



2024:DHC:1398



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 7th February, 2024**

+ **W.P.(C) 1794/2024**

NANAK CHAND Petitioner

Through: Appearance not given
versus

ARUNACHAL BHAWAN Respondent

Through: *Nemo*

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

- “a) pass an order counted to the seniority of petitioner since 1984 seniority counted according award dated 18.12.2006 and
b) issued direction to the respondent for allow pension and pensioner benefit to the petitioner,
c) pass any other or further order as this Hon'ble Court may deem fit and proper in the interest of justice.”*

2. The relevant facts necessary for the adjudication of the instant petition are reproduced herein below:

- a) The present petitioner i.e., Sh. Nanak Chand had been working under the respondent i.e., management of Arunachal Bhawan, Kotilaya Marg, New Delhi (“respondent



management” hereinafter), at the post of a ‘helper’ since, 23rd November, 1984, and was drawing a monthly wages of Rs. 3,300/-.

- b) Subsequently, in the year 1991, the respondent management terminated the services of the petitioner as on 22nd May, 1991. Aggrieved by the same the petitioner preferred to challenge the said termination before the Labour Court in I.D No. 389/93.
- c) Thereafter, the learned Labour Court in I.D No. 389/93 passed an award dated 3rd November, 2001, in favour of the petitioner holding that he be reinstated with continuity of service since 23rd November, 1984.
- d) Pursuant to the above stated award the petitioner was reinstated by the respondent management with effect from 22nd May, 1991, and continued to work at the post of a kitchen helper.
- e) Thereafter, the petitioner preferred an industrial dispute before the Secretary (Labour), Government of National Capital Territory of Delhi seeking regularization to the post of kitchen helper.
- f) Pursuant to raising of the said dispute, the Secretary (Labour), Government of National Capital Territory of Delhi referred the said dispute *vide* notification F.24(3917)/2003.Lab./1988-92 dated 19th February, 2004,



for adjudication before the Industrial Tribunal, Karkardooma, Delhi.

- g) The learned Industrial Tribunal in I.D. No. 147/2006 (OLD I.D. No. 23/2004), was directed to decide the following term of the reference i.e., whether the petitioner herein is entitled to be regularised on the post of helper and if so, what directions may be necessary in such regard.
- h) Further, during the pendency of the dispute, the respondent management *vide* order dated 10th October, 2005, of the Government of Arunachal Bhawan, regularised the services of 24 daily wage employees in pursuance of Govt. Order No. GA-2/99 dated 28th September, 2005.
- i) Consequently, the learned Industrial Tribunal framed the issues surrounding the dispute. Thereafter, the learned Tribunal passed the award dated 18th December, 2006, in favour of the petitioner workman and against the management.
- j) The learned Tribunal *vide* the above said award directed the management to consider the case of the workman for regularization as per its own policy in such regard on the post of Kitchen Helper, bearing in mind the workman's seniority w.e.f. 23rd November, 1984.
- k) The petitioner continued to work at the above stated post and subsequently, in the year 2022, the respondent management



passed an order dated 30th June, 2022, bearing reference No. RCE/PER/NC/2011, thereby, superannuating the petitioner and releasing him from the service of the respondent w.e.f. 30th June, 2022.

- 1) The petitioner has now preferred the instant petition seeking directions against the respondent management to count his seniority as per the observations made in the award dated 18th December, 2006 and to direct the respondent to grant him the benefit of pension.

3. Learned counsel appearing on behalf of the petitioner submitted that the respondent has failed to comply with the award passed by the learned Industrial Tribunal wherein, it had directed the respondent to consider the case of the petitioner with regards to regularization, keeping in view his seniority w.e.f. 23rd November, 1984.

4. It is submitted that the petitioner was reinstated at the post of 'kitchen helper' with the respondent management in furtherance of an award dated 3rd November, 2001, passed by the learned Labour Court in I.D No. 389/93, therefore, it is contended that the seniority of the petitioner has not been considered from his initial appointment.

5. It is submitted that the respondent has regularised the services of 24 daily wage employees vide an order dated 28th September, 2005, wherein *inter alia* kitchen helpers junior to the petitioner have been granted the benefit of regularization, however, the same has not been granted to the petitioner, which is contrary to the directions passed in the award.



6. It is submitted that the respondent had submitted before the learned Industrial Tribunal that the petitioner has been working under the respondent management at the post of a helper from 23rd November, 1984, but has failed to consider his seniority from the said date.

7. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be allowed and the reliefs be granted as prayed for.

8. Heard the learned counsel for the petitioner and perused the records.

9. The petitioner is aggrieved by the alleged inaction and failure of the respondent management in execution of the award dated 18th December, 2006 passed by the Industrial Tribunal whereby it directed the respondent management to consider the case of the workman for regularization as per its own policy in such regard on the post of Kitchen Helper, bearing in mind the workman's seniority w.e.f. 23rd November, 1984. Further, the petitioner has also sought directions of this Court to direct the respondent management to extend to him the benefit of pension.

10. At the outset, it is pertinent to state that upon perusal of the contents of the writ petition, the petitioner has sought for issuance of a writ in the nature of mandamus for extending the benefits of government pension in accordance with the prescribed rules and to consider the seniority of the petitioner in accordance with the award.

11. Tersely stated, the petitioner prays for execution of the award, wherein, the respondent was directed to consider the case of the petitioner for regularisation and consider his seniority from his initial appointment i.e., 23rd November, 1984. Another aspect that must be highlighted is with



regards to the belated claim of the petitioner as the instant petition has been preferred after a lapse of more than 18 years.

12. In view of the above this Court deems it appropriate to deal with the instant petition on two fundamental aspects *firstly*, whether a writ Court should act as a Court of execution and *secondly*, whether a belated claim of the petitioner can be entertained after a lapse of more than 18 years.

13. At this juncture, this Court deems it necessary to discuss the settled position of law with regards to whether the writ Courts should entertain writ petitions seeking execution of an award/order or such petitions be summarily rejected simply based on the fact that it does not lie under the writ jurisdiction of this Court.

14. The Hon'ble Supreme Court in **Civil Appeal No. 3656 of 1991** titled ***Ghan Shyam Das Gupta And Anr. vs. Anant Kumar Sinha And Ors.*** dated **17th September, 1991**, observed that the remedy prescribed under Article 226 of the Constitution cannot be invoked for execution of a decree passed by a competent Court. The relevant paragraph of the judgment is reproduced herein below:

"8. The principle as to when the High Court should exercise its special jurisdiction under Art. 226 and when to refuse to do so on the ground of availability of an alternative remedy has been settled by a long line of cases. The remedy provided under Art. 226 is not intended to supersede the modes of obtaining relief before a Civil Court or to deny defences legitimately open in such actions. As was observed in State of Andhra Pradesh v. Chitra Venkata Rao [1976] 1 SCR 521: AIR 1975 SC 2151] the jurisdiction to issue a writ of certiorari is supervisory in nature and is not meant for correcting errors like an appellate court.



In Thansingh Nathmal v. A. Mazid: [1964] 6 SCR 654: AIR 1964 SC 1419] a case dealing with liability to pay sales tax, the appellants without following the statutory remedy under the Sales Tax Act, moved the High Court under Art.226 on the ground that the Act was ultra vires. The challenge was rejected. Another contention, namely, that the finding of the Commissioner that the goods were actually within the State at the time of the contract was based on no evidence and was purely speculative, was also raised. This ground also failed before the High Court and the writ petition was dismissed. Approving the decision, this Court observed that if the appellants had pursued the statutory remedy under the Act and the question had been referred to the High Court, the Court could have appropriately advised the Commissioner, but not having done so, the High Court could not be asked to assume the role of an appellate court over the decision of the Commissioner either on a question of fact or even of law. Again when a learned Single Judge of the High Court and on appeal a Division Bench proceeded to examine the correctness of an order in relation to grant of a permit to ply a vehicle under the Motor Vehicles Act, it was observed by this Court in M. Naina Mohammed v. K. A. Natarajan [1976] 1 SCR 102: AIR 1975 SC 1867], that the power under Art. 226 is supervisory in nature and the Judges at both the tiers had unwittingly slipped into the subtle but, fatal, error of exercising a kind of appellate review. So far the question of executability of a decree is concerned, the Civil Procedure Code contains elaborate and exhaustive provisions for dealing with it in all its aspects. The numerous rules of 0.21 of the Code take care of different situations, providing effective remedies not only to judgment-debtors and decree- holders but also to claimant objectors as the case may be. In an exceptional case, where provisions are rendered incapable of giving relief to an aggrieved party in adequate measure and appropriate time, the answer is a regular suit in the civil court. The remedy under the Civil Procedure Code is



of superior judicial quality than what is generally available under other statutes, and the Judge being entrusted exclusively with administration of justice, is expected to do better. It will be, therefore, difficult to find a case where interference in writ jurisdiction for granting (relief) to a judgment-debtor or a claimant objector can be justified. The R.97 to 106 of O.21 envisage questions as in the present appeal to be determined on the basis of evidence to be led by the parties and after the 1976 Amendment, the decision has been made appealable like a decree. The High Court, in the present case, therefore, ought not to have embarked upon a decision of the writ petition on merits, and should have refused to exercise its special jurisdiction on the ground of alternative remedy before the civil court."

15. Upon perusal of the aforesaid paragraphs it can be concluded that it is a settled position of law that the High Court must not invoke the public law remedy available under Article 226 of the Constitution of India while exercising its writ jurisdiction by acting like a Court of execution as the legislature has prescribed alternative remedies and forums to carry out the execution of an award/order/decreed.

16. In light of the settled position of law, this Court is of the view that the petitioner has approached the wrong forum to seek the execution of the award under the instant writ petition. This Court is precluded from assuming the role of an execution Court hence, any directions in such regard would amount to doing an act impermissible in law.

17. Before concluding its analysis on the limited question of whether this Court can assume the role of an execution Court, this Court also deems it is equally important to test the contents of the instant petition on the aspect of



doctrine of delay and laches as the same has been preferred after a lapse of 18 years by the petitioner.

18. Thus, it is imperative for this Court to refer to and highlight the settled principle of law as is enunciated and expounded by the Hon'ble Supreme Court and discuss the same in the context to the instant matter.

19. The Hon'ble Supreme Court in ***Union of India v. N. Murugesan, (2022) 2 SCC 25***, reiterated the settled position of law and carved out the principle as to what constitutes the 'doctrine of delay and laches'. The relevant paragraphs of the judgment are reproduced herein below:

“Article 226 of the Constitution of India

28. We would not dwell deep into the extraordinary and discretionary nature of relief under Article 226 of the Constitution of India. This principle is to be extended much more when an element of undue delay, laches and acquiescence is involved. The following decisions of this Court would suffice:

28.1. U.P. Jal Nigam v. Jaswant Singh [U.P. Jal Nigam v. Jaswant Singh, (2006) 11 SCC 464 : (2007) 1 SCC (L&S) 500] : (SCC pp. 469-70, paras 8-11)

“8. Our attention was also invited to a decision of this Court in State of Karnataka v. S.M. Kotrayya [State of Karnataka v. S.M. Kotrayya, (1996) 6 SCC 267 : 1996 SCC (L&S) 1488] . In that case the respondents woke up to claim the relief which was granted to their colleagues by the Tribunal with an application to condone the delay. The Tribunal condoned the delay. Therefore, the State approached this Court and this Court after considering the matter observed as under : (SCC p. 268)

‘Although it is not necessary to give an explanation for the delay which occurred within the period mentioned in sub-section (1) or (2) of



Section 21, explanation should be given for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should satisfy itself whether the explanation offered was proper. In the instant case, the explanation offered was that they came to know of the relief granted by the Tribunal in August 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections (1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub-section (1) or (2). That was not the explanation given. Therefore, the Tribunal was wholly unjustified in condoning the delay.'

9. Similarly in *Jagdish Lal v. State of Haryana* [*Jagdish Lal v. State of Haryana*, (1997) 6 SCC 538 : 1997 SCC (L&S) 1550] this Court reaffirmed the rule that if a person chose to sit over the matter and then woke up after the decision of the court, then such person cannot stand to benefit. In that case it was observed as follows : (SCC p. 542)

'The delay disentitles a party to discretionary relief under Article 226 or Article 32 of the Constitution. The appellants kept sleeping over their rights for long and woke up when they had the impetus from Virpal Singh Chauhan case [Union of India v. Virpal Singh Chauhan, (1995) 6 SCC 684 : 1996 SCC (L&S) 1] . The appellants' desperate attempt to redo the seniority is not amenable to judicial review at this belated stage.'

10. In *Union of India v. C.K. Dharagupta* [*Union of India v. C.K. Dharagupta*, (1997) 3 SCC 395 : 1997 SCC (L&S)



821] it was observed as follows : (SCC p. 398, para 9)

‘9. We, however, clarify that in view of our finding that the judgment of the Tribunal in R.P. Joshi [R.P. Joshi v. Union of India, OA No. 497 of 1986, decided on 17-3-1987 (CAT)] gives relief only to Joshi, the benefit of the said judgment of the Tribunal cannot be extended to any other person. The respondent C.K. Dharagupta (since retired) is seeking benefit of Joshi case [R.P. Joshi v. Union of India, OA No. 497 of 1986, decided on 17-3-1987 (CAT)] . In view of our finding that the benefit of the judgment of the Tribunal dated 17-3-1987 could only be given to Joshi and nobody else, even Dharagupta is not entitled to any relief.’

11. In *State of W.B. v. Tarun K. Roy* [*State of W.B. v. Tarun K. Roy*, (2004) 1 SCC 347 : 2004 SCC (L&S) 225] their Lordships considered delay as serious factor and have not granted relief. Therein it was observed as follows : (SCC pp. 359-60, para 34)

‘34. The respondents furthermore are not even entitled to any relief on the ground of gross delay and laches on their part in filing the writ petition. The first two writ petitions were filed in the year 1976 wherein the respondents herein approached the High Court in 1992. In between 1976 and 1992 not only two writ petitions had been decided, but one way or the other, even the matter had been considered by this Court in Debdas Kumar [State of W.B. v. Debdas Kumar, 1991 Supp (1) SCC 138 : 1991 SCC (L&S) 841] . The plea of delay, which Mr Krishnamani states, should be a ground for denying the relief to the other persons similarly situated would operate against the respondents. Furthermore, the other employees not being before this Court although they are ventilating their



grievances before appropriate courts of law, no order should be passed which would prejudice their cause. In such a situation, we are not prepared to make any observation only for the purpose of grant of some relief to the respondents to which they are not legally entitled to so as to deprive others therefrom who may be found to be entitled thereto by a court of law.’ ”

28.2.*Eastern Coalfields Ltd. v. Dugal Kumar [Eastern Coalfields Ltd. v. Dugal Kumar, (2008) 14 SCC 295] : (SCC pp. 302-04, paras 24-28)*

“24. As to delay and laches on the part of the writ petitioner, there is substance in the argument of learned counsel for the appellant Company. It is well settled that under Article 226 of the Constitution, the power of a High Court to issue an appropriate writ, order or direction is discretionary. One of the grounds to refuse relief by a writ court is that the petitioner is guilty of delay and laches. It is imperative, where the petitioner invokes extraordinary remedy under Article 226 of the Constitution, that he should come to the court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ is indeed an adequate ground for refusing to exercise discretion in favour of the applicant.

25. Under the English law, an application for leave for judicial review should be made “promptly”. If it is made tardily, it may be rejected. The fact that there is breach of public law duty does not necessarily make it irrelevant to consider delay or laches on the part of the applicant. Even if leave is granted, the question can be considered at the time of final hearing whether relief should be granted in favour of such applicant or not. (Vide R. v. Essex County Council [R. v. Essex County Council, 1993 COD 344] .)

26. In R. v. Dairy Produce Quota Tribunal, ex p Caswell



[R. v. Dairy Produce Quota Tribunal, ex p Caswell, (1990) 2 AC 738 at p. 749 : (1990) 2 WLR 1320 (HL)] , the House of Lords stated [Ed. : Quoting from O'Reilly v. Mackman [O'Reilly v. Mackman, (1983) 2 AC 237 : (1982) 3 WLR 1096 : (1982) 3 All ER 1124 at p. 1131a-b (HL)]] : (O'Reilly case [O'Reilly v. Mackman, (1983) 2 AC 237 : (1982) 3 WLR 1096 : (1982) 3 All ER 1124 at p. 1131a-b (HL)] , AC pp. 280-81)

“The public interest in good administration requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision the authority has reached in purported exercise of decision-making powers for any longer period than is absolutely necessary in fairness to the person affected by the decision.”

27. The underlying object of refusing to issue a writ has been succinctly explained by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd [Lindsay Petroleum Co. v. Prosper Armstrong Hurd, (1874) LR 5 PC 221 : 22 WR 492] , thus : (LR pp. 239-40)

“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 limitations,



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 it relates to the remedy.”

28. This Court has accepted the above principles of English law. In *Tilokchand Motichand v. H.B. Munshi* [*Tilokchand Motichand v. H.B. Munshi*, (1969) 1 SCC 110] and *Rabindranath Bose v. Union of India* [*Rabindranath Bose v. Union of India*, (1970) 1 SCC 84] this Court ruled that even in cases of violation or infringement of fundamental rights, a writ court may take into account delay and laches on the part of the petitioner in approaching the court. And if there is gross or unexplained delay, the court may refuse to grant relief in favour of such petitioner.”

(emphasis supplied)

28.3. *State of J&K v. R.K. Zalpuri* [*State of J&K v. R.K. Zalpuri*, (2015) 15 SCC 602 : (2016) 2 SCC (L&S) 228] : (SCC pp. 608-11, paras 20-24)

“20. Having stated thus, it is useful to refer to a passage from *City & Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwalla* [*City & Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwalla*, (2009) 1 SCC 168] , wherein this Court while dwelling upon jurisdiction under Article 226 of the Constitution, has expressed thus : (SCC p. 175, para 30)

‘30. 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 questions 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.'

21. *In this regard reference to a passage from Karnataka Power Corpn. Ltd. v. K. Thangappan [Karnataka Power Corpn. Ltd. v. K. Thangappan, (2006) 4 SCC 322 : 2006 SCC (L&S) 791] would be apposite : (SCC p. 325, para 6)*

'6. 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.'

After so stating the Court after referring to the authority in State of M.P. v. Nandlal Jaiswal [State of M.P. v. Nandlal Jaiswal, (1986) 4 SCC 566] restated the principle articulated in earlier pronouncements, which is to the following effect : (Karnataka Power Corpn. case [Karnataka Power Corpn. Ltd. v. K. Thangappan, (2006) 4 SCC 322 : 2006 SCC (L&S) 791] , SCC p. 326, para 9)

'9. ... 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 and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.'

22. *In State of Maharashtra v. Digambar [State of Maharashtra v. Digambar, (1995) 4 SCC 683] a three-Judge Bench laid down that : (SCC p. 692, para 19)*

'19. Power of the High Court to be exercised under Article 226 of the Constitution, if is discretionary, its exercise must be judicious and reasonable, admits of no controversy. It is for that reason, a person's entitlement for relief from a High Court under Article 226 of the Constitution, be it against the State or anybody else, even if is founded on the allegation of infringement of his legal right, has to necessarily depend upon unblameworthy conduct of the person seeking relief, and the court refuses to grant the discretionary relief to such person in exercise of such power, when he approaches it with unclean hands or blameworthy conduct.'

23. *Recently in Chennai Metropolitan Water Supply &*



Sewerage Board v. T.T. Murali Babu [Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu, (2014) 4 SCC 108 : (2014) 1 SCC (L&S) 38] , it has been ruled thus : (SCC p. 117, para 16)

‘16. 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.’

24. At this juncture, we are obliged to state that the question of delay and laches in all kinds of cases would not curb or curtail the power of the writ court to exercise the discretion. In Tukaram Kana Joshi v. MIDC [Tukaram Kana Joshi v. MIDC, (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] it has been ruled that : (SCC pp. 359-60, para 12)



'12. ... Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause of action, etc. That apart, if the whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third-party interest is involved. Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience.'

And again : (Tukaram Kana Joshi case [Tukaram Kana Joshi v. MIDC, (2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] , SCC p. 360, para 14)

'14. No hard-and-fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being



done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged by delay on the part of the petitioners.

(Vide Durga Prashad v. Controller of Imports & Exports [Durga Prashad v. Controller of Imports & Exports, (1969) 1 SCC 185] , LAO v. Katiji [LAO v. Katiji, (1987) 2 SCC 107 : 1989 SCC (Tax) 172] , Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur [Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur, (1992) 2 SCC 598] , Dayal Singh v. Union of India [Dayal Singh v. Union of India, (2003) 2 SCC 593] and Shankara Coop. Housing Society Ltd. v. M. Prabhakar [Shankara Coop. Housing Society Ltd. v. M. Prabhakar, (2011) 5 SCC 607 : (2011) 3 SCC (Civ) 56] .)’ ”

(emphasis supplied)... ”

20. In reference to the case discussed above, the Hon’ble Supreme Court has extensively dealt with the doctrine of delay and latches and has reiterated the said principle time and again. The Hon’ble Court has held that the Courts exercising writ jurisdiction shall not encourage agitation of stale claims where the rights of the third parties has crystalized in interregnum. Inordinate delay in making the motion for a writ is indeed an adequate ground for refusing to exercise discretion in favour of the applicant. Hence, the Courts must preliminarily reject the stale and belated claims solely on the ground of delay and latches.

21. The Constitutional Courts are entrusted upon a legal duty to protect the rights of the citizens but simultaneously it must ensure that when an



aggrieved person approaches the Court at his own leisure without stating any adequate reason for such delay, the Court is under a legal obligation to scrutinise such a belated claim since the delay comes in the way of equity.

22. The questions that falls for consideration before this Court is *firstly*, whether the claim of the petitioner is barred by the principle of delay and latches, and *secondly*, whether this Court can pass any directions for execution of an award/order/decreed.

23. In this backdrop, this Court is of the view that the petitioner has wrongfully initiated the instant proceeding under the writ jurisdiction of this Court as there are efficacious and alternative remedies available before the appropriate forum. This Court further observes that if this Court assumes the role of an execution Court under the writ jurisdiction conferred to it under Article 226 of the Constitution of India, it would be flooded with such cases and the same would amount to exceeding its jurisdiction.

24. Applying the principles enunciated in the aforesaid paragraphs this Court is of a considered view that the petitioner like any other vigilant citizen, was expected to assert his rights before an appropriate forum within a reasonable time.

25. Further, with regards to the issue of delay and latches this Court observes that, although in law, the Limitation Act, 1963 does not directly apply to proceedings preferred under Article 226 of the Constitution of India but the applicability of the said act is extended to the scope of a writ jurisdiction by way of the doctrine of delay and latches.

26. This Court is of the view that the law of limitation rests upon the



foundation of public policy which is premised on three major reasons *firstly*, dormant claims envisage cruelty rather than justice, *secondly*, the defendants might have misplaced the evidence to disprove the stale claim and *thirdly*, due diligence must be observed by people with good cause of action in order to make out their case.

27. Further, any change in *de facto* position, creation of third party rights over a period of time, and need to ensure certitude in proceedings are certain factors upon which the consideration of equitable public policy is premised in the context of the limitation period as prescribed under the law.

28. The intent behind the same is based on public policy which aims to bar stale claims that litigants may prefer by way of a writ petition under Article 226 of the Constitution. Therefore, a writ petition that suffers from delay and laches shall be dismissed at the initial stage of the proceedings unless the petitioner is able to substantiate his cause for such delay.

29. As per the material on record, the petitioner has not challenged the award or sought for its execution before any other forum until preferring the instant petition and since, the award was passed on 18th December, 2006, hence, the present petition, in view of this Court, is barred under the doctrine of delay and laches. Therefore, the same is liable to be dismissed on these grounds alone.

30. It is hereby held that there is no force in the arguments advanced by the petitioner and the instant writ petition is not a fit case to pass any directions for the execution of the award under the extraordinary writ jurisdiction of this Court.



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31. In view of the above discussions of facts and legal principles, this Court is of the view that the instant petition being barred by the inordinate delay of 18 years, is nothing but a gross misuse of process of law and this Court is not inclined to exercise its extra ordinary jurisdiction.

32. For all the aforesaid reasons, this Court does not find any merit in the instant petition, and the same stands dismissed.

33. Pending applications, if any, also stand dismissed.

34. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

FEBRUARY 7, 2024
gs/da/av

Click here to check corrigendum, if any