consequently, miscellaneous petitions pending, if any, in this Writ Petition shall stand closed.

M.S.RAMACHANDRA RAO, J

11th November, 2016.
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