

30th June, 2022
(D/L No.20)
(SKB)

W.P.A. 11487 of 2021

Sukhendu Banerjee and another
Versus
The State of West Bengal and others

Mr. Sourav Prasanna Mukherjee
... for the petitioners

Mr. Bibek Jyoti Basu,
Mr. Uttam Kumar De
... for the State

The only prayer in the writ petition is for a direction on the respondent no.3 being the Executive Engineer, Bankura Division, Bankura, to consider the representation made by the petitioners on 24th January, 2021 by giving an opportunity of hearing to the petitioners.

The claim of the petitioners is for work done in relation to repair of PVC bath doors, frames and shutters in different flats at R.H.E. Bishnupur, Bankura and other similar work done in other flats at Bankura. The representation of 24th January, 2021 is preceded by other representations made on 17th January, 2017 and 10th July, 2017. Hence the petitioner made representations to the respondents for four years from 2017 to 2021. The representations are essentially a prayer for release of payment for the work done by the petitioners on the verbal instructions of the respondents

and under pressure from the tenants of the flats at Bishnupur, Bankura. These are the words used in the representations.

The scope of the work which was said to be done by the petitioners would appear from a communication dated 27th January, 2017 from the Office of the Executive Engineer, Housing Construction Division-V City Centre, Durgapur to the Assistant Engineer, Housing Construction Sub Division-XV, City Centre, Durgapur which states that the work to be undertaken was of an urgent nature. Similar communication was issued by and between the same authorities on 7th February, 2017.

The State respondents object to the maintainability of the writ petition on the ground of delay. Learned counsel appearing for the State submits that the claim is barred by the laws of limitation and that the writ petitioners have not been able to produce any bills in support of the claim.

The objection, hence, is a mix of facts and law. Counsel places a decision of the Supreme Court in *Chennai Metropolitan Water Supply and Sewerage Board Vs. T. T. Murali Babu* reported in AIR 2014 SC 1141 in this respect.

Without going into the correctness of the claim or any of the other factual conditions contained in the

representations, it is clear that the petitioners have approached the concerned Executive Engineer from 10th July, 2017 or thereabout till 24th July, 2021. None of these representations have been responded to and the State allowed the claim to go unanswered through a passage of four years. The objection to the claim now sought to be taken is one of the limitation and that the petitioners have not been able to substantiate their claims on documents.

This objection is not only specious but also an underhand way of ousting the petitioners from the writ court. There is little doubt that the writ petition is maintainable against the State respondents being the “authorities” under Article 226 of the Constitution.

With regard to limitation, at serial no. 18 of the Schedule of The Limitation Act, 1963, the prescribed period of limitation for work done at the request of the party is three years. It is well settled that the Schedule to The Limitation Act is for Suits and other claims of a civil nature. Serial no. 18 comes under the specific heading of Suits relating to Contracts. It is also well settled that question of limitation cannot strictly be made applicable to writ petitions filed under Article 226 of the Constitution although writ courts have encouraged the salutary practice of litigants not being indolent in respect of their rights.

The Supreme Court in paragraph 16 of *Chennai Metropolitan Water Supply* (supra) held that the doctrine of delay and laches should not be lightly brushed aside. The Supreme Court advised the writ court to weigh the explanation offered by a litigant who has come late to court and to assess the explanation given by the litigant for the delay. *Chennai Metropolitan Water Supply* has also to be seen in context of the particular facts. In that case, the concerned litigant abstained from joining his duty from 1995 to 1997 without any corroborating documents to explain his absence. The Court also frowned upon such a litigant being given the relief of reinstatement.

In the present case, the petitioners have written several letters to the respondents from July 2017 onwards. There is no evidence of the petitioners failing to take immediate steps from the time their claim became due. On the contrary, it is the respondents who remained in slumber and allowed the claim to become stale.

The ground that the petitioners can file a civil suit for appropriate relief is also not acceptable. The ground taken of a civil remedy does not fit into the adequate alternative remedy which is generally seen as an impediment to relief under Article 226 of the Constitution.

W.P.A.11487 of 2021 is held to be maintainable and allowed in view of the above reasons. The respondent no.3 is directed to consider the representations made by the petitioners, the last being of 24th January, 2021 and dispose of the same by a reasoned order within a period of three weeks from date. The petitioners shall be given a hearing and a copy of the reasoned order shall be made available to the petitioners within a week from date on which such order is passed. The petitioners shall be at liberty of producing all relevant documents before the authority at the time of hearing.

(Moushumi Bhattacharya, J.)