

(2009) 02 DEL CK 0254

In the Delhi High Court

Case No : Writ Petition (C) No. 23295 of 2005

Delhi Transport Corporation

APPELLANT

Vs

Sh. Ranbir Singh and Another

RESPONDENT

Date of Decision : 11-02-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 33(2)

Citation : (2009) 02 DEL CK 0254

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Vinay Sabharwal, for the Appellant; Rudra Kahlon, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—By way of this writ petition filed under Article 226 of the Constitution of India the petitioner seeks to challenge the impugned Award dated 4th July, 2000 passed by the Industrial Tribunal II declining the approval to the petitioner as was sought by the petitioner by moving an application u/s 33(2)(b) of the Industrial Disputes Act. At the outset counsel appearing for the respondent has taken preliminary objection to the very maintainability of the present petition on the ground of delay and laches. Counsel appearing for respondent No. 1 has submitted that respondent No. 1, has taken a preliminary objection in his counter affidavit stating that the present petition is liable to be dismissed on the ground of delay and laches as the order declining the approval was passed by the Tribunal as long back as on 4th July, 2000 and the present petition was preferred by the petitioner in December, 2005 without making any endeavour to explain the delay on the part of the petitioner for such a long period of five years. In support of his arguments counsel for the respondent No. 1 has placed reliance on the judgment of the Division Bench passed in LPA No. 2671/2005 dated 13.12.2005.

2. Mr. Vinay Sabharwal, counsel for the petitioner while refuting the said submission of the counsel for the respondent submits that such an objection of maintainability of the petition on the ground of delay and laches can only be taken at the initial stage and not at the stage of final hearing of the matter. Counsel for the petitioner further submits that in any case the petition filed by the petitioner cannot be treated as a belated petition as the petitioner had never abandoned its right on account of the pendency of the industrial dispute raised by the respondent pursuant to the reference made u/s 10 of the Industrial Disputes Act. Counsel for the petitioner further states that in any case, the law of limitation does not apply to the industrial adjudication and therefore, the petitioner is not required to explain each days delay as required for seeking condonation under the Limitation Act. Counsel thus states that the present petition filed by the petitioner cannot be thrown out merely on the ground of delay on the part of the petitioner.

3. I have heard learned Counsel for the parties and perused the record.

4. Indisputably, the law of Limitation does not attract the industrial adjudication, but the same would not mean that the parties can take their remedies as and when they so wish. The impugned order by the Tribunal was passed as long back as on 4th July, 2000 declining the approval sought by the petitioner u/s 33(2)(b) of the Industrial Dispute Act. The present petition was preferred by the petitioner on 2nd December, 2005 apparently when already the Tribunal had passed an Award in favour of the respondent in the other case i.e. ID No. 149/2001 holding the action on the part of the petitioner terminating the respondent as not legal and justified. In para 10 of the Award dated 30th September, 2005 the Tribunal observed that the management did not prefer any appeal, revision or writ petition against the order dated 4th July, 2000 declining the grant of approval u/s 33(2)(b) of the Industrial Disputes Act. It is perhaps this observation, which activated the petitioner to challenge the said order dated 4th July, 2000 and that is the reason the present petition was filed immediately after passing of the Award dated 30th September, 2005. I do not find myself in agreement with the counsel for the petitioner that the matter of limitation cannot be raised at the stage of final hearing of the petition. This can be only in a case where the objection of limitation itself is taken at such a belated stage, but that is not the case here as the respondent No. 1 has already taken the preliminary objection in his counter affidavit to the maintainability of the present petition on the ground of delay and laches. I also do not agree with the argument of counsel for the petitioner that once the industrial dispute was pending, therefore, the petitioner could have taken his remedy against the order passed by the Tribunal u/s 33(2)(b) as and when it liked. In the absence of any period of limitation prescribed for challenging orders under the Industrial Disputes Act the parties are still required to take their remedies within a reasonable time. For any unreasonable delay, the party is required to give explanation as to how such a delay has been caused in taking his remedy, if such a party felt aggrieved with any order passed by the Tribunal/Labour Court under relevant provision of the Industrial Disputes Act.

Perusal of the present petition filed by the petitioner clearly shows that the petitioner has not even made any endeavour to explain as to how such a long delay of 5 years has taken place in filing the present petition. In a very casual and perfunctory manner the petitioner stated that the record of the petitioner was unfortunately misplaced and after thorough check up fresh certified copies were applied and same were obtained on 7.5.2005.

5. At this stage Mr. Vinay Sabharwal, counsel appearing for the petitioner has drawn attention of this Court to one supplementary affidavit filed by the petitioner to explain the delay in filing the present petition. Contention of counsel for the petitioner is that notice in the present case was issued only after filing of the said supplementary affidavit. Counsel for the respondent on the other hand states that no copy of such an affidavit was supplied by the petitioner to the respondent and, therefore, the averments made therein could not be rebutted by the respondent. In any event of the matter, perusal of the said affidavit also disclose that no proper explanation has been rendered by the petitioner in not filing the present petition at the earliest opportune time. In the absence of any explanation much less the plausible explanation, I do not find that there is any justification for the petitioner to have approached this Court after a lapse of five years period. Unexplained delay on the part of the litigant does stare on its face. Non-applicability of the provision of Limitation Act cannot be justification for any party to say that he can approach the Court at any point of time, if he so wishes, if one is aggrieved by the outcome of any order passed by the Courts below. It is well settled that delay and laches is one of the factors which a High Court must bear in mind while exercising powers under Article 226 of the Constitution and in an appropriate case, it may refuse to exercise its extraordinary powers. In the absence of any explanation given by the petitioner in the present petition and in their affidavit, the present petition suffers from the vice of delay and laches. Based on the above discussion, I do not feel inclined to exercise jurisdiction under Article 226 of the Constitution of India in favour of the petitioner and accordingly the same is hereby dismissed. It is, however, made clear that any observation made in this order will not preclude the parties to the present petition to their respective positions in the main matter pending consideration before this Court in CWP No. 292/2007.