

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 9036 of 2015
Date of decision: 04.10.2016

Daya Kishan

....Petitioner(s)

Versus

State Transport Commissioner, Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Raj Kaushik, Advocate,
Mr. Rajinder Sharma, Advocate,
and Mr. Anil K. Ahluwalia, Advocate,
for the petitioner.

Mr. S.S. Chandumajra, Addl. A.G., Punjab.

G.S.SANDHAWALIA, J. (Oral)

The present order shall dispose of 13 writ petitions i.e. CWP Nos. 9036, 10663, 10699, 10700, 11036, 11272, 11404, 14620, 15037, 15923 of 2015 and 1432, 17657 and 9388 of 2016 as common questions of facts and law are involved in all the writ petitions. The primary issue in the cases which are being decided is that whether delay between 7 to 25 years in filing the appeals before the Tribunal can be condoned at the asking of the parties. Facts are being taken from ***CWP No. 9036 of 2015, Daya Kishan vs. The State Transport Commissioner, Punjab and others.***

The petitioner challenges the order dated 24.03.2014 (Annexure P-8) passed by respondent no. 4-Tribunal whereby, the appeal was dismissed by recording that there was a delay of 10 years in filing the appeal and, therefore, whether it would be constructive knowledge of the

impugned order. The explanation accordingly was held not acceptable that the petitioner was not aware of the order dated 17.02.2003, which was in favour of respondent no. 3.

Vide order dated 17.02.2003, respondent no. 1 had considered the three stage carriage permits which were to be granted on the Pathankot-Chandigarh route via Mukerian for air conditioned buses for a period of 5 years. The petitioner, who was one of the applicants had preferred not to attend the meeting on 07.11.2002, which would be clear from the presence recorded in the order. Respondent no. 1 granted the permits to 3 parties including respondent no. 3 while rejecting the case of the other 36 applicants.

The petitioner thereafter filed the appeal on 03.01.2013. In the appeal, it is averred that the order dated 17.02.2003 was never communicated and the petitioner had visited the office of respondent no. 2 on many occasions but was only informed on 16.11.2012 that the permit had been granted in favour of the 3 operators. Resultantly, the setting aside of the order was sought.

The Tribunal in the impugned order dated 24.03.2014 (Annexure P-8) noticed that though the period of limitation is 30 days from the date of receipt of the order as per Rule 85 of the Punjab Motor Vehicles Rules, 1989, however, while placing reliance upon the Full Bench judgment of this Court in ***Jagtar Singh vs. The State Transport Appellate Tribunal, 2009 (2) PLR 245***, it dismissed the appeal on the ground that there was constructive knowledge as such as the petitioner was having an office at Pathankot and the route was of Chandigarh-Pathankot. It is also noticed that the appellant had not appeared before the Commissioner also on the

date when the meeting was held and it showed his lack of interest to pursue his application.

The Full Bench, while considering the relevant provisions of the Rules, has held that the party cannot be allowed to sit back and indefinitely wait for a formal communication of the order and file the appeal at his own sweet will. It has been noticed by the Full Bench that diligence or the lack of it in seeking redressal is an important aspect and a party cannot be allowed to place his premium on its lack of diligence. The relevant observations read thus:-

“The remedy by way of an appeal before the State Transport Appellate Tribunal is available to anyone aggrieved of an order passed by the State or Regional Transport Authority. That remedy is, however, subject to the condition that it is availed within the time prescribed for the purpose. A stipulation regarding the period of limitation available for invoking the remedy shall have to be strictly construed. That is because any provision by way of limitation is in the nature of a restraint on the remedy provided under the Act. So viewed two inferences are clear viz. (i) Sections 80 and 89 of the Act read with Rule 85 of the Rules make it obligatory for the authorities making the order to communicate it to the applicant concerned and (ii) the period of limitation for any appeal against the order is reckonable from the date of such communication. Thus far there is no difficulty. The question that adds an interesting dimension is whether a party, who knows about the order of rejection made by the State or Regional Transport Authority, can sit back and indefinitely wait for a formal communication of the order and file the appeal at his sweet will. Our answer

to that question is in the negative. While it is true that communication of the reasons would imply communication of a copy of the written order itself, a party who knows about the making of an order cannot ignore the same and allow grass to grow under its feet and do nothing except waiting for a formal communication of the order or to choose a time of his convenience to file an appeal on a tenuous plea that even though he knew about the order, he was waiting for its formal communication to seek redress against the same in appeal. Any interpretation of the provisions of Section 80 and 89 of the Act and Rule 85 of the Rules that would give rise to such an absurdity shall have to be eschewed. Diligence or the lack of it in seeking redress is a crucial aspect in matters relating to law of limitation. One can understand that if a party does not know about the making of the order either actually or constructively it may claim that the period of limitation would start running from the date it acquires knowledge of the making of an order but one cannot understand how a party, who has acquired knowledge of the making an order either directly or constructively can ignore the same and belatedly seek redress just because the authority making the order had made a default in formally communicating the order to him. Allowing a party to do so would amount to placing a premium on the lack of diligence of a party, who is remiss in seeking a remedy that was available to it.”

A perusal of the appeal in question would go on to show that not a word has been averred as to the details regarding when the petitioner had visited the office of respondent no. 2 after filing of his application.

Nor any detail has been given regarding his enquiry after the decision dated 17.02.2003 till the filing of the appeal on 03.01.2013. It is hard for this

Court to digest this fact that the petitioner can sit at home and wait for the actual communication of the order and after 10 years suddenly be informed that the matter has already been decided and then apply for the copy and file the appeal.

The argument of the petitioner that the respondent had not lifted the requisite permit and reliance on the communication dated 25.02.2013 (Annexure P-3) would be of no benefit since the petitioner should have been diligent enough to have filed the appeal once noticing that the said respondent had been awarded the permit. It is also a matter of fact that apart from the said respondent, two others namely Indo Canadian Transport Company (Regd.) and Pritam Enterprises Travels Pvt. Ltd. were also granted the permits and once they were operating on the said route, the petitioner would have constructive knowledge as such of the factum of the decision which had to be appealed against diligently.

The issue of pursuing stale claims and parties resorting to daily delaying tactics to avail the legal remedies promptly was also examined by the Apex Court in ***Pundlik Jalam Patil (Dead) by L.Rs. vs. Executive Engineer, Jalgaon Medium Project and another, 2008 (17) SCC 448.*** It was accordingly held that settled rights cannot be interfered with and the discretion which has not been exercised to entertain the appeal on merits is not likely to be interfered with if the party was not diligent in availing the remedy of appeal. The relevant observations read as thus:-

“It needs no restatement at our hands that the object for fixing time limit for litigation is based on public policy fixing a life span for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail

their legal remedies promptly. Salmond in his jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.”

30. Public interest undoubtedly is a paramount consideration in exercising the courts discretion wherever conferred upon it by the relevant statutes. Pursuing stale claims and multiplicity of proceedings in no manner sub-serves public interest. Prompt and timely payment of compensation to the land losers facilitating their rehabilitation/resettlement is equally an integral part of public policy. Public interest demands that the State or the beneficiary of acquisition, as the case may be, should not be allowed to indulge in any act to unsettle the settled legal rights accrued in law by resorting to avoidable litigation unless the claimants are guilty of deriving benefit which otherwise not entitled in law in any fraudulent manner. One should not forget the basic fact that what is acquired is not the land but the livelihood of the land losers. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under Section 5 of the Limitation Act. Dragging the land losers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. It serves no public interest.

31. It is true when the State and its instrumentalities are the applicants seeking condonation of delay they may be entitled to certain amount of latitude but the law of limitation is same for citizen and for Governmental authorities. Limitation Act does not

provide for a different period to the government in filing appeals or applications as such. It would be a different matter where the Government makes out a case where public interest was shown to have suffered owing to acts of fraud or collusion on the part of its officers or agents and where the officers were clearly at cross purposes with it. In a given case if any such facts are pleaded or proved they cannot be excluded from consideration and those factors may go into the judicial verdict. In the present case, no such facts are pleaded and proved though a feeble attempt by the learned counsel for the respondent was made to suggest collusion and fraud but without any basis. We cannot entertain the submission made across the Bar without there being any proper foundation in the pleadings.”

The above said observations apply on all squares to the present set of litigation which suffer from the ailment of delay and laches in preferring their remedies before the Appellate Court. The non-entertainment of the appeal on merits by the Appellate Tribunal, in such circumstances, is well justified and is not liable for interference under the discretionary jurisdiction under Article 226 of the Constitution of India and accordingly, the present writ petitions are dismissed.

04.10.2016
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No