

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.7297 of 2019

A.Radhakrishnan

... Petitioner

vs.

1. The Secretary to Government,
Public Department,
Secretariat,
Chennai - 600 009.

2. The Secretary to Government,
Home Department,
Secretariat,
Chennai - 600 009.

3. The Secretary to Government,
Municipal Administration & Water Supply,
Secretariat,
Chennai - 600 009.

4. The Secretary to Government,
Highways & Minor Ports Department,
Secretariat,
Chennai - 600 009.

5. The State Road Safety Commissioner cum,
Transport Commissioner,
Chepauk, Chennai - 600 005.

6. The Additional Director General of Police,
State Traffic Planning Cell,
Dr.Radhakrishnan Road,
Chennai - 600 004.

7. The District Collector,
Salem.

8. The Commissioner of Police,
Salem.

9. The Special Officer cum Commissioner,
Salem City Municipal Corporation,
Salem.

10. The Superintending Engineer,
(Construction and Maintenance)
Highways Department,
Salem.

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, directing 8th & 9th respondents not to grant permission to anyone in conducting Meeting or Agitation in the important places of Head Post office, Fort Ground, Pattai Koil and Collectorate by considering the petitioner representation dated 17.08.2017.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondents: Mr.E.Manoharan (for R1 to R8 & R10)
Additional Government Pleader
Mr.S.Sathish (for R9)
Standing counsel for Salem Corpn.

ORDER

(Order of the Court was made by S.MANIKUMAR, J)

Petitioner has sought for a writ of mandamus, directing the Commissioner of Police, Salem and the Special Officer cum Commissioner, Salem City Municipal Corporation, Salem, respondents 8 and 9, respectively, not to grant permission to anyone for conducting Meeting or Agitation in the important places of Head Post office, Fort Ground, Pattai Koil and Collectorate, by considering his representation dated 17.08.2017.

2. Material on record discloses that his representation to the Hon'ble Chief Minister's Cell, has been forwarded vide letter dated 17.08.2017 to the Commissioner of Police, Salem District. Letter dated 17.08.2017, reads thus.

A.Radhakrishnan
Social Worker

Allikuttai Salem 636 008
E-Mail-rktnindia@gmail.com
August 17, 2017

Chief Minister of Tamil Nadu,
Chennai,

Dear Sir,

Salutation!

I request you to ban public meetings / protests at the below stated places falling under the limits of Salem Corporation / City Police.

1. Head Post Office: Presently, Passport Office is also running from here. Part of the buses from old Bus Depot is being run through this way.

2. Fort Grounds: Main junction road area, further, Government Hospital is very near to this place.

3. Pattaikovil: Main Junction road area, further, area with more of traffic congestion.

4. Office of the District Collectorate: Around 50 Government offices and around 2000 shops are functioning here. Main Junction road area.

Yours lovingly,

A.Radhakrishnan.

3. Now after two years, the petitioner has come to this Court, seeking for consideration of his representation dated 17.08.2017. Though, Mr.R.Marudhachalamurthy, learned counsel for the petitioner submitted that after sending the representation dated 17.08.2017, petitioner has approached the respondents for a reply, the said oral submission or the averments made in support of the above, do not merit consideration, for the reason that they are not substantiated.

4. On more than one occasion, the Hon'ble Supreme Court on public interest writ petitions, has observed and held that averments made in public interest writ petitions should be duly supported with documents. At this juncture, we also wish to state that there is a difference in the pleading, between writ petitions and civil proceedings and it is also worthwhile to consider a decision of the Hon'ble Supreme Court in Bharat Singh and Others Vs. State of Haryana and Others, reported in 1988 (4) SCC 534, wherein while distinguishing the difference between the pleading under the Code of Civil Procedure and a writ petition, under Article 226 of the Constitution of India, in Paragraph No.'13', held as follows:

".... In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evident which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place

to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it."

5. Secondly, there is delay and laches on the part of the writ petitioner in approaching this Court. The Hon'ble Supreme Court, has time and again held that person seeking grant of relief under Article 226 of the Constitution of India, even if it is against State, he requires to satisfy the High Court that he is not guilty of laches or undue delay in approaching the Court for the appropriate relief.

6. What is reasonable time has not been explained in any of the enactment. Reasonable time depends upon the facts and circumstances of each case.

(i) The words "reasonable time", as explained in *Veerayeeammal v. Seeniammal* reported in 2002 (1) SCC 134, at Paragraph 13, is as follows:

"13. The word "reasonable" has in law prima facie meaning of reasonable in regard to those circumstances of which the person concerned is called upon to act reasonably knows or ought to know as to what was reasonable. It may be unreasonable to give an exact definition of the word "reasonable". The reason varies in its conclusion according to idiosyncrasy of the individual and the time and circumstances in which he thinks. The dictionary meaning of the "reasonable time" is to be so much time as is necessary, under the circumstances, to do conveniently what the contract or duty requires should be done in a particular case. In other words it means, as soon as circumstances permit. In *P. Ramanatha Aiyar's The Law Lexicon* it is defined to mean:

"A reasonable time, looking at all the circumstances of the case; a reasonable time under ordinary circumstances; as soon as circumstances will permit; so much time as is necessary under the circumstances, conveniently to do what the contract requires should be done; some more protracted space than 'directly'; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances; all these convey

more or less the same idea."

7. Reference can also be made to few decisions of the Supreme Court, where inordinate delay and laches, on the part of the litigant in approaching the Court has been disapproved:

(i) In State of M.P. v. Bhailal Bhai reported in AIR 1964 SC 1006, the Hon'ble Supreme Court held that unreasonable delay denies to the petitioner the discretionary extraordinary remedy of mandamus, certiorari or any other relief.

(ii) 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."

(iii) In State of Maharashtra v. Digambar reported in AIR 1995 SC 1991, the Hon'ble Supreme Court, considered a case, where compensation for the acquired land was claimed belatedly and at Paragraphs 12, 18 and 21, 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 blame-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 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.

18. Laches or undue delay, the blame-worthy conduct of a person in approaching a Court of Equity in England for obtaining discretionary relief which disentitled for grant of such relief was explained succinctly by Sir Barnes Peacock, long ago, in *Lindsay Petroleum Co. v. Prosper Armstrong* (1874) 5 PC 221) thus :

"Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation, in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute or limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might

affect either party and cause a balance of Justice or injustice in taking the one course or the other, so far as it relates to the remedy."

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 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."

(iv) In *State of Rajasthan v. D.R. Laxmi* reported in 1996 (6) SCC 445, the Hon'ble Supreme Court observed that though the order may be void, if the party does not approach the Court within a reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner.

(v) 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."

(vi) In *S.S. Balu v. State of Kerala*, (2009) 2 SCC 479, wherein at paragraph No.17, the Hon'ble Supreme Court held as follows:

"17. It is also well-settled principle of law that "delay defeats equity". The Government Order was issued on 15-1-2002. The appellants did not file any writ application questioning the legality and validity thereof. Only after the writ petitions filed by others were allowed and the State of Kerala preferred an appeal thereagainst, they impleaded themselves as party-respondents. It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to

them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment. It is, thus, not possible for us to issue any direction to the State of Kerala or the Commission to appoint the appellants at this stage. In NDMC v. Pan Singh this Court held: (SCC p. 283, para 16)

"16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction."

8. After 17.08.2017, there would have been several meetings or agitations and that petitioner has not approached this Court for the period after 17.08.2017. Present writ petition does not satisfy the requirement of public interest writ petition. Writ petition does not warrant issuance of any mandamus. Writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Public Department, Secretariat, Chennai - 600 009.

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Home Department, Secretariat, Chennai - 600 009.

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(Construction and Maintenance)
Highways Department,
Salem.

+1 cc to Mr.S.Sathish, Advocate SR.No.23845

+1 cc to Mr.R.Marudhachalamurthy, Advocate SR.No.24649

+1 cc to The Government Pleader, Sr.No.24670

W.P.No.7297 of 2019

SAI (CO)
CSL/10.04.2019

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