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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14277 OF 2017

The State of Maharashtra and Anr.	... Petitioners
V/s.	
Abhiman Maruti Saravade	... Respondent

WITH
WRIT PETITION NO.13452 OF 2017

The State of Maharashtra and Anr.	... Petitioners
V/s.	
Prafulla Damodar Thakre	... Respondent

Mr. Y.S. Khochare, AGP for the Petitioners in both WPs.
Mr. Bhushan Arvind Bandiwadekar and Mr. Gaurav Arvind Bandiwadekar
for the Respondents in both Wps.

CORAM : A.S.OKA AND M.S. SONAK, JJ.
DATE : 24th OCTOBER 2018.

P.C. :

1 By these writ petitions filed under Article 226 of the Constitution of India on 10th February 2017, the first petitioner – the State Government and the second petitioner – the Additional Commissioner of Tribal Development Department have challenged the judgment and order dated 13th June 2013 passed by a Bench of the Maharashtra Administrative Tribunal, Mumbai. On the earlier date, we pointed out to the learned AGP that the writ petition suffers from gross delay and latches inasmuch as the following facts were disclosed from the bare reading of the writ petitions and annexures thereto :-

- A] Few months after the respondents filed contempt petition seeking action of contempt for breach of the impugned judgment and order dated 13th June 2013, review applications were filed on 14th March 2014. As there was delay in filing review petitions, applications for condonation of delay were filed.
- B] On 8th March 2014, review petitions were unconditionally withdrawn.
- C] On 10th July 2014, an order was passed by the second petitioner regularising the service of the respondents in terms of the impugned order. The said order records that it was passed by reserving right to challenge the impugned judgment and order by filing proceedings in this Court.
- D] The present writ petitions were filed nearly after 2 years and 7 months from the date of passing the order dated 10th July 2014. The contempt petitions filed by the respondents were disposed of on the basis of the aforesaid order passed by the second petitioner. Thus, for challenging the impugned Judgment and Order dated 13th June 2003, the present petitions were filed on 10th February 2017.

2 As in the memorandum of writ petitions, there is hardly any explanation for delay and as whatever explanation is set out in paragraph 6 was completely against the petitioners, we granted liberty to the learned

AGP to file affidavit explaining the delay.

3 We must make a reference to paragraph 6 of the Writ Petition No.14277 of 2017 which purports to explain the delay. Paragraph 6 reads thus :-

“6. The Petitioners state that the impugned order was passed on 13.6.2013. The Petitioner No.2, then vide letter dated 30.8.2013 sought opinion from the Presenting Officer regarding the order dated 13.6.2013 passed by the Hon'ble Tribunal. The Presenting Officer vide letter dated 12.9.2013 communicated his opinion to the Petitioner No.2. Accordingly on 21.11.2013 a proposal was forwarded to the Petitioner No.1. It is humbly submitted that the Petitioner No.2 filed Review Application Nos.8 of 2014 in O.A. No.57 of 2006 and filed M.A. No.152 of 2014 in Review Application No.8 of 2014 before the Honourable Tribunal in O.A. It is humbly submitted that the Petitioner No.2 on 8.5.2014 had been permitted to withdraw the abovementioned Review Application. It is further submitted that during the pendency of Contempt Application. It is further submitted that during the pendency of Contempt Application, C.A. No.104 of 2013 in O.A. No.57 of 2006 filed by the Respondent, the Petitioner No.1 vide letter dated 2nd July, 2014, issued directions to the Petitioner No.2. The Hon'ble Tribunal vide order dated 4.7.2014 disposed C.A. No.104 of 2013 in O.A. No.57 of 2006. The Hon'ble Tribunal vide order dated 4.7.2014 disposed of the C.A. No.104 of 2014 in O.A. 57 of 2006. It is humbly submitted that the Petitioner No.2 on verification of the facts and circumstances on record, vide letter dated 22.7.2015 again forwarded a proposal to the Government seeking approval to file an appeal before the Hon'ble High Court of Bombay against the order dated 13.6.2013 passed by the Hon. Tribunal. On receipt of Governments permission vide letter dt. 19.1.2016 the officers met the Learned AGP and given

instructions to him. Accordingly, the Learned AGP called further instruction and thereafter prepared draft of present writ petition. Hence, the petitioners are regularly and punctually pursuing the matters with authorities. Hence, there is delay in filing the petition due to administrative reason which is neither intentional nor deliberate. Therefore the same may be condoned in the interest of injustice.”

4 Paragraph 6 proceeds on the footing that on the basis of the opinion dated 12th September 2013 of the Presenting Officer communicated to the second petitioner, a proposal dated 21st November 2013 was forwarded to the first petitioner. It is further stated that review petitions were filed which were permitted to be withdrawn and during the pendency of the contempt petitions filed by the respondents, effect was given to the impugned order. Contempt petitions were disposed of on 4th July 2014 and a proposal was submitted one year thereafter on 22nd July 2015 to the State Government seeking approval to file an appeal before this Court and that the permission was granted by the State Government by letter dated 19th January 2016. There is no explanation for the delay between 19th January 2016 and 10th February 2017 when the present writ petitions were filed. In fact, the State Government unconditionally withdrew the review petitions and thereafter, complied with the impugned order

5 The learned AGP relied upon the additional common affidavit tendered today of Shri Sharad S. Deshmukh, Assistant Commissioner working in the office of the second petitioner. He relies upon two decisions of the Apex Court in the case of *M/s. Power Control Appliances*

*and Ors. Vs. Sumeet Machines Pvt. Ltd.*¹ and *U.P. Jal Nigam and Anr. Vs. Jaswant Singh and Anr.*². He submitted that apart from the fact that there is a cogent explanation for delay, in the present case, there is no acquiescence on the part of the petitioners with the impugned order and therefore, the delay cannot come in the way of the State Government prosecuting the remedy under Article 226 of the Constitution of India especially when the impugned order is illegal. With his assistance, we have gone through the affidavits tendered today.

6 Careful perusal of the additional affidavit shows that not only that the affidavit does not explain delay but the averments made therein makes the case worst for the State Government. The affidavit discloses that on 12th September 2013, the Chief presenting officer of the State Government before the Administrative Tribunal advised the State Government that it was a fit case to seek judicial review by filing writ petitions. The said letter was addressed to the second petitioner. In the year 2013 itself, contempt petitions were filed by the respondents. In paragraph 8, it is stated that the second petitioner, on the basis of letter dated 12th September 2013 of the Chief Presenting Officer, addressed a letter dated 21st November 2013 to the first petitioner seeking permission from the Law and Judiciary Department for challenging the impugned judgment and order by filing writ petitions. On 10th December 2013, the second petitioner addressed a letter to the first petitioner informing the first petitioner that the contempt petitions were scheduled to be heard on 20th December 2013 and again requested the first petitioner to grant

1. 1994(2) SCC 448

2. (2006) 11 SCC 464

permission to file writ petitions. In paragraph 11 of the affidavit, it is stated that the first petitioner addressed a letter dated 1st January 2014 in response to the letter dated 21st November 2013 addressed by the second petitioner stating that services of the respondents cannot be regularised in terms of the impugned order. Paragraph 11 indicates that in view of pendency of the contempt petitions, the first petitioner opined that there is no need to file an appeal for challenging the impugned order. Thereafter, there is a reference to correspondence between the first petitioner and the second petitioner. The correspondence went on. A decision was taken on 3rd February 2014 by the second petitioner allegedly pursuant to the impugned order and rejected the claim of the respondents for regularisation. Paragraph 16 indicates that it is only on 11th February 2014 that the second petitioner instructed the Chief Presenting Officer to file review petitions and accordingly, the review petitions were filed on 14th March 2014 along with the delay condonation applications. Thus, there was a delay of 9 months in filing review petitions. Moreover, the review petitions were filed about five months from the date on which the petitioners had knowledge about the pendency of the contempt petitions.

7 A very strange stand is taken in paragraph 19 of the affidavit. It is alleged that in view of discussion held on 8th May 2014, the first petitioner through the Desk Officer instructed the Presenting Officer to withdrew the review petitions with liberty to file fresh petitions. This stand is not taken in paragraph 6 of the petition. It is in the light of this stand that it is necessary to consider the order passed on the review petitions. The order passed on the review petitions reads thus :-

“Date : 08.05.2014
Order : Heard Shri A.J. Chougule, learned Presenting Officer for the Applicants (Ori. Resps.) and Shri A.V. Bandiwadekar, learned Advocate for Respondent (Cri. Applicant).

On instructions from Shri A.D. Shejale, Dy. Commissioner, ATC, Thane and Shri V.G. Shinde, Section Officer, Tribal Development Department, the learned Presenting Officer. Shri Chougule seeks leave to withdraw M.A. No.152/2014 in O.A. 57/2006 and also Review Application No.8/2014 in O.A.57/2006 and M.A. 153/14 in Review Application No.9/2014 in O.A. 64/2006. Leave granted. The above Misc. Application and Review Applications stands disposed of accordingly.”

8 Apart from the fact that the review petitions were unconditionally withdrawn, the order itself records that the review petitions were withdrawn by the learned Presenting Officer, on instructions of Shri A.D. Shejale, Deputy Commissioner, ATC, Thane and Shri V.G. Shinde, Section Officer, Tribal Development Department.

9 The learned AGP tried to submit that the review petitions were unconditionally withdrawn by the Presenting Officer contrary to the instructions given to him. He submitted that the correspondence shows this fact. This submission cannot be accepted for more than one reason. Firstly, the order dated 8th May 2014 specifically records the names of the officers who instructed the Presenting Officer to withdraw the review petitions. Secondly, the order does not record that a prayer was made for grant of liberty to file fresh review petitions. Thirdly, if according to the case of the petitioners, the Presenting Officer misconducted himself, the petitioners would have taken action against the Presenting Officer and

would have immediately moved the Maharashtra Administrative Tribunal for modification of the aforesaid order.

10 At this stage, the learned AGP states that his submission was different. His submission was that the learned Presenting Officer did submit before the Tribunal that permission may be granted to withdraw the review petitions with liberty to file fresh the review petitions, but the Hon'ble Members observed that it was a case of aggravated contempt and therefore, such liberty cannot be granted. Again this submission deserves to be completely rejected. Firstly, this is not reflected from the order dated 8th May 2014. If what is contended by the learned AGP had in fact transpired before the Tribunal, the petitioners could have always moved the Tribunal for necessary clarification or could have even challenged the order of the Tribunal. But that was not done. Moreover, all this is clearly an afterthought. We have quoted the entire paragraph 6 of the petition in which it is not even the case made out by the petitioners that instructions were given to the Presenting Officer to withdraw the review petitions with liberty to file fresh petitions. In fact, the act of unconditionally withdrawing the review petitions shows that the petitioners acquiesced to the impugned order of the Tribunal.

11 Reliance is placed on the order dated 10th July 2014 passed by the second petitioner by which services of the respondents were regularised while reserving right to challenge the order of the Tribunal.

12 We may note here that the contempt petitions were disposed of in view of compliance of the order passed by the Tribunal. It will be

very interesting to note what transpired thereafter. We have already noted that as stated in paragraph 6 of the writ petition, one year after the disposal of the review petitions and contempt petitions, on 22nd July 2015 a proposal was submitted for filing writ petitions. Paragraph 28 of the additional affidavit refers to this letter dated 22nd July 2015 seeking permission. Surprisingly, paragraph 29 records that by a letter dated 6th August 2015, the first petitioner directed the second petitioner to provide information as to why it is necessary to file writ petitions. On 26th August 2015, the second petitioner provided necessary information. In paragraph 32, it is stated that the first petitioner addressed a letter on 16th October 2015 calling upon the second petitioner to state whether he was in position to explain the delay of 2.5 years. On 31st October 2015, the second petitioner submitted a detailed report. Ultimately, on 19th January 2016, the first petitioner authorised the second petitioner to file writ petitions. Paragraph 38 of the affidavit records that the first draft of the writ petition was prepared in February 2016. There was further correspondence exchanged in September 2016. Ultimately, writ petitions were affirmed on 23rd January 2017 and filed 17 days thereafter on 10th February 2017. Thus, after unconditional withdrawal of the review petition, for a period of one year, nothing was done and a proposal was belatedly submitted on 22nd July 2015 seeking permission to file writ petitions. That permission was eventually granted on 19th January 2016. Though draft of the writ petition was ready in February 2016, the petitions were filed only on 10th February 2017. Apart from the fact that in paragraph 6 of the affidavit there is no explanation for delay, completely contrary and/or a new stand is taken by filing an affidavit today.

13 As far as the decision in the case of M/s. Power Control Appliances & Ors. (supra) is concerned, it is not applicable as it deals with acquiescence in the context of interim injunction sought for infringement of copyright. As far as the decision in the case of U.P. Jal Nigam and Anr. is concerned, in paragraph 12, the Apex Court has quoted with approval a passage of Halsbury's Laws of England. Paragraph 12 reads thus :-

“12. The statement of law has also been summarized in Halsbury's Laws of England, Para 911, pg. 395 as follows:

"In determining whether there has been such delay as to amount to laches, the chief points to be considered are :

(i) acquiescence on the claimant's part; and

(ii) any change of position that has occurred on the defendant's part.

Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches."

14 In the present case, there is more than one reason which indicates acquiescence on the part of the State Government. The first is unconditional withdrawal of the review petitions. The second is prior to

review petitions were filed, the first petitioner opined that it was not necessary to challenge the impugned order. There is one very crucial circumstances from which an inference of acquiescence can be drawn. After unconditional withdrawal of the review petitions, on 10th July 2014, the order was made by the second petitioner granting regularisation to the petitioner in terms of the impugned judgment and order. The order does not say that a decision has been taken to prefer a writ petition against the impugned order. It merely records that the State Government has reserved its right to challenge the impugned judgment and order. On the basis of the said decision, in July 2014 contempt petitions filed by the respondents were disposed of. For a complete one year thereafter, not even a proposal was moved for obtaining permission of the Law and Judiciary Department to challenge the impugned judgment and order. This conduct also shows acquiescence. At this stage, the learned AGP submitted that the acceptance of the order dated 10th July 2014 by the respondents amounts to acquiescence on their part. This argument, in our opinion, is irrelevant inasmuch as we are dealing with the question whether the State Government acquiesced to the order in the context of such a long delay in filing writ petitions.

15 Hence, this is a fit case where writ petitions deserve to be dismissed only on the ground of delay and latches. In the writ petitions there is absolutely no explanation for delay. This Court showed leniency by granting time to the learned AGP on more than one occasion to explain the delay and additional affidavit was permitted to be filed. To enable the learned AGP to file affidavit, the matter was adjourned for more than one

occasions. The affidavit which was eventually filed does not support the State at all.

16 Therefore, this is a fit case where the petitioners will have to be saddled with costs.

17 Accordingly, we pass the following order :

ORDER

- (i) Writ petitions are rejected. We direct the petitioners to pay cost of Rs.10,000/- each to the respondents in both the writ petitions. The amount of costs shall be paid within a period of one month from the date on which this judgment and order is uploaded.

(M.S. SONAK, J.)

(A.S.OKA, J.)