

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6456 of 2020

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Upendra Rishidev S/o Late Jamun Rishidev Resident of Jhalighat, Gram
Panchayat- Madhuban, P.S.- Jankinagar, District- Purnia.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Food and Consumer Protection, Government of Bihar, Patna.
2. The Collector Purnea.
3. The Sub Divisional Officer Banmankhi, Purnea.
4. The Block Supply Officer Banmankhi, Purnea.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Shailendra Kumar Singh
For the Respondent/s : Mr.S. Raza Ahmad (AAG-5)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

2 19-03-2021 The present writ petition has been filed for quashing the order dated 24.12.2019 passed by the Collector, Purnea in Supply Appeal Case No. 275 of 2018, whereby and whereunder the appeal of the petitioner has been dismissed on the ground of delay. The petitioner has further prayed for quashing the order dated 16.05.2016 by which the P.D.S. license of the petitioner bearing Licensing No. 12 of 2009 has been cancelled by the S.D.O., Banmankhi.

2. The learned counsel for the petitioner has submitted that by the impugned order dated 24.12.2019, the Collector, Purnea has rejected the appeal of the petitioner in limine on the ground of delay by a cryptic order, hence the same is required to



be set aside and the matter be remanded back to the appellate authority for reconsideration of the case of the petitioner on merits.

3. Per contra, the learned counsel for the respondent-State has submitted that the order cancelling the PDS shop license of the petitioner was passed by the SDO, Banmankhi on 16.05.2016 and as per Rule 32(iii) of the Bihar Targeted PDS Control Order, 2016, the appeal is required to be filed within a period of 30 days of the date of receipt of the order of the licensing authority cancelling the license of a PDS shop dealer, however, the petitioner had filed the appeal after a delay of about more than two and a half years, hence the appeal has rightly been rejected by the Collector, Purnea by the impugned order dated 24.12.2019. It is also submitted by the learned counsel for the respondent that the petitioner has again defaulted in even approaching this Court belatedly after more than one and a half year.

4. I have heard the learned counsel for the parties and perused the materials on record. At this juncture, it would be relevant to reproduce Rule 32(iii) of the Bihar Targeted PDS Control Order, 2016 herein below:-

“32. Appeal-(iii) Any person aggrieved by an order of the licensing authority denying the issue or renewal of



the license to the fair price shop owner or cancellation of the license may appeal to the District Officer within thirty days of the date of receipt of the order and the District Magistrate shall, as far as practicable, dispose the appeal within a period of sixty days.”

5. A bare perusal of the aforesaid provision contained in Rule 32(iii) of the Bihar Targeted PDS Control Order, 2016 would show that the statutory period for filing the appeal is 30 days, however, the petitioner took more than two and a half years for filing an appeal and in fact for the same no plausible explanation has been given, hence I do not find any infirmity in the impugned order dated 24.12.2019 passed by the Collector, Purnea, in Supply Appeal Case No. 275 of 2018.

6. Another aspect of the matter is that it is a well settled law that stale and dead claims should not be entertained in exercise of discretionary jurisdiction under Article 226 of the Constitution of India and a line of distinction is to be drawn between a vigilant and a non-vigilant litigant. It is equally a well settled law that the parties should pursue their rights and remedies promptly and not sleep over their rights and if they choose to sleep over their rights and remedies for an inordinately long time, the Court may well choose to decline to interfere in its discretionary jurisdiction under Article 226 of the



Constitution of India. In this regard it would be apt to refer to a judgment rendered by the Hon'ble Apex Court in the case of **Ex. Capt. Harish Uppal vs. Union of India** reported in **(1994) SCC Suppl. (2) 195**, paragraph no. 8 whereof is reproduced herein below:-

“8.The petitioner sought to contend that because of latches on his part, no third party rights have intervened and that by granting relief to the petitioner no other person's rights are going to be affected. He also cited certain decisions to that effect. This plea ignores the fact that the said consideration is only one of the considerations which the court will take into account while determining whether a writ petition suffers from latches. It is not the only consideration. It is a well-settled policy of law that the parties should pursue their rights and remedies promptly and not sleep over their rights. That is the whole policy behind the Limitation Act and other rules of limitation. If they choose to sleep over their rights and remedies for an inordinately long time, the court may well choose to decline to interfere in its discretionary jurisdiction under Article 226 of the Constitution of India and that is what precisely the Delhi High Court has done. We cannot say that the High Court was not entitled to say so in its discretion.”

7. The Apex Court in the case of **State of Uttar Pradesh**



& ors. vs. Arvind Kumar Srivastava & ors. (Civil Appeal No.9849 of 2014) decided on 17.10.2014 while dealing with the question of delay and latches held that in such like cases, the Court should be very slow in granting relief to the incumbents specially when the claimants lost time and did not rise to the occasion in time for filing the writ petitions by holding that :-

“(23) The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

(1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

(2) However, this principle is subject to well recognized exceptions in the form of latches



and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and latches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.”

8. In a judgment reported in 1986(4) SCC 566(State of M.P. & Ors. vs. Nandlal Jaiswal & Ors.), the Hon’ble Apex Court held as follows :-

“That the High Court in 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, the Court may decline to intervene and grant relief inasmuch as entertaining such a belated claim would have not only the effect of inflicting hardship and inconvenience but also injustice on third parties and creation of third party rights during the interregnum



period, is a matter to be considered while exercising discretionary writ jurisdiction.”

9. In *Chennai Metropolitan Water Supply and Sewerage Board & Ors. vs. T.T. Murali Babu*, it has been ruled thus:-

“Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant — a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of



time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis”. Karnataka Power Corpn. Ltd through its Chairman & Managing Director & Anr Vs. K. Thangappan and Anr would be apposite:-“Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party”. It was,therefore, contended that the appellant itself had agreed with respondent 2 to pay bonus for 1953, 1954, 1955 and 1956 according to the terms of the bonus agreement. It was also pointed out that the appellant had not pressed its objection with regard to jurisdiction before the labour court or the industrial court. But it appears that the decision of this Court in Prakash Cotton Mills case 1962 (1) LLJ 108] (vide supra) was given on February 16, 1961 after the decision of K. K. Desai, J., on July 1, 1960 and before the decision of the



Letters Patent Bench on February 6, 1962. In the circumstances of this case, we do not consider that there is such acquiescence on the part of the appellant as to disentitle it to a grant of writ under Art. 226 of the Constitution. It is true that the issue of a writ certiorari is largely a matter of sound discretion. It is also true that the writ will not be granted if there is such negligence or omission on the part of the applicant to assert his right as, taken in conjunction with the lapse of time and other circumstance, cause prejudice to the adverse party. The principle is to a great extent, though not identical with, similar to the exercise of discretion in the Court of Chancery. The principle has been clearly stated by Sri Barnes Peacock in Lindsay Petroleum Company v. Prosper Armstrong Hurd, Abram Farewell and John Kemp [Law Reports 5 P.C., 221 at 239] as follows : "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 of limitation, 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 relates to the remedy."

10. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, I do not find any merit in the present writ petition, hence the same stands dismissed.

(Mohit Kumar Shah, J)

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