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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 04.09.2017

+ LPA 690/2016 & CM Nos.45753/2016

SOUTH DELHI MUNICIPAL CORPORATION Appellant
Through: Mr. Sanjay Poddar, Sr. Adv. with
Ms. Mansi Gupta and Mr. Govind, Adv. for
SDMC.

versus

AMBIENCE EDUCATION SOCIETY Respondent
Through: Ms. Madhumita Bhattacharjee, Adv.

+ LPA 406/2017 & CM No.20520-20521/2017

SOUTH DELHI MUNICIPAL CORPORATION Appellant
Through: Mr. Sanjay Poddar, Sr. Adv. with
Mr. Mukesh Gupta, Mr. Govind Kumar and
Mr. Abhishek Gupta, Adv. for SDMC.

versus

FOUNDATION FOR ORGANIZATIONAL RESEARCH &
EDUCATION FORE SCHOOL OF MANAGEMENT & ANR
..... Respondents
Through: Mr. Ravi Gupta, Sr. Adv. with
Mr. Vinod Kumar, Mr. R.K. Joshi and
Mr. Saurabh Joshi, Adv. for R-1.
Mr. Dhanesh Relan with Ms. Isha Garg, Adv. for
DDA.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE CHANDER SHEKHAR

MR. JUSTICE S. RAVINDRA BHAT

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1. Both the appeals were heard independently but are being disposed of by a common order.

2. The appeals are facially untenable. The appellant/South Delhi Municipal Corporation (SDMC) in both the appeals contends that in W.P.(C) No.7438/2015 the direction to refund the additional charges i.e. ₹3,65,54,800/- along with interest @ 12% p.a. from 17.07.2012 and in W.P.(C) No.8467/2015 the direction to refund ₹2,10,27,645/- from the date of judgment failing which the amount shall be returned with interest @ 9% p.a., is unwarranted.

3. The writ petitioner approached this Court under Article 226 of the Constitution of India claiming that the additional charges for increased FAR, in accordance with the modified policy – which had been complied with, in terms of an older notification, had to be refunded. The cause of action claimed by the petitioner was that the earlier notification of 23.12.2008, framed on the basis of the Delhi Development Authority's (DDA) regulations/change in law, required deposit of additional charges and that such stipulations were complied with within the time given. The writ petitioner claimed that a subsequent notification dated 17.07.2012 absolved those securing the benefit of increased FAR from depositing or paying the additional amounts. On that premise, refund of the amount was sought. The Single Judge after considering the rival stands, directed refund of ₹3,65,54,800/- with interest calculated @ 12% p.a. within eight weeks in W.P.(C) No.7438/2015 and ₹2,10,27,645/- from the date of judgment,

failing which the amount shall be returned with interest @ 9% p.a. in W.P.(C) No.8467/2015.

4. It is vehemently contended that the Single Judge was bound by the Division Bench rulings in *Rosa Power Supply Co. Ltd. v. Union of India & Ors.*, 2014 (307) ELT 638; *Govt. of NCT of Delhi v. New Variety Tent House*, 2012 (189) DLT 65 and *Prakash Singh v. UOI*, 2016 (231) DLT 641. It is submitted that *per se* monetary claims should not be entertained in principle under Article 226 of the Constitution of India and, if so, should be exercised if the petition is filed within the period of limitation.

5. The Court is unpersuaded with the SDMC's submission. We note that the learned Single Judge by her well reasoned order took note of the decision in *Rosa Power Supply Co. Ltd.* (supra) and also noted *STO v. Kanhaiya Lal Mukundlal Saraf*, AIR 1959 SC 135. She was of the opinion that change in policy w.e.f. 17.07.2012, was in fact in keeping with the decision in *Delhi Development Authority v. Jagan Nath Memorial Educational Society* in LPA No.107/2014 (pronounced on 30.04.2014) - as to confer advantage to even those who had paid under the notification. The decision in *Jagan Nath Memorial Educational Society* (supra) is in consonance with the rulings of the Supreme Court which clearly stated that beneficial notifications though not made retrospective, in terms ought to be construed in such a manner.

6. In view of the reasoning of the Single Judge, it is evident that there was no delay on the part of the writ petitioner but the obdurate and shrill insistence that this Court should set aside the impugned order, cannot be entertained. Limitation and laches are procedural and discretionary rules

that regulate what are essentially constitutionally mandated proceedings. As noted in *Dwarka Nath v. Income-Tax Officer*, AIR 1966 SC 81, the use of the expression “appropriate proceedings” was meant to liberate Indian Courts from the shackles that bound traditional civil jurisprudence and those leading to prerogative writs in the United Kingdom. There is later jurisprudence of the Supreme Court to say that procedure should be regarded as the thing made of justice and that unless in such circumstances the claims are utterly stale as to lead the Court to conclude that the citizen approaching it had given it up, *per se* the bar should not apply if the Court is approached within reasonable time.

7. *New Variety Tent House* (supra) was one such instance where the litigant approached the Court sometime in the year 2007; the basic claim pertained to the year 1999-2000. The Division Bench quite naturally held that the litigant could not approach the Court long after expiry of the limitation period merely by explaining that repeated representations were made. In doing so, the Court rightly applied the decision in *S. S. Rathore v. State of Madhya Pradesh*, 1989 (4) SCC 582. In the present case, the right to approach the Court for a refund could have reasonably accrued only after the letters patent decision, i.e. on 30.04.2014.

8. For the above reasons, we hold that the appeal is lacking in merits. At the same time, this Court clarifies that the mention of interest per annum twice in the last part of the impugned order could create a confusion. The said direction is therefore modified. The writ petitioner shall be entitled to ₹3,65,54,800/- together with interest @ 12% p.a. in W.P.(C) No.7438/2015 and ₹2,10,27,645/- in W.P.(C) No.8467/2015 from the date

of judgment failing which the amount shall be returned with interest @ 9% p.a. In case the amount along with interest for the period 26.09.2016 till date is not paid, interest calculated @ 12% p.a. shall also be paid. The entire amount shall be paid within eight weeks from today. In case the amounts are not deposited, the interest for the further period too shall be @ 12% p.a. in case of default.

The appeal are dismissed but in the above terms.

S. RAVINDRA BHAT, J

CHANDER SHEKHAR, J

SEPTEMBER 04, 2017
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