

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2892 of 2017

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M/s Kumar A. S. Construction, Ashok Nagar, Bhatt Bigha, Gaya through its Managing Partner Smt. Pramila Singh W/o Shri Anuj Kumar Singh Resident of Mohalla- Ashok Nagar, Bhatt Bigha, Gaya, Police Station- Rampur, District- Gaya.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Rural Development Department, Engineering organisation, Govt. of Bihar, Patna.
3. The Additional Secretary to the Government, Rural Development Department, Govt. of Bihar, Patna.
4. The Engineer-in-Chief-Cum-Additional Secretary-cum-Special, Secretary, Public Work Department, Govt
5. The Chief Engineer, Rural Engineering Organization, Department of Rural Development, Govt. of Bihar
6. The Superintendent Engineer, Rural Engineering Organization, Work Circle, Sasarma, District- Rohta
7. The Executive Engineer, Rural Engineering Organization, Work Division, Bhabhua, District- Kaimur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Dubey, Advocate Mr. Uma Shankar Singh, Advocate Smt. Mamta Vijaya, Advocate
For the Respondent/s	:	Mr. Anjani Kumar, AAG 4

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 20-04-2023

Heard learned counsels for the respective parties.

2. In the instant petition, petitioner has prayed for the following relief/reliefs:



“I. For issuance of an appropriate writ/writs, order/orders and/or direction/directions holding and declaring that rescinding the contract and the forfeiture of earnest / security money contained in memo No.- 466 dated 08.04.2006 (Annexure P-5) is illegal and not sustainable in the eye of law.

II. For issuance of an appropriate writ/writs, order/orders and/or direction/directions for quashing the order contained in memo No.-466 dated 08.04.2006 by which the earnest money and initial security deposited in respect of contractual work for construction of two roads i.e. (I) Sonhan-Bare road (from 0. to 3.75 k.m.) (ii) Hatta-March road (from 0 to 3.60 k.m.) in the Kaimur district under Package No.-BR-05-01 of PMGSY in the form of NSCs of Rs. 2,00,000.00 + 2,90,000.00 = 4,90,000.00 (Four Lacs Ninety thousand only) by the petitioner was forfeited and agreement was rescinded by the Executive Engineer, Rural Engineering Organization, Works Division, Bhabhua.

III. For issuance of direction to refund the earnest money and initial security deposited by the petitioner in form of NSCs of Rs. 2,00,000.00 + 2,90,000.00 = 4,90,000.00 (Four Lacs Ninety thousand only) in relation to contractual work for construction of two roads i.e. (I) Sonhan-Bare road (from 0. to 3.75 k.m.) (ii) Hatta- March road (from 0 to 3.60 k.m.) in the Kaimur district under Package No. - B.R.-05-01 of PMGSY.

IV. For issuance of direction to refund the 5% deducted amount and cost of 70% old metals which was deducted from the bill of petitioner.

V. For any other relief/reliefs for which the petitioner is entitled in the eye of law.”



3. Challenge in the present petition is relating to Memo No. 466 dated 08.04.2006, Annexure - 5 and further sought for directions. Such petition was filed in the year 2017 after more than one decade. No reasons have been assigned as to why there is a delay of more than one decade.

4. Learned counsel for the petitioner submitted that earlier he has approached this Court. Perusal of the earlier order, that is not in respect of subject matter of the present petition, in particular, Memo No. 466 dated 08.04.2006. It is further submitted that matter is covered by Annexure – 11 series, therefore, delay would not be a hurdle. Apex Court in the case of ***Vetindia Pharmaceuticals Limited vs. State of Uttar Pradesh and others*** reported in (2021) 1 SCC 804, paragraph Nos. 14 and 15 held as under:

“14. Since the order of blacklisting has been found to be unsustainable by us, and considering the long passage of time, we are not inclined to remand the matter to the authorities. In *Daffodills Pharmaceuticals* [*Daffodills Pharmaceuticals Ltd. v. State of U.P.*, (2020) 18 SCC 550 : 2019 SCC OnLine SC 1607], relied upon by the appellant, this Court has observed that an order of blacklisting beyond 3 years or maximum of 5 years was disproportionate.

15. That brings us to the question of delay. There is no doubt that the High Court in its discretionary jurisdiction may decline to exercise the discretionary writ jurisdiction on the ground of delay in approaching the court. But it is only a rule of discretion by exercise



of self-restraint evolved by the court in exercise of the discretionary equitable jurisdiction and not a mandatory requirement that every delayed petition must be dismissed on the ground of delay. The Limitation Act *stricto sensu* does not apply to the writ jurisdiction. The discretion vested in the court under Article 226 of the Constitution therefore has to be a judicious exercise of the discretion after considering all pros and cons of the matter, including the nature of the dispute, the explanation for the delay, whether any third-party rights have intervened, etc. The jurisdiction under Article 226 being equitable in nature, questions of proportionality in considering whether the impugned order merits interference or not in exercise of the discretionary jurisdiction will also arise. This Court in *Basanti Prasad v. Bihar School Examination Board* [*Basanti Prasad v. Bihar School Examination Board*, (2009) 6 SCC 791 : (2009) 2 SCC (L&S) 252] , after referring to *Moon Mills Ltd. v. M.R. Meher* [*Moon Mills Ltd. v. M.R. Meher*, AIR 1967 SC 1450] , *Maharashtra SRTC v. Balwant Regular Motor Service* [*Maharashtra SRTC v. Balwant Regular Motor Service*, (1969) 1 SCR 808 : AIR 1969 SC 329] and *State of M.P. v. Nandlal Jaiswal* [*State of M.P. v. Nandlal Jaiswal*, (1986) 4 SCC 566] , held that if the delay is properly explained and no third-party rights are being affected, the writ court under Article 226 of the Constitution may condone the delay, holding as follows : (*Basanti Prasad case* [*Basanti Prasad v. Bihar School Examination Board*, (2009) 6 SCC 791 : (2009) 2 SCC (L&S) 252] , SCC p. 796, para 18)

“18. In the normal course, we would not have taken exception to the order passed by the High Court. They are justified in saying that a delinquent employee should not be permitted to revive the stale claim and the High Court in exercise of its discretion would not ordinarily assist the tardy and indolent person. This is the traditional view and is well supported by a plethora of decisions of this Court. This Court also has taken the view that there is no inviolable rule, that,



whenever there is delay the Court must refuse to entertain a petition. This Court has stated that the writ court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution may condone the delay in filing the petition, if the delay is satisfactorily explained.”

5. Nodoubt the Apex Court condoned the delay as third party right is not affected. At the same time, having regard to the conduct of the petitioner and not explaining enormous delay of more than one decade, it is not appropriate to condone the delay and laches on the part of the petitioner in entertaining the present writ petition insofar as challenge to the Memo No. 466 dated 08.04.2006 in the year 2017. In view of these facts and circumstances, the present writ petition stands dismissed on the ground of delay and laches.

6. At this stage, it is also noticed that Apex Court in the case of *State of Jammu and Kashmir V/s. R.K.Zalpuri and others* reported in AIR 2016 SC 3006, Paragraph-20 held as under:

“20. Having stated thus, it is useful to refer to a passage from City and Industrial Development Corporation V/s.Dosu Aardeshir Bhiwandiwalla and others {(2009) 1 SCC 168}, wherein this Court while dwelling upon jurisdiction under Article 226 of the Constitution, has expressed thus:-

“The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:



- (a) Adjudication of writ petition involves any complex and disputed question of facts and whether they can be satisfactorily resolved;
- (b) The petition reveals all material facts;
- (c) The petitioner has any alternative or effective remedy for the resolution of the dispute;
- (d) Person invoking the jurisdiction is guilty of unexplained delay and laches;
- (e) Ex facie barred by any laws of limitation;
- (f) Grant of relief is against public policy or barred by any valid law; and host of other factors”

7. One of the principle laid down by the Apex Court in the above cited decision is relating to delay and laches is required to be examined while entertaining writ petition under Article 226 of the Constitution.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.04.2023
Transmission Date	NA

Underline emphasized

