



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 12.04.2018

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P. (MD) No.6636 of 2018

and

W.M.P. (MD) Nos.6431 and 6432 of 2018

Yadhava Kalvi Nithi
Yadhava College,
Govindarajan Campus,
Thiruppalai,
Madurai 625014,
a Society registered under the Societies
Registration Act represented by its
Secretary, Sri.K.P.Navaneetha Krishnan ... Petitioner

-Vs-

Income-tax Officer (Exemptions),
Income-tax Offices,
2, V.P.Ratnasamy Nadar Road,
Bibikulam,
Madurai 625002 ... Respondent

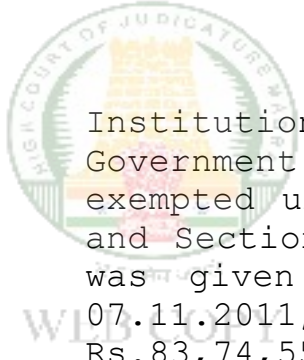
Prayer: Writ Petition - filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in the matter of assessment of the petitioner' for the assessment year 2010-11 which resulted in the issue of attachment of Bank Account with Central Bank of India Tiruppalai Branch, Narayanapuram New Natham Road, Madurai 625 014 (Yadhava College Self Finance A/c) in From ITNS 27 Notice under Section 226 (3) of the Income-Tax Act, 1961 in PAN AAAAY1452D/Yadhava Kalvi Nidhi/2010-11 dated 15.03.2018 after a lapse of 5 years, condone the delay in preferring appeal to the first appellate authority (Commissioner of Income-Tax Appeals) and direct such authority to dispose of the appeal in a short time in accordance with law after giving an opportunity to the petitioner.

For Petitioner : Mr.R.Srinivasan

For Respondent : Mrs.S.Srimathy
Special Government Pleader

O R D E R

<https://hcservices.efforts.gov.in/hcservices/> Petitioner is an Educational Society. According to the writ petitioner, it is exempted from income tax being involved in the public charitable activity of running an educational



Institution. The petitioner Society is receiving grants from the Government nearly to the extent of 47% and accordingly, they are exempted under Section 10(23C)(iiiab) of the Income-tax Act, 1961 and Section 11 of the Income-tax Act, 1961. All along, exemption was given to the Society, but, suddenly, by a letter dated 07.11.2011, a demand was made by the respondent demanding a sum of Rs.83,74,558/-. Since there was litigation over the management of the Society, no appeal was preferred by the petitioner for the demand made by the respondent.

2. From the year of 2011, the Special Officer appointed by the High Court is managing the affairs of the College. Therefore, the society could not approach the respondent in time. Since no appeal was filed the respondent issued a Garnishee order. The writ petitioner prefers this petition for quashing the notice issued by the respondent under Section 226(3) of the Income-tax Act, 1961 [Garnishee Order] dated 15.03.2018. Pursuant to the order, the Income Tax Department has also recovered the money from the bank account of the society to the tune of Rs.83,74,558/-.

3. The learned counsel appearing for the petitioner would contend that because of the rivalry between the members of the Management with regard to the administration, appeal could not be filed in time. Since the money is taken out from the bank account of the Society, the College Administration is crippled. It is imminent to file an appeal to claim exemption from income tax.

4. The learned Standing Counsel appearing for the Income Tax Officer would vehemently contend that the existence of dispute between the members of the Management is nothing to do with the demand made by the Income Tax Department. In fact, all the procedures were followed by the respondent in accordance with the Act. The petitioner Society has woken up from the deep slumber after the attachment and recovery of the dues. Now, it is not open to the petitioner Society to seek for condonation of delay in filing an appeal by way of setting the order dated 15.03.2018. Further, there is a dispute with regard to the maintainability of the appeal by the petitioner, as the Management is under the control of the Special Officer.

5. I have considered the rival contentions.

6. Admittedly, the writ petitioner is a Society running a College and imparting education to the students belonging to the Backward areas and from the statement, it is seen that more than 4,000 students are studying in the College. The College is financially crippled due to the attachment and recovery made by the respondent. Ultimately, the beneficiaries, the students and staff of the Educational Institution alone will be affected. The Special Officer is appointed only to manage the College and not to

monitor the affairs of the Society.

7. In such circumstances, somebody should take up the interests of the Society and consequentially the interest of students and the staff of the College. The Society shall be permitted to agitate the matter on merits for the cause of doing substantial justice, rather than knocking it off on technicalities of delay. The Honourable Supreme Court in the case of **N.Balakrishnan v. M.Krishnamurthy** reported in (1998) 7 SCC 123 at Paragraph Nos.9 to 13, observed as under:

"9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer



persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae ut sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain v. Kuntal Kumari and State of W.B. v. Administrator, Howrah Municipality*.

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss."

8. In the instant case, as stated supra, considering the interest of the students community as well as hundreds of employees working in the College and the Society, this Court is of the view that this is a fit case for issuing certain directions. Because of the rivalry between the members of the Management the real beneficiaries shall not be deprived of their rights and the interest of the Society to impart Education to the people of the Backward areas should not be defeated.



9. It is also pertinent to note that the Society is not represented by regularly by the Elected Office Bearers. There is an apprehension on the side of the respondent, from the past experiences, that too many persons would interfere and meddle with the matter. In such circumstances, permission is granted to the person named as Secretary of the petitioner Society before this Court to present an appeal and the respondent Department shall deal only with that person. No else can interfere in the matter of appeal to be filed. This order cannot be taken advantage by named Secretary in this petition for other issues or affairs of the Society and it is absolutely only in respect of filing an appeal before the respondent alone.

10. In view of the above observations, the following directions are issued:

(a) an appeal shall be filed through the Secretary named in the present Writ Petition for the assessment year 2010-2011 within a period of two weeks from the date of receipt of a copy of this order.

(b) on receipt of the appeal, the respondent is directed to provide ample opportunity to the petitioner in conformity with the principles of natural justice and decide the appeal on merits within a period of three months thereafter.

(c) It is clear that none other than the petitioner is entitled to deal with the appeal filed by the Society till its disposal.

(d) this order is restricted only to the appeal to be filed and shall not be taken advantage of in the affairs of the management of the Society in other respects.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To
Income-tax Officer (Exemptions),
Income-tax Offices,
2, V.P.Ratnasamy Nadar Road,
Bibikulam,
Madurai 625002

+ 1 cc TO Mrs.S.Srimathy , Advocate in SR No. 60938

+ 2 ccs TO Mr.R.Srinivasan , Advocate in SR No. 60946

sm

AE/RSK/SAR1/04.05.2018/5P/5C

Order made in
W.P. (MD) No.6636 of 2018
Dated:12.04.2018