

(2018) 01 AHC CK 0043
In the Allahabad High Court
Case No : 43194 of 2015

M/S. Three Star Paper Mills Pvt. Ltd.

APPELLANT

Vs

State Of U.P. And 5 Ors.

RESPONDENT

Date of Decision : 11-01-2018

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs

Citation : (2018) 01 AHC CK 0043

Hon'ble Judges : Sudhir Agarwal, Ajit Kumar

Bench : Division Bench

Advocate : Anjana Srivastava, Vivek Prakash Mishra

Final Decision : Dismissed

Judgement

1. Heard Sri Vivek Prakash Mishra, learned counsel for petitioner, learned Standing Counsel for respondents and perused the record.
2. This writ petition has been filed under Article 226 of Constitution of India by M/s Three Star Paper Mills Pvt. Ltd. (a company having its registered office at Gautam Buddha Nagar, U.P.) registered under Companies Act, 1956 (hereinafter referred to as "Act, 1956"), being aggrieved by orders dated 29.04.2014 passed by Consumer Redressal Forum, Meerut and 21.05.2015 passed by Ombudsman (Electricity), U.P., Lucknow. It has further sought a writ of mandamus commanding respondents to pay 10% rebate of electricity bills in the light of law laid down in M/s Pawan Alloys and Casting Pvt. Ltd., Meerut etc. Vs. U.P. State Electricity Board and others 1997 (7) SCC 251.
3. Facts in brief giving rise to present writ petition, are as under.
4. Petitionerunit claimed to have come into existence in 1984. It is engaged in manufacture of paper. It entered into an agreement for supply of electricity with Uttar Pradesh State Electricity Board (hereinafter referred to as "UPSEB") with a contracted electrical load of 400 KVA. As per Government Order dated

31.10.1985, 10% development rebate was made available to new industrial units for a period of three years but benefit was not extended to petitioner for the period October, 1986 to May, 1988. Some industrial units challenged withdrawal of rebate in this Court. They failed in this Court and matter went to Supreme Court which was finalized in M/s Pawan Alloys and Casting Pvt. Ltd., Meerut etc. (supra) and applying the principle of promissory estoppel, Court held that promise made has to be adhered to and benefit could not have been denied.

5. Petitioner submitted representations dated 05.06.1998 and 09.09.1998 to Superintending Engineer, Ghaziabad claiming said rebate alongwith 12% interest. In 2000, under the provisions of U.P. Electricity Reforms Act, 2000, UPSEB disbanded and its assets etc. relating to transmission and distribution stood transferred to Uttar Pradesh Power Corporation Ltd. (hereinafter referred to as "UPPCL") a company owned by U.P. Government incorporated under Act, 1956. Thereafter, petitioner filed Civil Misc. Writ Petition No. 31791 of 2009, in which an interim order was passed on 03.07.2009. We may notice at this stage that said writ petition has already been dismissed vide order dated 01.05.2014.

6. In the meantime, UPPCL issued a circular in respect of "One Time Settlement Scheme" on 06.10.2010. Petitioner made representation to avail benefit of One Time Settlement wherein petitioner unit also gave a statement that it is ready to settle its all pending matters on payment of Rs. 20,45,588.49 in four installments through post dated cheques. This offer of petitioner was accepted and Executive Engineer communicated said decision to Chief Engineer, Ghaziabad vide letter dated 05.04.2012.

7. Thereafter, petitioner filed an application before Electricity Consumer District Redressal Forum, Meerut registered as Case No. 21 of 2013 vide application dated 26.12.2013 that benefit of 10% rebate in the light of judgment in M/s Pawan Alloys and Casting Pvt. Ltd., Meerut etc. (supra) should be extended to it. Respondent Executive Engineer filed objection dated 13.02.2014 stating that once petitioner has already accepted One Time Settlement then no further dispute can be said to be pending and every dispute has stood closed. District Redressal Forum vide order dated 29.04.2014 rejected claim on the ground that once petitioner has already accepted One Time Settlement, no further dispute of earlier period can be said to have remained pending. Thereafter, petitioner came to this Court in Writ Petition No. 48178 of 2014 but it was dismissed on the ground of alternative remedy under clause 7.10 of Electricity Supply Code, 2005 (hereinafter referred to as "Code, 2005"). Petitioner then availed remedy by filing application before Electricity Ombudsman (respondent no. 2) who has also rejected claim of petitioner vide order dated 21.05.2015, hence this writ petition.

8. Petitioner claims that even if it has accepted One Time Settlement, still benefit admissible to it in respect of 10% rebate for the period October, 1986 to May, 1988 ought to have been decided and amount refundable should have been refunded to it.

9. During course of argument, learned counsel for petitioner did not dispute that in the year 1989, there was a recovery of more than Rs. 1,69,000/from petitioner which was challenged in Civil Misc. Writ Petition No. 10724 of 1989. Later, two more writ petitions were filed, i.e., Civil Misc. Writ Petition No. 2389 of 1992 in which demand of Rs. 3,66,569/was challenged and Civil Misc. Writ Petition No. 3608 of 1993 in which demand of Rs. 90,182.70 was challenged. The total principal amount in dispute in above three writ petitions was Rs. 6,25,780.39 whereagainst petitioner made deposits as under:

(S.No.)

(Amount)

(Receipt Number)

(Date)

1- 366569-00 14@181693 30-10-2003

2- 125000-00 20@181695 12-11-2003

3- 125000-00 40@181695 19-11-2003

616569-00

10. Thus substantial amount was deposited by petitioner in respect to the dues disputed in the above three writ petitions. There were all dismissed in the year 2003 by Lucknow Bench of this Court. Interest payable on the late deposit of above amount which came to around Rs. 18,09,637/remained unpaid. Executive Engineer found total dues against petitioner in respect of aforesaid three writ petitions and that accruing subsequently as on November, 2008, as under: "VERNACULAR MATTER OMITTED"

1.

Original amount in balance Rs. 9211.39

2.

Total surcharge up to the month 8/03 Rs. 18,09,637.00

3.

Cost of notice Rs. 75.00

4.

Surcharge on the original amount of Rs. 3,66,569/from 8/03 to 10/03

Rs. 10,997.07

5. On the original amount of Rs. 1,69,028.69 from 8/03 to 12.11.2003 Rs. 6,676.61

6.

On the original amount of Rs. 90,182.70 from 8/03 to 19.11.2003

Rs. 3,201.48

7.

On the original amount of Rs. 9,211.39 from 11/03 to 11/08

Rs. 8,340.91

Total amount of surcharge

Rs. 18,38,928.07

Total Rs. 18,48,139.46

(English Translation by Court)

11. Fourth writ petition, i.e., Civil Misc. Writ Petition No. 1197 of 1992 was filed disputing Rs. 1,73,730/but subsequently said amount was paid on 08.12.2008. Surcharge fell due on disputed amount in Civil Misc. Writ Petition No. 1197 of 1992 computed at Rs. 6,55,101.00. Therefore, total outstanding dues against petitioner, upto December, 2008, was found as Rs. 25,03,240.46.

12. Fifth writ petition, i.e., Civil Misc. Writ Petition No. 2789 of 1991 was filed disputing monthly bill of Rs. 6,15,913.10 in which an interim order was passed on 23.08.1991. Petitioner deposited Rs. 3 lacs. Balance amount of Rs. 3,15,913.10 earned late payment surcharge of Rs. 11,72,970/upto December, 2009 and total comes to Rs. 14,88,883.10.

13. There are some other writ petitions also which we need not to discuss and suffice it to mention that disputes pending between the parties in various writ petitions were taken together and to settle all disputes, Executive Engineer, against a total sum of Rs. 98,56,032.56, proposed that petitioner if deposits entire outstanding principal sum of Rs. 20,46,588.49, entire late payment surcharge of Rs. 78,09,444.07 shall be waived off. This proposal was accepted by petitioner with a clear understanding that in respect of all dispute it is accepting to pay said amount. That being so, petitioner is estopped now for raising a dispute with regard to 10% development rebate for the period October, 1986 to May, 1988 since to settle entire dispute, One Time Settlement scheme was launched which petitioner accepted and has already got benefit of waiver of more than Rs. 78 lacs. The writ petition, therefore, is thoroughly misconceived. In the present case, question, whether petitioner is entitled for benefit of judgment in M/s Pawan Alloys and Casting Pvt. Ltd., Meerut etc. (supra) is not relevant for reason that here is a case where petitioner has already settled entire disputed amount in various cases by entering and accepting One Time Settlement in which surcharge of more than Rs. 78 lacs has already been waived off by respondents. Hence, petitioner cannot turn around now to rake up a dispute of 1986-88 period.

14. There is another angle in the matter. Petitioner admits that surcharge was withdrawn in the year 1986 was disallowed to it. Petitioner did not challenge said disallowance. It is only after judgment in M/s Pawan Alloys and Casting Pvt. Ltd., Meerut etc. (supra) rendered in 1997, for the first time, petitioner made representation in 1998 claiming benefit of said judgment.

15. In our view, petitioner is guilty of laches in claiming aforesaid benefit after more than 20 years by referring to judgment in M/s Pawan Alloys and Casting Pvt. Ltd., Meerut etc. (supra) for the reason that those who were vigilant and raised their dispute well in time, they are entitled to benefit of M/s Pawan Alloys and Casting Pvt. Ltd., Meerut etc. (supra) but petitioner who accepted withdrawal of subsidy and did not raise dispute, cannot be allowed to raise said dispute after more than 20 years. The extraordinary delay and laches of more than 20 years cannot be condoned on the basis of a judgment rendered by Court in respect of dispute raised by others and that cannot explain delay and laches of petitioner in order to give cause of action after a judgment is delivered.

16. Delay and laches constitute substantial reason for disentitling relief in equitable jurisdiction under Article 226 of the Constitution of India. In New Delhi Municipal Council Vs. Pan Singh and others J.T.2007(4) SC 253, Court observed that after a long time writ petition should not have been entertained even if petitioners are similarly situated. Discretionary jurisdiction may not be exercised in favour of those who approached Court after a long time. It was held that delay and laches are relevant factors for exercise of equitable jurisdiction.

17. In M/S Lipton India Ltd. And others vs. Union of India and others, J.T. 1994(6) SC 71 and M.R. Gupta Vs. Union of India and others 1995(5) SCC 628 it was held that though there was no period of limitation provided for filing a petition under Article 226 of Constitution of India, ordinarily a writ petition should be filed within reasonable time. In K.V. Rajalakshmiah Setty Vs. State of Mysore, AIR 1961 SC 993, it was said that representation would not be adequate explanation to take care of delay. Same view was reiterated in State of Orissa Vs. Pyari Mohan Samantaray and others AIR 1976 SC 2617 and State of Orissa and others Vs. Arun Kumar Patnaik and others 1976(3) SCC 579 and said view has also been followed in Shiv Dass Vs. Union of India and others AIR 2007 SC 1330= 2007(1) Supreme 455 and New Delhi Municipal Council (supra). The aforesaid authorities of Apex Court have also been followed by this Court in Chunvad Pandey Vs. State of U.P. and others, 2008(4) ESC 2423. This has been followed in Virender Chaudhary Vs. Bharat Petroleum Corporation & Ors., 2009(1) SCC 297. In S.S. Balu and another Vs. State of Kerala and others, 2009(2) SCC 479, Court held that it is well settled principle of law that delay defeats equity.

18. It is now a trite law, where writ petitioners approach High Court after a long delay, reliefs prayed for may be denied to them on account of delay and laches irrespective of the fact that they are similarly situated to other candidates who have got the benefit. In Yunus Vs. State of Maharashtra and others, 2009(3) SCC

281, Court referred to the observations of Sir Barnesdelay Peacock in Lindsay Petroleum Company Vs. Prosper Armstrong Hurde etc. (1874) 5 PC 239 and held as under: "Now the doctrine of laches in Courts of Equity is not an arbitrary or 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. 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 relates to the remedy." (emphasis added)"

19. In view of above discussion, we find no merit in the petition. In our view, Electricity Consumer District Redressal Forum as well as Electricity Ombudsman have rightly negated claim of petitioner.

20. Writ petition lacks merit. Dismissed with cost which we quantify to Rs. 10,000/.