



2024:DHC:9873-DB



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

+ W.P.(C) 17440/2024

**RAHUL MAVAI** .....Petitioner

Through: Mr. M.K. Gaur, Advocate

versus

**UNION OF INDIA & ORS** .....Respondents

Through: Mr. Vinay Yadav, SPC with  
Mr. Vedansh Anand, GP and Mr. Sachin  
Saraswat, Mr. Abhinav M. Goel and Mr.  
Ansh Kalra, Advocates

**CORAM:**

**HON'BLE MR. JUSTICE C. HARI SHANKAR**

**HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA**

**JUDGMENT (ORAL)**

**18.12.2024**

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**C. HARI SHANKAR, J.**

1. This writ petition has been filed after an inordinate delay of six years. The impugned order was passed on 17 July 2018. The only explanation for the delay, as contained in para 4 of the writ petition, reads thus :

4. That it reveals from the face of records that the petitioner who had applied for a Group 'D' post, belongs from socially weaker backward uneducated family is the resident of a remote Village namely Lala Khar, Teh-Sohna, Gurgaon, Haryana having the lesser qualification, after dismissal of his OA No. 32/2016 on dt. 17.07.18 approached to a counsel namely Sh. Deepak Maan locally practicing in District Court Gurgaon who has been misleading by giving the fake dates, the petitioner, suffering from financial hardships was unable to pursue his case personally on dates given by the counsel rather taking care of his case telephonically however visited to his counsel on dt. 08.08.24 to



know the whereabouts of his case in absence of any proper information wherein after a hot discussion and quarrelling, anyhow the incomplete file was returned and on queries it is found that no case was filed before the Hon'ble High Court for which a complaint is lodged before the District Bar Association Gurgaon and thereby the petitioner who had become the victim of adverse circumstances only applied and obtained the complete set of his case from the Tribunal on 27.09.24 and hence the instant writ petition is delayed.

That it is well settled law of the land that a petitioner should not suffer due to mistake on the part of his counsel in case of *Rafiq & Anr. v Munshi Lai & Anr*<sup>1</sup> and *Ajit Kumar Singh v Chiranjai Lai*<sup>2</sup>.”

2. On the aspect of delay and laches, and their effect on writ proceedings, the Supreme Court has, in its recent decision in *Mrinmoy Maity v Chhanda Koley*<sup>3</sup>, reiterated the legal position thus:

“9. Having heard rival contentions raised and on perusal of the facts obtained in the present case, we are of the considered view that writ petitioner ought to have been non-suited or in other words writ petition ought to have been dismissed on the ground of delay and laches itself. *An applicant who approaches the court belatedly or in other words sleeps over his rights for a considerable period of time, wakes up from his deep slumber ought not to be granted the extraordinary relief by the writ courts. This Court time and again has held that delay defeats equity. Delay or laches is one of the factors which should be born in mind by the High Court while exercising discretionary powers under Article 226 of the Constitution of India. In a given case, the High Court may refuse to invoke its extraordinary powers if laxity on the part of the applicant to assert his right has allowed the cause of action to drift away and attempts are made subsequently to rekindle the lapsed cause of action.*

10. *The discretion to be exercised would be with care and caution. If the delay which has occasioned in approaching the writ court is explained which would appeal to the conscience of the court, in such circumstances it cannot be gainsaid by the contesting party that for all times to come the delay is not to be condoned. There may be myriad circumstances which gives rise to the*

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<sup>1</sup> (1981) 2 SCC 798

<sup>2</sup> 2002 AD (SC) 235

<sup>3</sup> 2024 SCC OnLine SC 551



invoking of the extraordinary jurisdiction and it all depends on facts and circumstances of each case, same cannot be described in a straightjacket formula with mathematical precision. The ultimate discretion to be exercised by the writ court depends upon the facts that it has to travel or the terrain in which the facts have travelled.

11. For filing of a writ petition, there is no doubt that no fixed period of limitation is prescribed. However, *when the extraordinary jurisdiction of the writ court is invoked, it has to be seen as to whether within a reasonable time same has been invoked* and even submitting of memorials would not revive the dead cause of action or resurrect the cause of action which has had a natural death. In such circumstances on the ground of delay and laches alone, the appeal ought to be dismissed or the applicant ought to be non-suited. *If it is found that the writ petitioner is guilty of delay and laches, the High Court ought to dismiss the petition on that sole ground itself, in as much as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own wrong.* It is true that there cannot be any waiver of fundamental right but *while exercising discretionary jurisdiction under Article 226, the High Court will have to necessarily take into consideration the delay and laches on the part of the applicant in approaching a writ court.* This Court in the case of **Tridip Kumar Dingal v State of W.B.**<sup>4</sup>, has held to the following effect:

“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 jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhumate matters which have already been disposed of or settled or where the rights of

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<sup>4</sup> (2009) 1 SCC 768



third parties have accrued in the meantime (*vide State of M.P. v Bhailal Bhai*<sup>5</sup>, *Moon Mills Ltd. v Industrial Court*<sup>6</sup>, and *Bhoop Singh v UOI*<sup>7</sup>). This principle applies even in case of an infringement of fundamental right (*vide Tilokchand Motichand v H.B. Munshi*<sup>8</sup>, *Durga Prasad v Chief Controller of Imports & Exports*<sup>9</sup> and *Rabindranath Bose v UOI*<sup>10</sup>).

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.”

12. It is apposite to take note of the dicta laid down by this Court in *Karnataka Power Corporation Ltd. v K. Thangappan*<sup>11</sup>, whereunder it has been held that the High Court may refuse to exercise extraordinary jurisdiction if there is negligence or omissions on the part of the applicant to assert his right. It has been further held thereunder:

“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. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in *Durga Prasad v. Chief Controller of Imports and Exports*. Of course, the discretion has to be exercised judicially and reasonably.

7. What was stated in this regard by Sir Barnes Peacock in *Lindsay Petroleum Co. v Prosper Armstrong Hurd*<sup>12</sup>, was approved by this Court in *Moon Mills*

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<sup>5</sup> AIR 1964 SC 1006 : (1964) 6 SCR 261

<sup>6</sup> AIR 1967 SC 1450

<sup>7</sup> (1992) 3 SCC 136

<sup>8</sup> (1969) 1 SCC 110

<sup>9</sup> (1969) 1 SCC 185

<sup>10</sup> (1970) 1 SCC 84

<sup>11</sup> (2006) 4 SCC 322

<sup>12</sup> (1874) 5 PC 221 : 22 WR 492



**Ltd. v. M.R. Meher and Maharashtra SRTC v. Shri Balwant Regular Motor Service**<sup>13</sup>. Sir Barnes had stated:

*“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 limitation, 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.”*

8. It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation to Article 32 of the Constitution. It is apparent that what has been stated as regards that article would apply, a fortiori, to Article 226. It was observed in **Rabindranath Bose v UOI**<sup>14</sup> that no relief can be given to the petitioner who without any reasonable explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution-makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay.

9. It was stated in **State of M.P. v Nandlal Jaiswal**<sup>15</sup>, that *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*

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<sup>13</sup> AIR 1969 SC 329

<sup>14</sup> (1970) 1 SCC 84

<sup>15</sup> (1986) 4 SCC 566



*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.”*

13. Reiterating the aspect of delay and laches would disentitle the discretionary relief being granted, this Court in the case of **Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu**<sup>16</sup>:

“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.”*

(Emphasis supplied)

3. The explanation in para 4 of the writ petition can hardly explain six years of delay in approaching the Court.



4. We also disapprove the unwholesome practice of seeking to explain away inordinate delay and laches on approaching the Court on the mere ground that the Counsel who had been dealing with, or entrusted, the matter, was tardy, negligent, or indolent. At times, this assertion is sought to be supported by an assertion that the litigant has approached the Bar Council concerned against the counsel.

5. We emphatically disapprove of this practice of shifting, to the shoulders of the Counsel, the negligence in approaching the Court. It is easy, in such circumstances, to file a complaint before the Bar Council and seek to explain away the delay. We deprecate this. A litigant does not abandon all responsibility to keep track of a matter, once it is entrusted to Counsel.

6. That said, if, in fact, the Counsel has been negligent, the litigant would have to place, on record, material to indicate that she, or he, has been in touch with the Counsel during the entire period of delay, and that the Counsel has been misleading her, or him. This material must be acceptable, and convincing. The Court has to be satisfied that, in fact, the Counsel has been misleading the client, and that this explains the entire period of delay in approaching the Court. Of course, if the Court is so satisfied, and an innocent litigant has been led up the garden path by an unscrupulous Counsel, the court would not allow injustice to be done, and would, in an appropriate case, condone the delay.

7. In the present case, however, we are not convinced that 6 years' delay has been satisfactorily explained by the petitioner.

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<sup>16</sup> (2014) 4 SCC 108



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8. Accordingly, the writ petition is dismissed on the ground of unexplained delay and laches, without examining merits.

**C. HARI SHANKAR, J.**

**ANOOP KUMAR MENDIRATTA, J.**

**DECEMBER 18, 2024/yg**

*Click here to check corrigendum, if any*