

30.04.2024
Item No.07
Court No.11
Avijit Mitra

WP.CT 66 of 2024

In re: An application under Article 226 of the Constitution of India;

And

**Soumyabrata Maity
- Versus -
Union of India & ors.**

Mr. Tulsi Das Maity,
Ms. Namita Basu
...for the petitioner

Mr. Arabinda Sen,
Ms. Sarda Sha
...for the respondents

Affidavit-of-service filed by the petitioner be kept on record.

The present writ petition has been instituted to question the justifiability of the order dated 23rd February, 2024 passed by the learned Tribunal rejecting the application being M.A. 97 of 2024 preferred at the instance of the petitioner to enforce the order dated 29th January, 29, 2021 passed in O.A. No.350/350/2018.

The brief facts need to be noticed for effective adjudication of the writ petition are that the certain plots of land appurtenant to Mouza- Rankinipur of District-Purba Medinipur belonged to the petitioner's father. Sometimes in 2010, the Railway Authority started a project, namely, 'Deshpran-Nandigram New B.G. Line Project'. Further to the project, a land acquisition proceeding was initiated invoking the relevant provisions of Railway Act, 1989. A chunk of lands including the petitioner's was acquired. A meager amount of compensation was paid to the petitioner keeping a

provision of one employment in Railway for the land-loser or his/her nominee.

The petitioner as a nominee of his father approached the Railway Authority with a prayer for consideration of the case of his employment under land-loser category but despite being so approached, the Railway Authority did not take any effective steps which prompted the petitioner to move an application being O.A. No.350/350/2018 before the learned Tribunal, which was disposed of by an order dated 29th January, 2021 with following direction:

“In view of the orders passed in O.A. Nos.350/1313/2019 and others (supra) and as prayed by the Ld. Counsel for the applicant for a direction to consider his case in the light of the decision of the Hon’ble High Court in WPCT No.74/2016, we dispose of the present O.A. directing the applicant to represent before the appropriate authority to that effect within four weeks and if such representation is preferred the said authority will consider the same in the light of the orders passed in O.A. Nos. 350/1313/2019 and others (supra) within a period of 2 months therefrom and issue necessary orders”.

Pursuant thereto, the petitioner presented a representation on 4th October, 2023. In spite of receipt of such representation, the same was kept in suspended animation which forced the petitioner to approach the learned Tribunal again by preferring an application being M.A. 97 of 2024 for enforcement of the order dated 29th January, 2021.

By the order impugned in the writ petition, the M.A. application was disposed of with an observation that the applicant himself did not obey and/or comply with the direction given by the learned Tribunal by way of making representation to the appropriate authority within the time specified therein.

Mr. Maity, learned advocate appearing for the petitioner seeks to justify the belated submission of the representation contending that the learned advocate-on-record due to certain unavoidable reasons could not communicate to the petitioner. He contends that time specified in the order was intervened by the period lost due to the Covid-19 pandemic. He contends that glossing over these issues, the learned Tribunal has refused to enforce its own order. He next contends that for these reasons, delay occurred in making the representation in terms of the order dated 29.01.2021 should not be attributed to the petitioner. He prays that a direction be given upon the respondents to consider the representation, as presented on 4th October, 2023.

Mr. Sen, learned advocate appearing for the respondents vehemently opposes such prayer. He contends that the petitioner himself has not acted in consonance with the order passed in the original application and the delay which has occurred is attributable to the petitioner and for this reason, the Tribunal has rightly refused to pass any order on such application being M.A. 97 of 2024.

Needless to state that in the order dated 29th January, 2021, the petitioner was given liberty to present the representation within the time specified therein and the petitioner did not submit the representation within the time, as stipulated in O.A. no. 350/350 of 2018.

Indisputably, on 29.01.2021 when the order was passed in O.A. no. 350/350 of 2018, normal life of the people across the country was paralyzed due to onset of Covid-19 pandemic. Giving anxious consideration to the difficulties faced by the litigants

across the country, even the Hon'ble Apex Court found it fit to exclude the period commencing from 15.03.2020 to 28.02.2022 from the period of limitation. There cannot be any automatic presumption that delay is always deliberate. If there is no change of circumstance or if no third party interest is created during the period of delay occasioned by the petitioner or if no reasonable ground is found to infer that causing delay, the petitioner is trying to gain time to earn any illegal profit, the courts and/or judicial institution shall not throw away any genuine cause from its threshold.

From the order dated 29th January, 2021, it would be explicit that the similar issue was relegated to the authority with a direction to consider the same and the issue is still under consideration of the respondents. In the case at hand also, the issue raised in the writ petition is required to be addressed and decided on merit.

Considering all these aspects, we restrain ourselves from adopting hyper-technical approach. Those issues were glossed over by the learned Tribunal while rejecting the application being M.A. no. 97 of 2024. As such, the order dated 23rd February, 2023 is set aside. The writ petition is disposed of directing the authority concerned to address the issue and decide the representation dated 4.10.2023 on merits. The petitioner shall communicate this order along with a copy of the representation dated 4th October, 2023 to the competent authorities. It is clarified that if the representation is decided in favour of the petitioner, the next follow up action will be taken accordingly but the decision taken thereon if found to be adverse and/or prejudicial to the interest of

the petitioner, a reasoned order shall be passed and communicated to the petitioner.

The entire exercise shall be completed within a period of 8(eight) weeks from the date of receipt of a copies of this order and the representation dated 4.10.2023.

With the observations and directions the writ petition being WP.CT 66 of 2024 is disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Partha Sarathi Chatterjee,J.) (Tapabrata Chakraborty, J.)