

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.563 of 2016
Date of decision: 13.01.2016

Rajinder Kumar

... Petitioner

Versus

Chief Administrator, Union Territory, Sector 17, Chandigarh and
another

... Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Pankaj Middha, Advocate for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

ARUN PALLI J.

A writ in the nature of certiorari is prayed for to quash the recommendations of the Screening Committee dated 17.06.1997 (Annexure P7), vide which the petitioner was not found eligible or entitled for allotment of a built up booth, order dated 28.12.1998 (Annexure P9), rendered by the Assistant Estate Officer (exercising the powers of Estate Officer, UT, Chandigarh), affirming the aforesaid recommendations as also the order dated 06.04.2015 (Annexure P10), whereby the appeal preferred by the petitioner against both i.e. recommendations and the order dated 28.12.1998, was also dismissed.

In brief, the case set out by the petitioner is that he has been plying a handcart (Rehri) in Sector 20D, Chandigarh, for the

last about 33 years and selling confectionary items. He was issued a cart licence in the year 1973-74, which was renewed from time to time. The petitioner was allotted a Thara site in Sector 20D, Chandigarh in the year 1978. And, was also issued a licence No.1840/registration No.1907 by the Licensing Officer, UT, Chandigarh for running the said business at the aforesaid site. Claim of the petitioner for allotment of built up booth on lease and hire purchase basis in Chandigarh under the **“Allotment/Transfer of built up booths in any Sector on Lease/Hire Purchase basis in Chandigarh, Rules, 1991”** was considered by the Screening Committee, constituted by the Chandigarh Administration for the scrutiny of claims and determining of eligibility of beneficiaries of Rehri Market of Sectors 20C, 20D and 47C, Chandigarh. However, vide its recommendation dated 17.06.1997 (Annexure P7), the Screening Committee did not find the petitioner eligible or entitled for allotment, for he was neither found conducting any business during the survey conducted in the year 1995 nor led any cogent evidence to substantiate his claim. So much so, the other handcart holders (Rehriwalas) of Rehri Market, Sector 20D, Chandigarh, who were present before the Screening Committee and consulted in this regard, did not acknowledge the petitioner as a genuine claimant of the said Rehri Market. Being aggrieved, the petitioner preferred an appeal before the Chief Administrator, Chandigarh (respondent No.1). However, the said appeal was not found to be maintainable, but as it was pleaded on behalf of the petitioner that he be afforded yet another opportunity to establish his claim, to avert any

injustice to the petitioner, vide order dated 10.10.1997 (Annexure P8), the Estate Officer was directed to re-examine the claim of the petitioner. The operative part of the said order reads as thus:

“6. Before parting with the matter, it may be noted that counsel for the appellant has strenuously contended that they may be given a chance to establish their claim one more time. This is not really warranted, but taking a sympathetic view of the matter, it is directed that the Estate Officer may look into the appellant’s claim one more time so as to ensure that no injustice is caused to the appellant. This would not mean that the appellant is to be heard all over again by the Screening Committee, but only that his file may be scrutinized to see that there is no patent irregularity.”

Resultantly, the matter was re-examined by respondent No.2 and once again, claim of the petitioner was rejected vide order dated 28.12.1998 (Annexure P9). As even an appeal preferred against the said order failed and was dismissed on 06.04.2015 (Annexure P10) being grossly barred by time, by the Chief Administrator, UT, Chandigarh (respondent No.1), the petitioner is before this court.

We have heard learned counsel for the petitioner and perused the paper book.

All what has been urged by learned counsel for the petitioner is that the petitioner was not aware of the order dated 28.12.1998 (Annexure P9) and the same was never conveyed to him by the Administration. And, although the petitioner had rendered a plausible explanation for the delay that had occurred in filing the

appeal, but yet the Chief Administrator, UT, Chandigarh, dismissed the same without assigning any reason.

Before we proceed further, it would be apposite to refer to the conclusion that has been recorded by the appellate authority while rejecting the appeal preferred by the petitioner:

“The case is listed for hearing today i.e. 06.04.2015. The counsel for the Estate Office preliminary objected that the appellant preferred the present appeal after a period of 14 years and as such the appeal is badly time barred by limitation and requested to dismiss the appeal. The counsel for the appellant argued that the appellant was not aware of the impugned order passed by the Assistant Estate Officer (exercising the powers of Estate Officer) UT, Chandigarh, and the moment appellant came to know about the findings of the subordinate court, the appellant preferred the instant appeal. The ground taken by the appellant to justify long delay of 14 years in filing the appeal is not justified and the same cannot be accepted. Therefore, I hereby dismiss the present appeal being time barred by limitation.”

Ex facie, post rejection of the claim of the petitioner by respondent No.2, even on re-consideration of his claim, the petitioner did not assail the said order for a period of 14 long years. The submission that is being advanced by learned counsel for the petitioner; that the order dated 28.12.1998 (Annexure P9) was neither in his knowledge nor ever conveyed to the petitioner also lacks conviction, as a bare analysis of the said order reveals that the petitioner along with his counsel was present at the time the said order was passed. Thus, the petitioner was indeed conscious of the said order and on his own volition did not assail the same for

almost a decade and half. And, rather allowed it to attain finality between the parties. Although, it is maintained that the petitioner had rendered a cogent explanation to justify the delay that had occurred in filing the appeal, neither any application seeking condonation of delay nor the grounds of appeal preferred before the appellate authority have been placed on record. Apparently, institution of the appeal after a gross, inordinate and unexplained delay of 14 years was nothing but speculative in nature. The petition lacks both i.e. merit as also bona fides.

That being so, we are dissuaded to interfere with the discretion exercised by the authorities, in exercise of extraordinary jurisdiction under Article 226/227 of the Constitution of India. Petition being devoid of merit is accordingly dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(ARUN PALLI)
JUDGE

13.01.2016
Rajan