

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

RESERVED ON: 29.11.2022
DELIVERED ON:06.12.2022

CORAM:

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

MAT NO. 1495 OF 2022

WITH

I.A. NO. CAN 01 OF 2022

KANCHAN OIL INDUSTRIES LIMITED

VERSUS

STATE OF WEST BENGAL & OTHERS

Appearance:-

Mr. Vinay Kumar Sharaff, Adv.

Ms. Priya Sarah Paul, Adv.

Ms. Priyanka Sharma, Adv.

.....For the Petitioner

Mr. Soumitra Mukherjee, Adv.

.....For the Respondents

JUDGMENT

(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)

1. This intra court appeal filed by the writ petitioner is directed against the order dated 16.08.2022 in WPA No. 3639 of 2019. The appellant had filed the writ petition challenging the order dated 30.06.2016 by which the authority rejected the application filed by the appellant for granting the incentive in respect of fourth quarter up to 31.10.2012. The Government of West Bengal notified the West Bengal Industrial Promotion Assistance to Industrial Enterprises (scheme) with effect from 01.01.2010 with the object to encourage manufacturing goods in West Bengal and to take care of the financial need for expansion of their capacity, modernization and improving their marketing capabilities. The appellant filed an application in terms of paragraph 4 of the said scheme for the relevant period and the benefit was allowed from time to time except the quarter ending 30.06.2012. In terms of the scheme, such application has to be made within four months from the end of each quarter. The scheme also provided extension of time beyond the period of four months in deserving cases. For the quarter ending 30.06.2012 the prescribed form should have been filed by the appellant by 31.10.2012. The appellant would state that due to lack of internet connectivity in the office of the appellant the same could not be done and the appellant approached the authority on 02.11.2012 and thereafter on 04.11.2012 the form was manually presented before the said authority. In the year 2016, the appellant had received payments for the remaining period except for the quarter ending 30.06.2012. It is the case of the appellant that they were under the bonafide belief that due to inadvertence, the benefit was not

extended for the said period which prompted them to submit representations dated March 18, 2016 and April 28, 2016 followed by reminder dated 11.05.2016. The authority declined to grant the benefit on the ground that the form was filed well beyond the period fixed in the scheme. Challenging the decision of the authority, the appellant had approached the Writ Court for the aforementioned relief. The learned Writ Court by the impugned order dismissed the writ petition, on the ground that the stand taken by the appellant that on account of technical glitches suffered by them cannot be accepted and for such purpose evidence cannot be recorded in a proceeding under Article 226 of the Constitution and in the absence of any material, rejected the contention of the appellant.

2. Secondly the appellant was non suited on the ground of delay and latches stating that they had waited for nearly four years that is till the year 2016 and thereafter till 2019 when they filed the writ petition.
3. Thirdly, the learned Writ Court found that in the absence of any violation of principles of natural justice and in the absence of any perversity in the action of the authority no relief can be granted to the appellant. Aggrieved by such order, the appellant is before us by way of this appeal.
4. We have heard Mr. Vinay Kumar Sharaff assisted by Ms Priya Sharaff Paul, learned advocates for the appellant and Mr. Soumitra Mukherjee, learned Government Counsel for the respondent.
5. After we have elaborately heard the learned advocates for the parties and carefully perused the materials placed on record, we find that the conclusion arrived at by the learned Writ Court that the claim of the appellant was barred by latches is on account of the correct facts not been placed before

the Court. At the first instance, when we heard the matter we were also of the opinion that the claim made by the appellant was a stale claim as it pertained to the quarter ending October 2012. However, after carefully going through the facts we found that the claim made by the appellant for the remaining quarters for the year 2012 was sanctioned and paid only in the year 2016. The appellant's case is that during 2016, when he had received the payment for three quarters and did not receive the payment for the quarter ending 30.06.2012. The appellant approached the authority and filed the requisite applications in a manual format on 04.11.2012. This submissions made by the appellant has not been contraverted by the respondents nor any record to the contrary had been placed before the learned Writ Court or before us. Therefore, it would be incorrect to state that the appellant is guilty of delay and latches from the year 2012-2016. Once we are steer clear of this issue, the next aspect which we have to see is as to whether the application filed by the appellant in the manual format could have been accepted though filed beyond the period of four months stipulated under the scheme. In the absence of any power conferred on the authority to entertain an application beyond the period stipulated, we will be required to examine as to whether the discretion vested in this court under Article 226 could be exercised in the given facts and circumstances. However our task has become easier since the scheme itself provides for entertaining applications beyond the period stipulated in deserving cases. The ordinary dictionary meaning of the word deserving is "meritorious" a person who deserves another chance. In other words, if in the opinion of the officer, the case of the appellant is meritorious nothing prevents the officers from

granting relief. More particularly, when in respect of other period during the relevant time the benefit had been given in the year 2016. Exercise of discretion by the authority concerned in such a matter should be in a manner to promote the purpose for which the scheme was introduced and not to the contrary. The purpose of the scheme as spelt out is for encouraging manufacturing activities expansion etc. which would go to generate direct and indirect employment in the state.

6. Thus, any interpretation which is given which will stultify the objects of the schemes has to be frowned upon. The learned Government Counsel submitted that earlier the appellant had filed the writ petition which was affirmed on 13.02.2017 but there after the appellant did not pursue the said writ petition and it is only in the year 2019, the appellant had filed the present writ petition. It is not clear as to why the petitioner or the erstwhile counsel did not pursue the matter. Nevertheless, for no fault committed by the appellant or the fault committed by the erstwhile counsel who had been engaged in the matter, the appellant should not be penalized or non-suited. It is not the case that the earlier writ petition was filed and it was dismissed. The record shows that the writ petition was affirmed on 13.02.2017 and there is nothing to show that it was registered and case number was allotted etc. In any even such a stand cannot be permitted to be taken by the respondent to deny relief to the appellant. That apart, the bonafides of the appellant have not been doubted by the respondents, the eligibility is also not in dispute and if that be a factual position on account of a technical ground such incentive or benefit extended by the Government should not be denied.

7. Thus, for all the above reasons, the appeal is allowed the order passed in the writ petition is set aside. Consequently, the writ petition is allowed and the order impugned in the writ petition is set aside and the respondent authority is directed to take into consideration the manual form submitted by the appellant on 04.11.2012 and grant the admissible incentive to the appellant as expeditiously as possible preferably within a period of three months from the date of the receipt of the server copy of this order. No costs.

(T.S. SIVAGNANAM, J.)

I Agree.

(HIRANMAY BHATTACHARYYA, J)

(P.A- SACHIN)