

(1997) 12 MP CK 0002
In the Madhya Pradesh High Court
Case No : M.P. No. 3213 of 1994 (J)

Madhya Pradesh State Road Transport Corporation, Bhopal
and Another

APPELLANT

Vs

Bharatlal Soni and Others

RESPONDENT

Date of Decision : 16-12-1997

Acts Referred:

Constitution of India, 1950 — Article 227, 32

Citation : (1999) 1 MPJR 345

Hon'ble Judges : S.C. Pandey, J

Bench : Single Bench

Advocate : A.G. Dhande, for the Appellant; R.N. Shukla, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Pandey, J.

This petition, under Article 227 of the Constitution of India, is directed against the order dated 15.4.1991 passed by the Industrial Court, Jabalpur in an appeal arising out from the order dated 22.12.1986 passed by the Labour Court, Jabalpur. It appears that the petition is delayed as it was filed on 29.7.1994 after three years of passing of the appellate order, The petitioners have tried to explain the delay by asserting that the legal position was crystalised by the case of K.K. Krishnan Vs. Industrial Court of M.P., Indore and another, reported in K.K. Krishnan Vs. Industrial Court, This is the only reason given for late filing of this petition. Initially, by order dated 28.10.1994, notice was issued to the effect requiring the respondents to show cause why this petition should not be allowed. However, subsequently this case was admitted by order dated 31.1.1995 with a direction to pay Process Fee after admission. Thereafter, this case was listed for final disposal in motion hearing by order dated 13.10.1997 at the request of learned counsel for the parties.

A reply/return has been filed on behalf of the respondent No. 1, Bharatlal Soni. It is urged inter alia that the petition is highly belated and the petitioners are guilty of laches. The respondent No. 1 has already been classified as a booking agent and his salary has been fixed. It is urged that as per Annexure R-1 the name of the respondent No. 1 appears at serial No. 15 as a booking agent. One Brij Mohan Sahu too has been classified, promoted and placed at No. 14 and the Writ Petition No. 2567/94 filed against the similar order passed by the Industrial Court was rejected by the order passed by D.M. Dharmadhikari, J. on 9.9.1996, Annexure R-2. The respondent No. 1 further relies on the order passed in the case of M.P.S.R.T.C. Vs. Gyaniram in Writ Petition No. 2863 of 1994, decided on 1.9.1994 by S.K. Dubey, J., holding that two years delay would not be condoned on the foundation that there was subsequent change of view in the case of K.K. Krishnan Vs. Industrial Court, and that in the case of M.P.S.R.T.C. and Another Vs. Narain Singh Rathore and Others, . It has been pointed out in the return that the respondent No. 1 was already promoted by regular D.P.C., even before the Industrial Court passed the impugned order, as per order dated 19.5.1989, Annexure R-5 and the petitioners had decided to abide by the order impugned. Subsequently, they woke-up after the decision in the two cases mentioned hereinabove.

Learned counsel for the petitioners does not dispute the case of K.K. Krishnan Vs. Industrial Court, as well as that of M.P.S.R.T.C. and Another Vs. Narain Singh Rathore and Others, has impelled the petitioners to file this petition as the earlier cases of V.K. Jain and another Vs. Kamal Singh Thausingh and another, reported in 1978 MPLJ 664 (Division Bench) and M.P. State Road Transport Corpn. Vs. Bhagiram Yadav and Others, (Division Bench) stood ever ruled by the Full Bench case of M.P.S.R.T.C. and Another Vs. Narain Singh Rathore and Others, . Learned counsel for the petitioners referred to the decision of learned single Judge of this Court, who while deciding the Writ Petition No. 4186 of 1993, between The State of M.P. Vs. State Industrial Court and several other parties, has followed the case of M.P.S.R.T.C. and Another Vs. Narain Singh Rathore and Others, . It is true that C.K. Prasad, J. has categorically held in aforesaid case that the Full Bench in the case of M.P.S.R.T.C. and Another Vs. Narain Singh Rathore and Others, has overruled all other cases taking a contrary view. It appears that learned single Judge does not share the view taken by D.M. Dharmadhikari, J. in Misc. Petition No. 3973 of 1993 that the case of V.K. Jain Vs. Kamal Singh Thausingh, 1978 MPLJ 664 (supra) was not completely eclipsed by the Full Bench decision in the case of M.P.S.R.T.C. and Another Vs. Narain Singh Rathore and Others, . It is clear that there is difference of opinion between two learned single Judges of this Court as to the import of Full Bench Judgment referred to hereinabove. However, in this case it is not necessary to examine to extent of difference between the two learned single Judges of this Court because in the opinion of this Court, the particular facts of this case, do not call for exercise of jurisdiction under Article 227 of the Constitution of India. The petitioners have not approached this Court in time and thereby created certain rights in the respondents which shall be

considered in the sequel. It shall be a travesty of justice to interfere with the order of the Industrial Tribunal which when passed, was legal and just, being in accord with the earlier decisions of this Court which were binding on the Industrial Tribunal. A change of view of this Court in another case was subsequent and that eventuality could not have robbed the Industrial Tribunal of the jurisdiction that it had the time of passing of the order. There could be no error apparent on the face of record or exercise of jurisdiction not vested in the Tribunal or refusal to exercise jurisdiction at the time of passing of the order. There could be no manifest illegality when the order was passed. Therefore, petitioners had perforce to rely on an eventuality which happened after considerable time and could never have been foreseen by the presiding officer of the Industrial Tribunal. Nor could the petitioners foresee the possibility of change of law and, therefore, set silent and implemented the order of the Court by giving respondents benefit in accordance with the order of the Labour Court even before the Tribunal passed the order. It regularized the case of the respondent No. 1 by granting him promotion to the post of booking agent. Thereafter, the legal advisers of the petitioners saw the light at the end of the tunnel when they woke-up from their slumber and found that subsequently in K.K. Krishnan Vs. Industrial Court, a different note was struck as against the earlier cases V.K. Jain, 1978 MPLJ 664 (supra) and that of M.P. State Road Transport Corpn. Vs. Bhagiram Yadav and Others, and those cases appear to have been over-ruled by the Full Bench in the case of M.P.S.R.T.C. and Another Vs. Narain Singh Rathore and Others, . It appears that one learned Judge of this Court thinks so but another single Judge is not prepared to go the whole hog and say that earlier decision of Division Bench in the case of V.K. Jain Vs. Kamal Singh Thausingh, 1978 MPLJ 654 (supra) is totally over-ruled. Be it as it may, this Court is inclined to confine its decision to facts of the case without being lured by the controversy. Learned counsel for the respondent No. 1 has pointed out that in case this petition is accepted and allowed then his client shall suffer immensely because the petition filed by the petitioners in M.P.S.R.T.C. Vs. Brij Mohan Sahu, Writ Petition No. 2867/94 against an identical order was rejected by D.M. Dharmadhikari, J. in limine on 9.9.1996, Annexure R-2. The respondent No. 1 is at serial No. 15 in seniority and the aforesaid Brij Mohan Sahu would be just one rung senior to the respondent No. 1 if the present position was maintained. Otherwise, the world of the respondent No. 1 shall become topsy turvy. The laches of the petitioners are impinging upon the rights of respondent No. 1 which have taken root in time. His rights cannot be uprooted by the petitioners-root-branch-and-tree-merely because the law had changed its face in course of time. These are the contentions that have to be weighed in delicate balance before exercising the jurisdiction under Article 227 of the Constitution of India.

It is well established that the petitions under Article 226 or 227 of the Constitution of India grant discretionary remedies. Whenever a Court is required to exercise its discretion, the principle of equity intervenes. It would not be sound exercise of discretion if these principles not borne in mind. It may be trite

learning to say that "Delay defeats equity or that Law helps the vigilant and not those who slumber but they do service as a starting points in cases of delay and laches and are helpful more than a mountain of learning. These are the basic principles that must guide the Court and the light of precedents cannot throw much light as each case has to be decided on its own facts. Nevertheless paying tribute at the alter of the precedents is a judicial practice and this Court must bow to time-tested practice by referring to few cases which reflect the way to approach such cases.

It has already been stated that in exercising jurisdiction either under Article 226 or 227 of the Constitution of India similar principles prevail. No hard and fast rule could be laid down for exercising the discretion. If the Court is of the view that laches on the part of the petitioners is likely to harm the respondents, then looking to its gravity the Court can decline to interfere. On the other hand, if the delay is not likely to affect the respondents, or the equitable rights of the petitioners are so overwhelming, that they are likely to out-weigh the accrued rights of the respondents, then any amount delay can be condoned. Though, march of time is important but it should not have a sway over the discretion when the cause of justice to the petitioners demands otherwise. It becomes a relevant factor when the circumstances are moving at great speed and the changes are kaleidoscopic requiring great alacrity on the part of the petitioners. In other cases the Courts have used the march of time to deny the rights to a petitioner as a matter of policy to weed out stale claims. The litigation must an end in the interest of the Republic. Here the marco-interest of society or the state is pitted against that of an individual. However, indicating the general principles, is only by the way, because it would not be proper to be carried away by the sweep of generalization. Whatever has been said above is only to indicate the measure of the problem and not by way of laying down any particular guiding principle.

Way back in the year 1954, the predecessor of this Court the Nagpur High Court was required to consider the problem of delay. It was pointed out by the Full Bench in the case of Krishna Rajeshwar Vs. The Chief Secretary to the M.P. Govt. Police Dept., Nagpur and another, reported in AIR 1954 Nag 151, that powers under Article 226 of the Constitution of India are wide. There was no limitation on the extraordinary power of the Court. The power being extraordinary the limitation is self-imposed, by the Courts upon themselves. Being a self-imposed limitation it could not be put in a particular strait jacket of time as was sought to be done by the decisions that caused the reference to Full Bench. Mr. Justice G.P. Bhutt was at pains to point out in paragraph 28 at page 157 in Krishna Rajeshwar's case, AIR 1954 Nag 151 (supra), as follows-

Para 28:.....Naturally, therefore, the question of delay or laches cannot be determined with reference to the number of days that have elapsed since the injury was caused or threatened, and while in certain cases long delay may not be deemed sufficient to defeat a just cause, in others, it may not in equity be fair

to condone even a slight delay. It is presumably for this reason that the Constitution has not provided any limitation on the discretion of the Court in regard to the exercise of its powers under Article 226, and has left it to the Court itself to determine the limits to which it will go, depending upon the justice of each case.

Deo, J. stated in paragraph 45 at page 160 as follows -

Para 45: "As already stated, the diligence in moving the High Court for a writ of "certiorari" must be considered not merely with reference to the length of time but also with reference to the Circumstances of the case.....

In that case, Deo, J. specifically referred to, in paragraph 42 at page 159, the case of Lindsay Petroleum Co. Vs. Hurd, (1874) 5 PC 221 at page 229, and quoted the following observations of Blackburn, J.-

Two circumstances always important in such cases are the length of 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 one course or the other, so far as relates to the remedy.

These principles shall also apply to a petition under Article 227 of the Constitution of India.

It is obvious that the Court is required to balance the claims of the petitioners, as well as that of the respondent No. 1. The delay here amounts to laches. The petitioners neglected to challenge the order which they were obliged to do within a reasonable time. Nay they implemented the order of the Labour Court which was in accordance with the earlier decisions of the Court. Had they challenged the order earlier it is quite likely that the petition filed by the petitioners could have been rejected prior to delivery of judgment in K.K. Krishnan Vs. Industrial Court, . Could they take advantage of their own laches ? They did not challenge the order on lines of K.K. Krishnan Vs. Industrial Court, , earlier. Could they be justified in taking the benefit of a judgment delivered in the case of another person ? It has been pointed out by the learned counsel for the respondent No. 1 that his client had been promoted by regular D.P.C. and was placed at serial No. 15 in seniority. Since, this Court rejected the petition against Industrial Court's order in the case of M.P.S.R.T.C. Vs. Brij Mohan on 9.9.1996, Annexure R-1, the position of the respondent No. 1 becomes anomalous. A person placed just above the respondent No. 1 in seniority list would be getting all the benefits of the order of the Industrial Court whereas the petitioners seek to deprive the respondent No. 1 of the same rights. Under such circumstances, this Court holds that delay of three years is fatal to the petition. Equipoising the rights of respondent No. 1, with that of the petitioners in this case this Court finds that interval has affected the right of respondent No. 1 and the confusion shall be created in his service conditions which had become stable by the time this petition was filed. They have been consolidated by the dismissal of the case of M.P.S.R.T.C. Vs. Brij Mohan, Writ Petition No. 2867/94 dated 9.9.1996, Annexure

R-2.

In this connection, it would be profitable to recall the order of Hidayatullah, C.J. in paragraph 12 at pages 902 and 903 in the case of Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, , wherein the Supreme Court by majority of three to two laid down that a petition under Article 32 of the Constitution of India is liable to be dismissed on the ground of delay and laches. The order of Hidayatullah, C.J. in paragraph 12 at pages 902 and 903 in the aforesaid case is as follows-

Para 12 : ".....The question is : can the petitioner in this case take advantage, after a lapse of a number of years, of the decision of this Court ? He moved the High Court but did not come up in appeal to this Court. His contention is that the ground on which his petition was dismissed was different and the ground on which the statute was struck down was not within his knowledge and therefore he did not know of it and pursue it in this Court. To that I answer that law will presume that he knew the exact ground of unconstitutionality. Everybody is presumed to know the law. It was his duty to have brought the matter before this Court for consideration. In any event, having set the machinery of law in motion he cannot abandon it to resume it after a number of years, because another person more adventurous than him in his turn got the statute declared unconstitutional, and got a favourable decision. If I were to hold otherwise, then the decision of the High Court in any case once adjudicated upon and acquiesced in may be questioned in a fresh litigation revived only with the argument that the correct position was not known to the petitioner at the time when he abandoned his own litigation.....

The facts are similar here.

It is said that there is comity among the Judges and the Court finds that in the case of M.P.S.R.T.C. Vs. Gyaniram in Writ Petition No. 2868 of 1994 decided on 1.9.1994 by S.K. Dubey, J., Annexure R-3 rejected an identical petition for the reason the same petitioners approached this Court after two years.

For all the reasons aforesaid, this Court concludes that there is no merit in this petition and it is accordingly dismissed. There shall be no order as to costs of this case.