IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.06.2019

CORAM :

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.6385 of 2007
and
MP.No.2 of 2007

Tvl.Chemech Laboratories Ltd,
rep. by its Managing Director,
Dr.Rajam Jaishankar,
No.4, Kodambakkam High Road,
Chennai 600 034. ... Petitioner

vs.

1. The Appellant Assistant,
Commissioner (CT) VII,
Kuralagam Annex, Chennai 600 108.

2. The Deputy Commercial Tax Officer,
T.Nagar (East) Assessment Circle,
Taluk Office Buildings,
46, Greenways Road, Chennai 600 028. ... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorari, calling for the records of the first respondent in A.P.No.581 of 1999 dated 3.10.2001 and the connected proceedings of the second respondent in TNGST 137701/92-93 dated 27.11.97 and quash the same as illegal, arbitrary and against the principles of natural justice and equity.

For Petitioner : Mr.K.Soundara Rajan

For Respondents: Mr.V.Haribabu
Addl. Govt. Pleader for R1&R2

O R D E R

The challenge in the present writ petition is to quash the order dated 03.10.2001, passed by the Appellant Assistant Commissioner (CT) VII, Chennai.

2. The petitioner is a company incorporated under the Companies Act 1956, engaged in manufacture of drugs and blood products, plasma, Protein Fractions, Bio-technology and other items. In October 1989, the Government of India imposed a ban on the manufacture of blood products and directed the company to destroy all the stocks held by it. The company became sick and there was a reference to the Board for Industrial and Financial Reconstruction (BIFR), for rehabilitation in 1991, under Sick Industrial Companies Act, 1985.

3. Bank of India was appointed as the Operating Agency. Certain concessions were granted to the appellant. The petitioner company filed monthly A1 returns along with the tax dues for the assessment year 1992-93. On 03.10.1997, a notice was issued proposing to revise the assessment by adding 50% of the turnover and also for disallowing the tax collections cum sales tax etc., Penalty was also proposed to be imposed. The petitioner filed a rectification petition under Section 55 of the TNGST Act, which was also dismissed on 18.02.2003. Against the revised assessment order dated 26.11.1997, appeal was filed by the petitioner before the Appellate Assistant Commissioner (CT) VII. The Appellate Authority also dismissed the appeal on the ground that the books of accounts had not been produced before the Appellate Authority. The appeal was dismissed on 03.10.2001.

4. The petitioner thereafter filed a petition before the Special Committee under Section 16(D) of the TNGST Act. The committee constituted under Section 16(D) of the TNGST Act, passed the following order:-

> "1992-93 (Tamil Nadu General Sales Tax Act 1959)
>
> It is seen from the records that the applicant has gone for appeal under the Tamil Nadu General Sales Tax Act for the year 92-93 and die same was dismissed by the Appellate Assistant Commissioner-VII.
>
> Proviso to Section 16-D prohibits applicants who have filed an appeal or writ to approach die Committee for relief The relevant proviso to Section 16-D of the Tamil Nadu General Sales Tax Act is as below:
>
> "Provided that such proceeding or order against which any appeal or writ is pending shall not be entertained under this sub-section."
>
> Therefore as per the above proviso those who filed appeal or writ becomes ineligible to prefer application under Section 16-D of the Tamil Nadu General Sales Tax Act 1959, since Section 16-D of the Tamil Nadu General Sales Tax Act 1959 envisages power to set aside the order of the Assessing Authority only, whereas any order passed by any appellate authority would merge with the order of Assessing Authority as a result of appeal. Hence, the

application deserves no consideration.

5. On the rejection the order passed under Section 16(D) of the TNGST Act, dated 19.10.2005, by the Special committee of the TNGST Act, the petitioner is now chosen to challenge the order dated 03.10.2001, of the Appellate Authority.

6. Heard the counsel for the parties.

7. The counsel for the petitioner strenuously contended that there was a lock out in the factory. He also states that there was no staff and therefore, the petitioner could not produce the books of accounts and the assessment was passed. He also states that even in the appeal proceedings also, he did not have the books of accounts. He further states that the books of accounts were produced and pursued by the Special Committee, regarding other assessment years other than 1992-93 and the said request was accepted by the Special Committee under Section 16(D). Another assessment order has been set aside, he therefore submitted that the same relief should be given to the petitioner for the assessment year 1992-93 also. The books of accounts were available and were not produced only due to the lock out in the factory.

8. The learned counsel for the Revenue of the State states that the appeal was dismissed in the year 2001 and the writ petition has been filed in the year 2007. He stats that there is no explanation for this long delay. He would also submit that there is an alternate remedy is available to the petitioner under Section 36 of the TNGST Act which reads as under:-

> "36. (1) Any person objecting to an order passed by the Appellate Assistant Commissioner under sub-section (3) of section 31, or an order passed by the Deputy Corn- I missioner under '[sub-section (3) of section 31-A or] subsection (1) of section 32 may, within a period of sixty days from the date on which the order was served on hill1 in the wanner prescribed, appeal against such order to the Appellate Tribunal :
> Provided that the Appellate Tribunal may admit an appeal presented after the expiration of the said period. It is satisfied that the appellant had sufficient cause for presenting the appeal within the said period.
> (2) The appeal shall be in the prescribed form and; shall be verified in the prescribed manner and shall be accompanied by such fee not exceeding one hundred rupees as may be prescribed.
> (3) In disposing of an appeal, the Appellate Tribunal may, after giving the appellant a reasonable opportunity of being heard,

(a) in the case of an order of assessment- (i) confirm, reduce, enhance or annul the assessment or penalty or both ; (ii) set aside the assessment and direct the assessing authority to make a fresh assessment after such further inquiry as may be directed ; or
(iii) pass such other orders as it may think fit ; or
(b) in the case of any other order, confirm, cancel , or vary such order:
Provided that at the hearing of any appeal against an order of the Appellate Assistant Commissioner or the Deputy Commissioner the assessing authority shall have the right to be heard either in person: or by a representative: Provided further that, if the appeal involves a question of law on which the Appellate Tribunal has previously given its decision in another appeal and either a revision petition in the High Court against such decision or an, appeal in the Supreme Court against the order of the High Court thereon is pending, the Appellate Tribunal may defer the hearing of the appeal before it, till such revision petition in the High Court or the appeal in the Supreme Court is disposed of.
5. Notwithstanding that an appeal has been preferred under sub-section (I), the tax shall be paid in accordance with the order of assessment against which the appeal has been preferred : Provided that the Appellate Tribunal may, in its discretion, give such directions as it thinks fit in regard to the payment of the tax before the disposal of the appeal, if the appellant furnishes sufficient security to its satisfaction, in such form and in such manner as may be prescribed.
(6) (a) The appellant or the respondent may apply for review of any order passed by the Appellate Tribunal under sub-section (3) on the basis of the discovery of new and important facts which after the exercise of due diligence were not within his knowledge or could not be produced by him when the order was made: Provided that no such application shall be preferred more than once in respect of the same order:
(b) The application for review shall be preferred in the prescribed manner and within one year from the date on which a copy of the order to which the application relates was served on the applicant in the manner prescribed and where the application is preferred by any party other than a departmental authority it shall be accompanied by such fee not exceeding one hundred rupees as may be prescribed.
(7) Except as provided in the rules made under this

Act the Appellate Tribunal shall not have power to award costs to either of the parties to the appeal g review.
(8) Every order passed by the Appellate Tribunal under sub-section (3) or (6) shall be communicated in the manner prescribed to the appellant, the respondent, the authority from whose order the appeal was preferred, the Deputy Commissioner, if he is not such authority, and the *Board of Revenue.
9) Every order passed by the Appellate Tribunal under sub~section (3) shall, subject to 'the provisions of sub-sect;on (6) and section 38, be final.]"

9. He would submit that the petitioner knew fully, that the remedy under Section 16(D) of the TNGST Act was not available to him for the year 1992-93, in as much as the appeal has already been rejected.

10. Perused the materials on record. The petitioner has not substantiated his case that due to the lock out, the petitioner was not in a position to produce the books of accounts. He has not shown as to how he was not permitted to produce the books of accounts. A lockout ipso facto does not create the situation that the books of accounts could not be brought out. No evidence of any law and order problems has been shown which would substantiate the case of the petitioner. The petitioner was prevented even to access the factory premises where the books of accounts were kept. There was a lock out and therefore, the petitioner is restrained by them cannot be accepted on the mere statement. Appeal has already been dismissed on the reason that the books of accounts has not been filed. The alternative remedy available to the petitioner . The petitioner has approached the Special Committee under Section 16(D). Obviously the order of appeal would have been produced before the Special Committee under Section 16(D) of the TNGST Act. At that time the petitioner could have been approached the Tribunal, The writ petition has been filed only because the period of limitation to file the revision has been last by the petitioner.

11. There is an inordinate delay and laches on the part of the appellant. What is laches is as follows:

"Laches or reasonable time are not defined under any Statute or Rules. "Latches" or "Lashes" is an old french word for slackness or negligence or not doing. In general sense, it means neglect to do what in the law should have been done for an unreasonable or unexplained length of time. What could be the latches in one case might not constitute in another. The latches to non-suit, an aggrieved person person from challenging the acquisition proceedings should be inferred from the conduct of the land owner or an interested person and that there should be a passive inaction for a reasonable length of time. What is reasonable time has not been explained in any of the enactment. Reasonable time depends upon the facts and circumstances of each case.''

12. 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 9 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."

13. Also refer i) State of M.P Vs. Bhailal Bhai reported in AIR 1964 SC 1006, ii) Dilbagh Rai Jarry Vs. Union of India, (1974) 3 SCC 554, and iii) P.S.Sadasivasamy Vs. State of Tamil Nadu, reported in (1975) 1 SCC 152, which states that, a person must approach a Writ Court within reasonable time and the Courts must not permit stale claims to be agitated before it.

14. In State of M.P., v. Nandlal Jaismal reported in 1986 (4) SCC 566, the Hon'ble Supreme Court, at Paragraph 24, held as follows:

"24. Now, it is well settled that the power of the High Court to issue an appropriate 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. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties.

When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs the High Court in deciding whether or not to exercise such jurisdiction. We do not think it necessary to burden this judgment with reference to various decisions of this Court where it has been emphasised time and again that where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would decline to interfere, even if the State action complained of is unconstitutional or illegal. ....Of course, this rule of laches or delay is not a rigid rule which can be cast in a strait jacket formula, for there may be cases where despite delay and creation of third party rights the High Court may still in the exercise of its discretion interfere and grant relief to the petitioner. But, such cases where the demand of justice is so compelling that the High Court would be inclined to interfere in spite of delay or creation of third party rights would by their very nature be few and far between. Ultimately it would be a matter within the discretion of the court; ex hypothesi every discretion must be exercised fairly and justly so as to promote justice and not to defeat it."

15. In State of Maharastra v. Digambar reported in AIR 1995 SC 1991, the Hon'ble Supreme Court, held as follows:

"12. How a person who alleges against the State of deprivation of his legal right, can get relief of compensation from the State invoking writ jurisdiction of the High Court under article 226 of the Constitution even though, he is guilty of laches or undue delay is difficult to comprehend, when it is well settled by decision of this Court that no person, be he a citizen or otherwise, is entitled to obtain the equitable relief under Article 226 of the Constitution if his conduct is blame13 worthy because of laches, undue delay, acquiescence, waiver and the like. Moreover, how a citizen claiming discretionary relief under Article 226 of the Constitution against a State, could be relieved of his obligation to establish his unblameworthy conduct for getting such relief, where the State against which relief is sought is a welfare State, is also difficult to comprehend. Where the relief sought under Article 226 of the Constitution by a person against the welfare State is founded on its alleged illegal or wrongful executive action, the need to explain laches or undue delay on his part to obtain such relief, should, if anything, be more stringent than in other cases, for the reason that the State due to laches or undue delay on the part of the person seeking relief, may not be able to show that the executive action complained of was legal or correct for want of records pertaining to the action or for the officers who were responsible for such action not being available later on. Further, where granting of relief is claimed against the State on alleged unwarranted executive action, is bound to result in loss to the public exchequer of the State or in damage to other public interest, the High Court before granting such relief is required to satisfy itself that the delay or laches on the part of a citizen or any other person in approaching for relief under Article 226 of the Constitution on the alleged violation of his legal right, was wholly justified in the facts and circumstances, instead of ignoring the same or leniently considering it. Thus, in our view, persons seeking relief against the State under Article 226 of the Constitution, be they citizens or otherwise, cannot get discretionary relief obtainable thereunder unless they fully satisfy the High Court that the facts and circumstances of the case clearly justified the laches or undue delay on their part in approaching the Court for grant of such discretionary relief. Therefore, where a High Court grants relief to a citizen or any other person under 14 Article 226 of the Constitution against any person including the State without considering his blame-worthy conduct, such as laches or undue delay, acquiescence or waiver, the relief so granted becomes unsustainable even if the relief was granted in respect of alleged deprivation of his legal right by the State.'

21.Therefore, where a High Court in exercise of its power vested under Article 226 of the Constitution issues a direction, order or writ for granting relief to a person including a citizen without considering his disentitlement of such relief 15 due to his blameworthy conduct of undue delay or laches in claiming the same, such a direction, order or writ becomes unsustainable as that not made judiciously and reasonably in exercise of its sound judicial discretion, but as that made arbitrarily."

(emphasis supplied)

16. In Hameed Joharan Vs. Abdul Salem, reported in (2001) 7 SCC 573, the Hon'ble Supreme Court of India, observed as under:-

"14. It cannot but be the general policy of our law to use the legal diligence and this has been the consistent legal theory from the ancient times: even the doctrine of prescription in Roman law prescribes such a concept of legal diligence and since its incorporation therein, the doctrine has always been favoured rather than claiming disfavour. Law courts never tolerate an indolent litigant since delay defeats equity — the Latin maxim vigilantibus et non dormientibus jura subveniunt (the law assists those who are vigilant and not those who are indolent). As a matter of fact, lapse of time is a species for forfeiture of right. Wood, V.C. in Manby v. Bewicke, reported in 1857 (3) K&J 342 = 69 ER 1140 (K&J at p. 352) stated: (ER p. 1144)

“The legislature has in this, as in every civilized country that has ever existed, thought fit to prescribe certain limitations of time after which persons may suppose themselves to be in peaceful possession of their property, and capable of transmitting the estates of which they are in possession, without any apprehension of the title being impugned by litigation in respect of transactions which occurred at a distant period, when evidence in support of their own title may be most difficult to obtain.”

17. In Chairman, U.P.Jal Nigam and another v. Jaswant Singh reported in AIR 2007 SC 924, the Hon'ble Supreme Court, after considering a catena of decisions, on the aspect of delay, at Paragraph 13, held as follows:

“13........Therefore, whenever it appears that the claimants lost time or while away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the Court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted."

18. In Prabhakar v. Joint Director, Sericulture Department reported in 2015 (3) SCC 1, the Hon'ble Supreme Court, at Paragraphs 37 and 38, held as follows:

"37. Let us examine the matter from another aspect viz. laches and delays and acquiescence.

38. It is now a well-recognised principle of jurisprudence that a right not exercised for a long time is non-existent. Even when there is no limitation period prescribed by any statute relating to certain proceedings, in such cases courts have coined the doctrine of laches and delays as well as doctrine of acquiescence and non-suited the litigants who approached the Court belatedly without any justifiable explanation for bringing the action after unreasonable delay. Doctrine of laches is in fact an application of maxim of equity "delay defeats equities".

40. Likewise, if a party having a right stands by and sees another acting in a manner inconsistent with that right and makes no objection while the act is in progress he cannot afterwards complain. This principle is based on the doctrine of acquiescence implying that in such a case the party who did not make any objection acquiesced into the alleged wrongful act of the other party and, therefore, has no right to complain against that alleged wrong."

19. Even in case of pension, Shiv Dass vs. Union of India and others reported in (2007) 9 SCC 274, the Hon'ble Supreme Court of India observed as under:-

"10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each in case. If petition is 34 filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone. 11. In the peculiar circumstances, we remit the matter to the High Court to hear the writ petition on merits. If it is found that the claim for disability pension is sustainable in law, then it would mould the relief but in no event grant any relief for a period exceeding three years from the date of presentation of the writ petition. We make it clear that we have not expressed any opinion on the merits as to whether appellant's claim for disability pension is maintainable or not. If it is sans merit, the High Court naturally would dismiss the writ petition."

20. There is no equity in favour of the writ petitioner to invoke the extraordinary writ jurisdiction. The conduct of the petitioner shows that he has not been vigilant in pursuing the available remedies. The approach of the petitioner is completely lackadaisical and therefore he is not entitled to the equitable relief under Article 226 of the Constitution of India. It is obvious, the petitioner has filed the writ petition only because the Tribunal has no power to condone the delay beyond 120 days from the date of receipt of a copy of the order. Other than pleading that there was a lock out, no material has been produced to show as to how the petitioner was prevented from producing the books of accounts. The writ petition is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Appellant Assistant,
   Commissioner (CT) VII,
   Kuralagam Annex, Chennai 600 108.

2. The Deputy Commercial Tax Officer,
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   Taluk Office Buildings,
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W.P.No.6385 of 2007

RK(CO)
GN(18/07/2019)