



2024:DHC:8978



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

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***Decided on: 18.11.2024***

+ **W.P.(C) 9405/2017**  
**UNION OF INDIA**

.....Petitioner

Through: Ms.Pratima N. Lakra, CGSC with  
Mr.Chandan Prajapati, Advocate

versus

**COMMISSIONER OF NORTH DELHI  
MUNICIPAL CORPORATION**

.....Respondent

Through: Mr. Mukesh Gupta, Standing  
Counsel for MCD with Ms. Shashi  
Gupta and Mr. Arnav Gupta,  
Advocates

+ **W.P.(C) 9784/2017 & CM APPL. 41149/2024**  
**UNION OF INDIA**

.....Petitioner

Through: Ms.Pratima N. Lakra, CGSC with  
Mr.Chandan Prajapati, Advocate

versus

**COMMISSIONER OF SOUTH DELHI  
MUNICIPAL CORPORATION**

.....Respondent

Through: Dr. Divya Swamy, Standing  
Counsel for MCD with  
Mr.Yagyawalkya Singh, Ms. Akriti  
Singh and Ms. Nidhi Kumar,  
Advocates

**CORAM:**

**HON'BLE MR. JUSTICE PRATEEK JALAN**

**PRATEEK JALAN, J. (ORAL)**

1. These two writ petitions were filed by the Union of India ["UoI"]  
in the year 2017, seeking directions against the Municipal Corporation of



Delhi [“MCD”], to pay maintenance charges in respect of Road Under Bridges (RUBs).

2. The prayer in W.P.(C) No. 9405/2017 reads as follows:

*“issue a mandamus to the respondent Municipal Corporation of Delhi to discharge it's public duty of maintaining the RUB (Road Under Bridge); at the crossing of Shyama Prasad Mukherjee Marg, Zorawar Singh Marg, Subhash Marg and the Road to leadaing Shahdara; by making the payment of maintenance charges is terms of the provisions of Railway Act, 1989 as well as the engineering Code.”*

The prayer in W.P.(C) No. 9784/2017 is virtually identical, except that it refers to the RUB at Tughlaqabad on the Delhi-Palwal section instead of the RUB mentioned in W.P. (C) 9405/2017.

3. I have heard Ms.Pratima N. Lakra, learned Central Government Standing Counsel, and Mr. Mukesh Gupta and Dr. Divya Swamy, learned Standing Counsel for MCD.

4. Ms. Lakra submits that, in both cases, the RUBs were constructed at the request of MCD. Under Section 19 of the Railways Act, 1989 [“the Act”], read with Clause 1851 of the Indian Railways Code for the Engineering Department, the Railway administration was, *inter alia*, empowered to require the local authority to undertake the cost of the work and the expense of maintaining the work, either fully or in such proportion as the Central Government considers just and reasonable.

5. Ms. Lakra submits that, as far as W.P.(C) No.9405/2017 is concerned, MCD sought construction of the RUB in the year 1983, and also paid an amount of Rs.10 crores at the initial stage. However, the amount of maintenance tax was not paid and correspondence ensued in this regard after the year 2015 in view of an audit objection/observation. She submits that the amount due has been computed at approximately



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Rs.38 crores, inclusive of capitalised maintenance charges of Rs.8.01 crores, interest thereupon @ 12% p.a. for 25 years (from 1992 until the filing of the petition in the year 2017) computed at Rs.24.03 crores, and service tax. The computation is annexed to a letter addressed by the Northern Railways to the Commissioner, MCD dated 16.06.2017 (Annexure P-4 to the writ petition).

6. The alleged cause of action of the Railways in W.P.(C) 9784/2017 is similar. It is stated in the writ petition that as far as the Tughlaqabad RUB is concerned, MCD's share of construction was computed at approximately Rs.13.9 crores, against which they deposited Rs.10.63 crores. In paragraph 3(iii) of the writ petition, it is suggested that capitalised cost of construction of Rs.6.95 crores remains due, in respect of which an audit objection was raised. Reference is made to communications addressed to MCD between 2009 and 2011 and again between 2015 and 2017.

7. In both the petitions, MCD has filed counter affidavits, *inter alia* opposing the petitions on the ground that relief for payment of monetary dues cannot be granted in proceedings under Article 226 of the Constitution; that the petitions are, in any event, barred by *laches* and delay; and that significant factual disputes arise as to the alleged liability of MCD and as to the amounts already paid by MCD to UoI, in this connection.

8. Having heard learned counsel for the parties, I am of the view that the grant of relief as sought in these writ petitions would not be an appropriate exercise of jurisdiction under Article 226 of the Constitution, both due to considerable delay in filing of these petitions and because



adjudication of disputed factual questions would be required. These are discussed in greater detail below:

- A. Section 19(2) of the Act, relied upon by Ms. Lakra, refers to recovery of expenses and maintenance costs from the State or local authority, subject to the decision of the UoI. No such decision has been placed on record.
- B. In W.P.(C) No. 9405/2017, UoI has annexed a copy of Circular dated 02.05.1983, which states as follows:

*“Sub: Levy of maintenance charges for the road over bridges constructed jointly by the Railways and the State Govt. in replacement of existing level crossings.*

*Ref: Addl. FA & CAO's D.O. Letter No.AC/FX/FS/84/8 dated 24.3.83*

*The Board have already clarified the position in respect of the responsibility of maintenance of road over/under bridges constructed on cost sharing basis vide Board's letter No. 63/W1/BRO/22 dated 13.7.70. No change is contemplated in the extent of responsibility of the respective authorities in regard to recurring expenses as a result of liberalisation of the cost sharing rules vide Board's letter No.68/W1/BRO/25 dated 21.1.1969. These will continue to be follows:-*

*iii. The Railways will maintain the bridge structure proper across the railway tracks. No charges will be levied for the maintenance of bridge structure across the Railway tracks upto 24' width with 2 foot-path of 6' each, if provided, for which the Railways share the cost. However, if any extra width of road-way is provided at the request of the State Government on deposit terms- its maintenance cost will be recovered from the party.*

*ii) The State Government will maintain the road approaches and Railway will not be pay any charges for its maintenance.*



*iii) The maintenance and lighting of road-way of the bridge and its approaches will be the responsibility of the State Government/Road Authority.”<sup>1</sup>*

In the context of this circular, the question which would require consideration is whether the RUBs in question are upto the specified width and footpath, which are not susceptible to maintenance charges, or whether extra width of road has been provided at the request of State Government, which is to be maintained at the cost of the parties. The correspondence placed on record does not contain necessary particulars referable to the aforesaid circular dated 02.05.1983.

- C. It may also be noted that, in the counter affidavit filed by MCD in W.P.(C) No. 9405/2017, it has specifically been contended that capitalised maintenance charges of Rs. 4,61,10,258/- were already included in MCD's share of the charges payable for construction of the RUB and were paid by MCD or otherwise recovered by the Railways. It is stated that the Railways, in fact, did not account for the advance payments made by MCD and recovered the amount from other works arbitrarily.
- D. Further, the correspondence, including the letter dated 16.06.2017 referred to above, shows that even according to the Railways, the capitalised maintenance charges for the Lothian bridge [subject matter of W.P.(C) 9405/2017] were payable in the year 1992. The Railways has claimed interest on this amount for 25 years, from

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<sup>1</sup> Emphasis supplied.



1992 until the filing of the petition. A writ petition filed after 25 years after the cause of action accrued in favour of UoI is, in my view, hopelessly barred by delay and *laches*.

E. Similarly, in W.P.(C) No.9784/2017 also, there is little clarity on the computation or quantification of amounts claimed by UoI. While the figure of Rs.6.95 crores has been referred to in the writ petition, Ms. Lakra has also drawn my attention to a letter dated 16.06.2017, which refers to Rs.33.03 crores as capitalised maintenance charges, including interest @ 12% p.a. for 25 years and service tax. The calculation sheet, although referred to in the said communication, has not been annexed.

F. In the counter affidavit in this case, MCD has referred to the agreement which was entered into between the parties 40 years ago, and taken the defence of delay and *laches*. It has specifically been stated that maintenance charges in all work orders issued by MCD from 1989 to 1992 have been paid in advance.

9. The Supreme Court has, in several judgments, laid down the self-imposed restrictions on exercise of writ jurisdiction which the Court is required to bear in mind. In *City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwalla*,<sup>2</sup> the Court held as follows:

*“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;*

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<sup>2</sup> (2009) 1 SCC 168; See also: *Radha Krishan Industries v. State of H.P.*, (2021) 6 SCC 771.



**(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.

*The Court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly and accurately for the consideration of the Court and particularly in cases where public revenue and public interest are involved. Such directions are always required to be complied with by the State. No relief could be granted in a public law remedy as a matter of course only on the ground that the State did not file its counter-affidavit opposing the writ petition. Further, empty and self-defeating affidavits or statements of Government spokesmen by themselves do not form basis to grant any relief to a person in a public law remedy to which he is not otherwise entitled to in law.”<sup>3</sup>*

10. The Supreme Court has reiterated in *Tridip Kumar Dingal v. State of W.B.*<sup>4</sup>, that the discretionary relief exercised under Article 226 can be declined if the petition is filed after an inordinate delay:

*“56. We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is discretionary. **One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.***

***57. If the petitioner wants to invoke jurisdiction of a writ court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary***

<sup>3</sup> Emphasis supplied.

<sup>4</sup> (2009) 1 SCC 768; See also: *Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu*, (2014) 4 SCC 108.



jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhume matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime (vide *State of M.P. v. Bhailal Bhai* [AIR 1964 SC 1006 : (1964) 6 SCR 261] , *Moon Mills Ltd. v. Industrial Court* [AIR 1967 SC 1450] and *Bhoop Singh v. Union of India* [(1992) 3 SCC 136 : (1992) 21 ATC 675 : (1992) 2 SCR 969] ). This principle applies even in case of an infringement of fundamental right (vide *Tilokchand Motichand v. H.B. Munshi* [(1969) 1 SCC 110], *Durga Prashadv. Chief Controller of Imports & Exports* [(1969) 1 SCC 185] and *Rabindranath Bose v. Union of India* [(1970) 1 SCC 84] ).

58. There is no upper limit and there is no lower limit as to when a person can approach a court. The question is one of discretion and has to be decided on the basis of facts before the court depending on and varying from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose.”<sup>5</sup>

11. Similarly, the writ Court cannot enter into “hotly disputed questions of facts”<sup>6</sup> under Article 226 of the Constitution<sup>7</sup>. The Supreme Court in *M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd.*<sup>8</sup> held as follows:

“82.7. The existence of an alternate remedy, is, undoubtedly, a matter to be borne in mind in declining relief in a writ petition in a contractual matter. Again, the question as to whether the writ petitioner must be told off the gates, would depend upon the nature of the claim and relief sought by the petitioner, the questions, which would have to be decided, and, most importantly, whether there are disputed questions of fact, resolution of which is necessary, as an indispensable prelude to the grant of the relief sought. Undoubtedly, while there is no prohibition, in the writ court even deciding

<sup>5</sup> Emphasis supplied.

<sup>6</sup> *Shubhas Jain v. Rajeshwari Shivam*, (2021) 20 SCC 454, paragraph 25.

<sup>7</sup> These principles have been consistently upheld by the Supreme Court in *Chand Ratan v. Durga Prasad*, (2003) 5 SCC 399, *Babubhai Muljibhai Patel v. Nandlal Khodidas Barot*, (1974) 2 SCC 706, and *Rajasthan SEB v. Union of India*, (2008) 5 SCC 632 among other decisions.

<sup>8</sup> (2023) 2 SCC 703.



**disputed questions of fact, particularly when the dispute surrounds demystifying of documents only, the Court may relegate the party to the remedy by way of a civil suit.**<sup>9</sup>

12. Having regard to the aforesaid position, I am of the view that these writ petitions would require detailed adjudication of factual controversies, in order to determine the entitlement of the Railways to the amounts claimed. As evident from the prayer clause and the documents annexed to the writ petitions, the quantification of amounts has not been undertaken with any degree of clarity, even by UoI, and this is not a case where the liability has been admitted by the respondent. Writ proceedings are inappropriate for such adjudication. The writ petitions seem to have been provoked principally by audit observations, recorded long after the transactions in question had been concluded.

13. While declining relief in these writ petitions, therefore, it may only be observed that the parties are the Railway authorities on the one hand, and the local authorities on the other. If it is possible for them to resolve this long standing issue administratively, they are at liberty to do so, failing which UoI may take recourse to remedies available in law, if any.

14. Learned counsel for MCD submit that any proceedings for recovery instituted by the Railways would, at this stage, be barred by limitation. Ms. Lakra, however, submits that UoI would be entitled to the extended period of limitation provided under Article 112 of the First Schedule to the Limitation Act, 1963, as also to the benefit of Section 14 of the Limitation Act, 1963. These contentions can be considered by the appropriate court in the event UoI considers it necessary to institute civil

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<sup>9</sup> Emphasis supplied.



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proceedings. The rights and contentions of the parties in this regard remain open.

15. These writ petitions, alongwith the pending applications, are disposed of, with these observations. There will, however, be no order as to costs.

**PRATEEK JALAN, J**

**NOVEMBER 18, 2024**

*uk/Adhiraj/*