

(2009) 10 GAU CK 0015

In the Gauhati High Court

Case No : Writ Petition (C) No's. 226 (SH) , 227 (SH) , 208 (SH) , 209 (SH) and 210 (SH) of 2009

Green Valley Rice Tech (P.) Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-10-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 32

Citation : (2010) 5 GLR 318 : (2009) 5 GLT 646

Hon'ble Judges : T. Vaiphei, J

Bench : Single Bench

Advocate : N. Saikia, N. Lahkar, P. Mahanta, A. Saikia and L. Borgohain, for the Appellant; S.P. Mahanta, A.K. Agarwal and H. Abraham, for the Respondent

Final Decision : Dismissed

Judgement

T. Vaiphei, J.—This batch of writ petitions, involving a common question of law, were taken up together for hearing, and are now being disposed of by this common judgment. The petitioners are separately aggrieved by the refusal of the respondents to sanction financial assistance under the Scheme of Promotion of Industries in the North East (SPINE) in violation of the extant guidelines.

2. To simplify the controversy, I shall first decide WP(C) No. 226 (SH) of 2009 and thereafter apply my decision thereon to the remaining cases to the extent possible. The petitioner is stated to be a registered company and is engaged in the production of high quality rice having great taste and high nutritional value. It claims to be the first of its kind in the North Eastern Region and is using the technology supplied by Sortex of London. The case of the petitioner is that this writ petition is squarely covered by the common judgment of this Court rendered on 20.6.2008 in WP(C) Nos. 279 (SH) to 285 (SH) of 2007, and it is, therefore, entitled to the same relief granted in those cases. Anyway, in the year 1997, a policy decision had been taken by the Planning and Development Department, Government of India for promotion of industries in the North during the period of

the 9th Plan by creating an entrepreneurial climate through consistent and concerted efforts. Towards that end, the guidelines for the scheme and special package for food processing, bamboo and common facility centres and service industries with particular emphasis on tourism, etc, were introduced. The scheme is known as "Scheme for Promotion of Industries in the North East" otherwise known as SPINE, which was launched by the Ministry of DONEYAR "with an intention to give more incentives for setting up more industries in the North East Region". In terms of Clause 4 of para 1.4 of the Scheme, the North Eastern Council (NEC) is to provide to the newly set-up industries to the extent of 25% of the project cost or Rs. 50 lakhs, whichever is less, subject to a maximum limit of Rs. 50 lakhs and as deemed proper by the recommending authority subject to fulfillment of the conditions stipulated therein. Plainly stated, the object of the Scheme is to make the entire North Eastern Region more investment friendly. The Union Cabinet approved the Scheme and entrusted the respondent Nos. 1 and 3 to implement the same, which would act as the facilitators rather than that of an active player. It appears that the Research Officer, SSI vide his letter No. NEC/IND/14-97 dated 25.2.2002 sent a copy of the revised guidelines for funding the Scheme to the General Manager, District Industrial and Commerce Centres, Bamunimaidan for necessary action.

3. Apparently acting upon the representations contained in the aforesaid policy, the petitioner submitted the application dated 28.11.2005 along with the necessary documents for setting up rice mill plant of six tons per hour industry with infrastructure facilities and manufacturing unit under the Scheme, i.e., SPINE. In setting up this rice mill plant, the petitioner claims to have incurred huge investments to the order of Rs. 9,12,00,000 and also taken a term loan amounting to rupees six crores carrying high interest from a commercial bank, namely, United Bank of India, Guwahati. The Joint Director, Industries Department, Assam vide his letter dated 6.2.2006, after verification of the application of the petitioner, informed the Secretary, Industries and Commerce Department, Government of Assam that the petitioner was entitled to financial assistance to the tune of Rs. 50,00,000, being 25% of the eligible investment, and requested the Secretary to forward the application of the petitioner to the respondent No. 3 through the Planning and Development Department, Assam. The Under Secretary, Industries and Commerce, Government of Assam vide his letter dated 21.2.2006, having satisfied the eligibility of the firm, forwarded application/project proposal of the petitioner along with the relevant documents to the Chief of Division (NEC Cell), Planning and Development Department, Government of Assam to enable it to avail of the financial assistance. It further appears that the Chief of Division (NEC Cell) thereafter by his letter dated 3.3.2006 forwarded the application of the petitioner to the respondent No. 3 with a request to consider the same for the financial assistance. After receipt of the application of the petitioner, the Adviser (Banking and Industries), NEC, after scrutinizing its application, vide his letter dated 10.5.2006 asked the petitioner to submit details about civil construction done and details of estimate and drawing

of civil construction, which was duly responded by it on 12.6.2006. According to the petitioner, even after answering the queries of the respondents satisfactorily, its application was simply kept pending and no disbursement of the financial assistance has been made by the respondents till now. It is alleged by the petitioner that the respondents are following the policy of pick and choose in the disbursement of the financial assistance to other applicants and have overlooked its case though its entitlement thereto is well-established. This prompted the petitioner to file this writ petition seeking the same relief granted to the petitioners in WP(C) Nos. 279 (SH) to 285 (SH) of 2007.

4. The writ petition is resisted by the respondents, who have filed their affidavit-in-opposition. Before entering into the merits of the case, the first point for consideration is whether the writ petition is barred by the principles of laches/delay. Mr. S.P. Mahanta, the learned Counsel for the respondents, drawing my attention to paragraph 15 of the affidavit-in-opposition, submits that the petitioner is a fence-sitter, waiting for others to obtain a favourable order and then attempt to take advantage of the relief obtained by them: he who does not come to court with clean hands should be told off the gate. He further contends that when the writ petition was filed after an inordinate delay, and in the absence of satisfactory explanation for the same, the writ petition is liable to be dismissed on the ground of delay/laches. On the other hand, Mrs. N. Saikia, the learned Counsel for the writ petitioner, contends that the delay, if there be any, is hardly for two years, which can be condoned by this Court. According to the learned Counsel, the petitioner cannot be faulted with for not approaching this Court immediately inasmuch as it is dealing with public authorities whose functionings are notoriously slow as well as cumbersome. She heavily relies on the following decisions to buttress her contentions: - (a) *Dhirendra Chandra Roy v. Union of India* 1998 (4) GLT 416, (b) *Ashok Kumar Vs. State of Bihar and Others*, (c) *Sanjay Place Group Housing Association and others Vs. Agra Development Authority and others*, (d) *R.S. Deodhar v. State of Maharashtra*, (1992) 2 SCC 598 (e) *N. Balakrishnan Vs. M. Krishnamurthy*, (f) *Sub-Divisional Officer Telegraph, Bijnor Vs. The Presiding Officer Central Government Industrial Tribunal-cum-Labour Court, Kanpur and Another*, (g) *Suresh Chand v. Union of India and Ors.* (2004) 13 SCC 563, (h) *State of Nagaland v. Lipok Ao and Ors.* (2005) 5 SCC 752, (i) *Dilip Kumar Dutta v. State of Tripura* (1986) 1 GLR 367, (j) *Hindustan Petroleum Corpn. Ltd. v. Dolly Das* (1999) 5 SCC 450 and (k) *A.K. Adhikari v. State of Assam* 2009 (2) GLT 579.

5. There is no dispute at the bar that this writ petition was filed by the petitioner on 17.8.2009 after the SLP filed by the respondents against the judgment and order dated 27.11.2008 passed by the Division Bench of this Court reported in 2009 (1) GLT 557 upholding my decision allowing WP(C) Nos. 279 (SH) to 285 (SH) of 2007 and that the petitioner is claiming the benefit of my aforesaid decision. Even if I assume that the instant case is squarely covered by my decision in WP(C) Nos. 279 (SH) to 285 (SH) of 2007, still the petitioner has to cross another hurdle, namely, whether the petitioner can claim benefit of the said

decision on the facts and in the circumstances of this case. Recent decisions of the Apex Court will reveal that the benefit of a judgment is no longer automatically extended to a case, and if the petitioner approaches this Court after unexplained, or unsatisfactorily explained delay, such delay may disentitle him to claim a discretionary relief. To appreciate this legal principle, it will be apposite to discuss in detail the decision, of the Apex Court in *Rup Diamonds and Others Vs. Union of India and Others*, That was a case in which the writ petitioners under Article 32 of the Constitution assailed the validity of the decisions dated 9th April, 1986 and 5th August, 1986 of the Joint Controller of Imports and Exports declining to re-validate and endorse six Imprest Licenses for import of Open General License items upon the fulfillment by them of their export obligations under the Imprest Licenses. The petitioners were a recognized Export House for purposes of Import-Export Policy, 1982-83. They applied for and were granted six Imprest Licenses on various dates between 1980 and 1982 for various amounts for the import of uncut and unset diamonds with the obligation to fulfill certain export commitment for the export out of India of cut and polished diamonds of the requisite values as evidenced by the Redemption Certificates annexed to the writ petition. They, therefore, claimed that in terms of para 185(4) of Import and Export Policy, 1982-83, they were entitled to the facility for the import of OGL items as was available in the case of replenishment licenses issued to export houses under Clauses (1) and (3) of para 185 of A-M Policy 1983. It would appear that the petitioners did not immediately seek for re-validation and endorsement for OGL items, and it was only in the year 1986, they sought such re-validation and endorsement. That was after a lapse of several years from the completion of their export obligations. The Joint Chief Controller of Imports and Exports by the impugned decisions declined the request on the ground, among others, that the request for re-validation and endorsement under para 185 of A-M 83 Policy after 4 years and 7 months from the discharge of their export obligations was time-barred.

6. One of the contentions raised by the petitioners before the Apex Court was that their claims were similar to those made by M/s. Ripal Kumar & Co. and M/s. H. Patel & Co., who filed Writ Petition Nos. 2477 of 1984 and No. 1465 of 1984 respectively in the Bombay High Court for issue of appropriate writs to the authorities to re-validate the Imprest Licenses; that those writ petitions were allowed by the learned Single Judge of the High Court, whose decisions came to be affirmed in appeal by the Division Bench; that Special Petitions Nos. 4670 of 1986 and 7389 of 1985 respectively preferred by the Union of India against the said two judgments of the Bombay High Court were dismissed by the Apex Court and that, therefore, the rejection by the authorities of the petitioners' claim for similar validation of the six Imprest Licenses and endorsement for OGL items would, in view of grant of re-validation and endorsement in those cases, be discriminatory and violative of Article 14. Rejecting the writ petition, the Apex Court held:

8. Apart altogether from the merits of the ground of rejection - on which it

cannot be said that the mere rejection of the special leave petitions in the cases of "M/s. Ripal Kumar & Co. and M/s. H. Patel & Co., could, by itself, as the imprimatur of this Court on the correctness of the decisions sought to be appealed against - there is one more ground which basically sets the present case apart. Petitioners are re-agitating claims which they had not pursued for several years. Petitioners were not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided. There case cannot be considered on the analogy of one where a law had been declared unconstitutional and void by a court, so as to enable persons to recover monies paid under the compulsion of a law later so declared void. There is also an unexplained and inordinate delay in preferring this writ petition, which is brought almost a year after the first rejection. From the orders in M/s. Ripal Kumar & Co.'s case and M/s. H. Patel & Co.'s case it is seen that in the former case the application for re-validation and endorsement was made on 12th March, 1984 within four months of the date of the redemption certificate dated 6th November, 1983 and in the latter case the application for re-validation was filed on 20th June, 1984 in about three months from the Redemption Certificate dated 9th March, 1984.

9. On a consideration of the matter we think that, apart altogether from the merits of the other grounds for rejection, the inordinate delay in preferring the claim before the authorities as also the delay in filing the writ petition before this Court should, by themselves, persuade us to decline to interfere.

The decision in *Rup Diamonds (supra)* has been quoted with approval and relied on by the Apex Court in numerous subsequent cases, some of which deserves mention, i.e., *Lt. Governor of Delhi and others Vs. Const. Dharampal and others*, *Bhoop Singh Vs. Union of India and others*, , *Chairman, U.P. Jal Nigam and Another Vs. Jaswant Singh and Another*, , *A.P. Steel Re-Rolling Mill Ltd. Vs. State of Kerala and Others*, , *New Delhi Municipal Council Vs. Pan Singh and Others*, and *S.S. Balu and Another Vs. State of Kerala and Others*, . In the last cited case of *S.S. Balu*, this is what the Apex Court said:

17. It is also a well-settled principle of law that "delay defeats equity". The Government Order was issued on 15.1.2002. The appellants did not file any writ application questioning the legality and validity thereof. Only after the writ petitions filed by others were allowed and the State of Kerala preferred an appeal there against, they impleaded themselves as party-respondents. It is now a trite law that where the writ petitioners approaches the High Court after a long delay, reliefs may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment. It is, thus, not possible for us to issue any direction to the State of Kerala or the Commission to appoint the appellants at this stage. In *NDMC v. Pan Singh*, this Court held:

16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate for a

long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favor of those who approached the court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction. (SCC p. 283, para 16)

7. The common thread which runs through the decisions cited in the foregoing is that the benefit of a judgment in a given case is not extended to another case automatically. While granting relief in a writ petition, this Court is entitled, indeed, has the duty to consider the facts and circumstances of the case including the conduct of the petitioner. In the instant case, the project proposal of the petitioner had been received in the Office of the respondent No. 3 in or about March 2006. At any rate, by 5.2.2007, the petitioner was already aware of the refusal of the respondents to sanction the financial assistance. It is quite obvious that the petitioner had never pursued his application seriously. As already noticed, the writ petitions filed by M/s. Harujan Tea Estate and other petitioners [In re.: Harujan Tea Estate (2009) 1 GLT 557] were allowed by a common judgment of this Court on 20.6.2008, which was upheld by the Division Bench of this Court reported in 2009 (1) GLT 557. The Special Leave Petitions Nos. 9578-9584 of 2009 preferred by the respondents before the Apex Court were also dismissed on 1.5.2009. It is, thus, demonstrably clear that the petitioner has chosen to approach this Court only after the disposal of M/s. Harujan Tea Estate case (supra), and is obviously trying to derive the benefit of that judgment after sleeping over its rights for more than two years or more. He simply sat over the matter and then woke up after the Apex Court dismissed the special leave petitions against the said decision of this Court. The benefit of a judgment is not, as found by me earlier, extended to a case automatically any more. This Court in exercise of its equity jurisdiction under Article 226 of the Constitution is entitled to consider the fact situation obtaining in each case including the conduct of the petitioner. Laches and delay has been considered to be an important factor in the exercise of the discretionary relief of this Court under Article 226 of the Constitution. When a person is not vigilant about his rights and acquiesces with the situation, his writ petition cannot be heard on merit after a couple of years on the ground that the same relief should be granted to him as was granted to a person similarly situated who was vigilant about his rights and challenged the illegal action of the authorities. That apart, this Court cannot be unmindful of the financial implications of granting the relief claimed by the petitioner now after an inordinate delay without convincing or satisfactory explanation by it. Here, considerable amount of public money is undoubtedly involved. Moreover, procuring additional allocation of fund to satisfy

the relief claimed at this stage in a case of this nature involving huge public money will undeniably pose serious problems to the respondent authorities. Had the petitioner approached this Court like M/s. Harujan Tea Estate (supra), the respondent authorities could have taken appropriate steps to procure the necessary funds so as to satisfy the liability imposed by this Court. However, the petitioner, by not asserting its rights immediately, the petitioner has allowed time to pass and after a lapse of a couple of years, it filed this writ petition claiming the benefit of the judgment passed in favour of the petitioners, who were undoubtedly alert and vigilant, though similarly situated with it. Why should this Court come to the rescue of such a petitioner who has chosen to sleep over its rights and who is a confirmed fence sitter? (See - U.P. Jal Nigam case).

8. I have carefully gone through numerous decisions cited by the learned Counsel for the petitioner, but, I am afraid, these decisions can hardly be of any assistance to the petitioner in the light of Rup Diamonds case (supra) and S.S. Balu (supra). As already indicated, the law is well-settled that the question whether or not there is delay or laches on the part of the petitioner in approaching the court has to be decided considering the facts and circumstances of the case in hand. There may even be cases where even a short delay may be fatal while there may be cases where even a long delay may not be evidence of laches on the part of the petitioner. In deciding the question of delay in filing a petition, the court has to consider all the relevant circumstances including the conduct of the parties, the change in situation, the prejudice likely to be caused to the opposite party or to the general public, etc. As noted earlier, the petitioner cannot sit in a fence till someone else's case is decided and then re-agitate claims which he had not pursued for two years or so. If he is not vigilant, he cannot ask the court to grant the relief on the basis of the law declared in favour of third parties in some other cases. In the view that I have taken, I have no alternative but to hold that this writ petition is liable to be dismissed at the very threshold on the ground of laches and delay.

WP(C) No. 209(SH) of 2009

In this writ petition, the petitioner is a registered company, and is serving as Data Base Activities, Data Processing and other computer related activities. The petitioner is also claiming financial assistance under the SPINE. It also claims that it acted upon the promise of financial assistance made by the respondents under the SPINE and accordingly set up textile industries with infrastructure facilities by making huge investments worth Rs. 2,11,589,79 and also took a term loan of Rs. 128.15 lakhs from a commercial bank, i.e., United Bank of India, Guwahati. It accordingly submitted an application on 7.11.2006, which was duly processed and recommended by the Chief of Division (NEC Cell) on 5.3.2007 to the respondent No. 3. As in the previous case, the respondents refused to sanction the financial assistance. There is evidence to show that by February, 2007, the petitioner had come to know that it was being denied of the subsidy under the SPINE. Yet, it chose to file this writ petition only on 14.8.2009

admittedly after the special leave petitions filed by the respondents against M/s. Harujan Tea Estate (supra) had been dismissed by the hon'ble Supreme Court on 1.5.2009. As in WHO No. 226(SH) of 2009, the petitioner is undoubtedly claiming the benefit of the judgment in M/s. Harujan Tea Estate (supra). In my opinion, my decision in WHO No. 226(SH) of 2009 will apply to this case. The writ petition is, therefore, barred by the principle of delay and laches.

WP(C) No. 227(SH) of 2009

The petitioner in this writ petition is a proprietary concern and is registered as a Small Scale Industry. It claims to be engaged in the production of high quality rice flakes having great taste and nutritional value. Like the petitioner in WP(C) No. 226(SH) of 2009, it also claims that the unit of the petitioner is the first of its kind in North Eastern India. It is the case of the petitioner that it, having come to know the promise of financial subsidy made by the respondents under the SPINE, submitted an application on 7.7.2006, which was duly processed and forwarded with recommendation by the Chief Division (NEC Cell) to the respondent No. 3 on 4.8.2009. According to the petitioner, acting upon the promise made in the SPINE, it set up rice mill plant of 6 tons per hour industry with infrastructure facilities and manufacturing unit by investing Rs. 1,02,39,400 and also obtained a term loan of Rs. 25,00,000 carrying high interest from NEDHI, Guwahati. As in the previous cases, the respondent authorities refused to sanction the financial assistance to the petitioner. That is how this writ petition came up before this Court. There can be no dispute that the petitioner was already aware of the decision of the respondent authorities not to sanction the grant by February, 2007. Yet, it chose to approach this Court only on 27.8.2009. The petitioner is, indisputably, claiming the benefit of the judgment of this Court in M/s. Harujan Tea Estate (supra) and approached this Court only after the special leave petitions filed by the respondents against the judgment of this Court was dismissed by the Apex Court. In my judgment, this case is squarely covered by my decision in M/s. Harujan Tea Estate cases (supra). Consequently, the writ petition is barred by delay and laches.

WP(C) No. 208(SH) of 2009

The petitioner in this writ petition is a registered SSI Unit, and is engaged in the manufacture of ready-made shirts, trousers, half parits, bermudas, cotton vests, brief and panties, track suits, baby suits and all types of uniforms and accessories. Acting upon the promise of financial assistance under the SPINE, it set up textile industry with infrastructure facilities with an investment to the order of Rs. 1,94,980,77 and took a term loan of Rs. 57.25 lakhs carrying high interest from the United Bank of India. Its application for the financial assistance was duly processed and recommended by the Chief of Division (NEC Cell) in his letter dated 5.3.2007 to the respondent No. 3. When the respondents failed to sanction the grant, this writ petition has been filed by the petitioner. As in the previous cases, the petitioner became aware of the decision of the respondent authorities not to sanction the financial assistance by the month of February

2007. Yet, this writ petition was filed by it only on 14.8.2009. It is not disputed by the petitioner that it is also claiming the benefit of the judgment of this Court in M/s. Harujan Tea Estate case (supra), which attained finality on 1.5.2009 when the Apex Court dismissed the special leave petitions thereagainst filed by the respondents. As in the former cases, this writ petition will be governed by my decision in WP(C) No. 226(SH) of 2009. Resultantly, this writ petition is also not maintainable on the ground of delay and laches.

WP(C) No. 210(SH) of 2009

In this case, the petitioner is a registered company, which is engaged in the production of all kinds of readymade shirts, trousers, half pants-Bermudas, cotton vests, track suits, T-shirts, etc. As in the previous cases, acting upon the promise of financial subsidy made by the respondents under SPINE, it claims to have started industries with huge investments to the order of Rs. 95,50,000 and took a term loan of Rs. 95,50,000 carrying high interest from the United Bank of India. Its application for the financial assistance was duly processed and forwarded by the Chief of Division (NEC Cell), Government of Assam with his recommendation to the respondent No. 3 on 5.3.2007. The respondents refused to sanction the financial assistance to the petitioner whereupon this writ petition has been filed by it. In this case also, the petitioner came to know of the refusal of the respondents to sanction the grant by the end of March 2007. Yet, it approached this Court only on 14.8.2009. Indisputably, the petitioner is claiming the benefit of the judgment of this Court in M/s. Harujan Tea Estate case, which attained finality when the Apex Court dismissed Special Leave Petitions Nos. 9578 to 9584 of 2009 filed by the respondents there against on 1.5.2009. Like the other writ petitions, this writ petition will also be governed by my decision in M/s. Harujan Tea Estate case. Consequently, the writ petition is barred by the principle of laches/delay, and liable to be dismissed at the very threshold.

9. Resultantly, these five writ petitions, having found to be not maintainable, are accordingly dismissed. However, on the peculiar facts and circumstances of the case, I direct the parties to bear their respective costs.