THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION NO.32577 OF 2018

ORDER: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

The petitioner is a private limited company. It is carrying on business in the purchase and sale of trucks. It was issued a show cause notice, for the tax period 2011-12 to 2014-15, on 16.03.2016 to which the petitioner appears to have filed a reply on 09.05.2016. Eventually, an assessment order was passed on 31.05.2016 in Form VAT 305 and, pursuant thereto, a demand notice for unpaid tax was issued on 15.07.2016 in Form VAT 202.

The present Writ Petition was filed on 30.04.2018, one year eleven months after the date of the assessment order. The explanation furnished thereto, in the affidavit filed in support of the Writ Petition, was that the petitioner was severely attacked by jaundice from 27.07.2016, and was admitted in the hospital. He was advised to take bed rest which resulted in tremendous impact on the health of the petitioner; because of the petitioner's negligence, the jaundice he suffered from had resulted in Hepatitis-B, because of which the petitioner was admitted in a hospital, and underwent treatment; he used to frequently visit the hospital, and was advised bed rest because of weakness and lack of strength to even work; in March 2017, his father, who was also a Director of the company, was attacked by diabetes because of the ill-health of his son, and as his kidneys deteriorated, he was on dialysis from January, 2017 and he eventually died on 25.01.2018.

While certain laboratory test reports of diagnostic centres are filed in support of the plea that the petitioner was unwell and some prescriptions of doctors are filed to show that the petitioner was advised bed rest, the delay in filing the Writ Petition, questioning the assessment order, is of almost two years. After the assessment order was passed, a demand notice was issued to the petitioner in Form VAT 202 on 15.07.2016 calling upon them to pay the VAT dues. Even on receipt of the demand notice dated 15.07.2016, the petitioner did not choose to question the assessment order. It is not even the petitioner's case, in the writ affidavit, that his ill-health and that of his father had resulted in stoppage on their business. If the petitioner's company could carry on the business, notwithstanding the illness of its directors, there is no justification in not preferring an appeal against the assessment order, or to invoke the jurisdiction of this Court earlier.

The power of the High Court to issue a Writ under Article 226 of the Constitution is discretionary and the High Court, in the exercise of its discretion, does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition, and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. Where there is inordinate and unexplained delay, the High Court would decline to interfere, even if the State action complained of is unconstitutional or illegal. (**State of M.P. v. Nandlal Jaiswal**[1]).

As held in **Nandlal Jaiswal**[1] the Court would not aid to indolent and the lethargic. In cases where the delay in invoking the jurisdiction is unduly belated, this Court would refrain from interference. On the short ground that the writ jurisdiction of this Court was invoked belatedly i.e. nearly two years after the assessment order was passed, and the explanation furnished for the delay is wholly insufficient, we see no reason to exercise discretion under Article 226 of the Constitution of India to entertain the belated challenge to the assessment order.

The Writ Petition fails and is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, J)

(KONGARA VIJAYA LAKSHMI, J)

11th September 2018
RRB

[1] (1986) 4 SCC 566