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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2019

CORAM

THE HONOURABLE Mr.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE Mr.JUSTICE SUBRAMONIUM PRASAD

W.P.No.24929 of 2017

J.Seethalakshmi

... Petitioner

Vs.

1.Indian Oil Corporation Limited

Marketing Division, Tamil Nadu State Office
"Indian Oil Bhawan"
139, Mahatma Gandhi Road
(Nungambakkam High Road)
Chennai - 600034.

2.Rajesh Agency

(Dealer Code:133633)
No.129, Santhome High Road
Foreshore Estate
Basha Garden
Mylapore, Chennai - 600 004.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance for a Writ of Mandamus directing the 1st respondent to consider the petitioner's representation dated 02.08.2017 to cancel/terminate the licence issued to the 2nd respondent for running the retail outlet in the name and style of 'Rajesh Agency' at No.129, Santhome High Road, Foreshore Estate, Basha Garden, Mylapore, Chennai - 600 004.

For Petitioner : No Appearance
For R1 : Mr.Abdul Saleem

ORDER

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

The petitioner has sought for a Writ of Mandamus, directing the 1st respondent, to consider her representation, dated 02.08.2017, to cancel/terminate the licence, issued to the 2nd respondent, for running the retail outlet, in the name and style of 'Rajesh Agency' at No.129, Santhome High Road, Foreshore Estate, Basha Garden, Mylapore, Chennai.

2. There is no representation for the petitioner.

3. Mr.Abdul Saleem, learned counsel appearing for Indian Oil Corporation Limited Marketing Division, Tamil Nadu State Office, Chennai, the 1st respondent herein, submitted that M/s.Rajesh Agency (Dealer Code:133633), No.129, Santhome High Road, Foreshore Estate Basha Garden, Mylapore, Chennai/the 2nd respondent herein, was initially established in the year 1987,



for a period of five years and that the dealership agreement is periodically extended. Contending inter alia, that Indian Oil Corporation has not properly considered the requirements for establishment of the retail outlet, the Petitioner has made a representation in the year 2017, after 20 years for establishment of the retail outlet, named as, Rajesh Agency (Dealer Code:133633), No.129, Santhome High Road, Foreshore Estate Basha Garden, Mylapore, Chennai.

4. De hors the averments, there is unexplained and inordinate delay of 20 years, even making a representation by the petitioner.

5. It is trite law that remedy under Article 226 of the Constitution of India, is equitable in nature and in the case on hand delay of 20 years is unexplained. There is no proper reason. Delay defeats equity, it is worthwhile to refer few decisions:-

(i) In S.S.Balu v. State of Kerala reported in 2009 (2) SCC 479, at Paragraph 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 Singh⁹ 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



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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."

(ii) In *Virender Chaudhary v. Bharat Petroleum Corporation* reported in 2009 (1) SCC 297, the Hon'ble Supreme Court held as follows:

"The court exercises its jurisdiction only upon satisfying itself that it would be equitable to do so. Delay and/or laches, indisputably, are the relevant factors.

"15. The Superior Courts, times without number, applied the equitable principles for not granting a relief and/or a limited relief in favour of the applicant in a case of this nature. While doing so, the court although not oblivious of the fact that no period of limitation is provided for filing a writ petition but emphasize is laid that it should be filed within a reasonable time. A discretionary jurisdiction under Article 226 of the Constitution of India need not be exercised if the writ petitioner is guilty of delay and laches."

Some of the decisions considered by the Hon'ble Apex Court in *Virender Chaudhary's* case (cited supra), are reiterated as follows:

"16. In *Uttaranchal Forest Development Corporation and Anr. v. Jabar Singh and Ors.* [(2007) 2 SCC 112], this Court held:

"It is not in dispute that the effective alternative remedy was not availed of by many of the workmen as detailed in paragraphs supra. The termination order was made in the year 1995 and the writ petitions were admittedly filed in the year 2005 after a delay of 10 years. The High Court, in our opinion, was not justified in entertaining the writ petition on the ground that the petition has been filed after a delay of 10 years and that the writ petitions should have been dismissed by the High Court on the ground of laches."

17. In *New Delhi Municipal Council v. Pan Singh and Ors.* [(2007) 9 SCC 278], this Court held:

"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



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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. (See Govt. of W.B. v. Tarun K. Roy [(2004) 1 SCC 347], U.P. Jal Nigam v. Jaswant Singh [(2006) 11 SCC 464] and Karnataka Power Corpn. Ltd., v. K.Thangappan [(2006) 4 SCC 332])

17. Although, there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, ordinarily, writ petition should be filed within a reasonable time. (See Lipton India Ltd. v. Union of India [(1994) 6 SCC 524] and M.R.Gupta v. Union of India [(1995) 5 SCC 628])”

6. In the light of the above discussion and decisions, prayer sought for, cannot be granted. Writ petition is dismissed. No Costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

+1 cc to Mr.Abdul Saleem, Advocate Sr.No. 55539

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VBA (CO)
AKM/13.08.19/4P-2C/