(1961) 03 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 1266 of 1959

State of Punjab — APPELLANT

Vs

Dhanna Ram Har Bhagwan and Another — RESPONDENT

Date of Decision : 09-03-1961

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab General Sales Tax Act, 1948 — Section 21, 22

Citation : (1961) 12 STC 612

Hon'ble Judges : Inder Dev Dua, J;D.K. Mahajan, J

Bench : Division Bench

Advocate : M.R. Sharma, for A.G, for the Appellant; J.N. Kaushal and S.K. Jain, for the Respondent

Judgement

Inder Dev Dua, J.—This writ petition was referred by me to a larger Bench, because I felt that the question of competency or desirability of a petition under Article 226 of the Constitution on behalf of the State against one of its own officers was of some importance and deserved to be disposed of by a larger Bench. The writ was sought against an order of the Financial Commissioner (Taxation), Punjab and the State of Punjab, petitioner in these proceedings, was represented by the Assistant Government Advocate. The learned Financial Commissioner was not represented before me. I also directed by my order dated the 26th December, 1960, that a notice for actual date should go to the Financial Commissioner, so that he may, if he so chooses, file a proper return. It is in these circumstances that this matter has been placed before us.

2. Today, again, the learned Financial Commissioner has not cared to engage any counsel and, indeed, proceedings against the department have to be ex parte. Messrs Dhanna Ram Har Bhagwan, Contractors, respondent No. 1, however, are represented by Shri Jagan Nath Kaushal, and a reply to the petition has been filed by this respondent. Although, in their reply, this respondent has not raised a preliminary objection that the petitioner has an adequate and effective

alternative legal remedy and, therefore, this Court should not in the exercise of its discretionary powers under Articles 226 and 227 of the Constitution interfere with the impugned order of the Financial Commissioner, nevertheless our attention at the Bar has been drawn to Section 22 of the Punjab General Sales Tax Act (46 of 1948), which provides for a reference to the High Court of any question of law arising out of an order passed u/s 21 of the above Act. We have also been referred to Section 22 of the Pepsu General Sales Tax Ordinance (33 of 2006 Bk.), which contains similar provisions for a reference to the High Court. The contractor-firm, respondent No. 1, has, however, pleaded in the written statement that the present writ petition has been filed after an inordinate delay without furnishing any explanation for the same. It may here be stated that the impugned order of the learned Financial Commissioner is dated the 20th April, 1958, and the present writ petition was filed in this Court on 12th November, 1959. In my opinion, the writ petition deserves to be disallowed on both the grounds, namely, of the existence of an alternative adequate and equally efficacious remedy and of the unexplained, undue delay and laches on the part of the petitioner.

3. In K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc., , Mukherjea, J., in expressing the opinion of the Court, stated the position :-

... For purposes of this case, it is enough to state that the remedy provided for in Article 226 of the Constitution is a discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere ....

4. In that case, the party had already availed itself of the alternative remedy and a reference had already been made to the High Court of Allahabad, which was awaiting decision. But that, in my opinion, would make no difference in the applicability of the principle that if there is an effective and adequate alternative remedy elsewhere this Court is disinclined, as a general rule, to interfere under Article 227 of the Constitution. It is true that there, is no hard and fast rule that this. Court must, as a matter of law, refuse to entertain a petition under Article 226 of the Constitution, merely because of the existence of an alternative remedy prescribed, but it is certainly a relevant factor to be taken into account. It is only in cases where the fundamental right of a citizen is violated by a glaringly and manifestly illegal act that the Court may choose to exercise its discretion in defence of such a fundamental right, any efficacious alternative remedy notwithstanding. But in the present case, the State being the petitioner such a consideration can hardly arise. The objection on the score of undue delay and laches is also not unsubstantial and in the absence of any valid and cogent explanation, this Court would be disinclined to exercise its discretionary power.

5. In view of our decision that this petition is going to fail on account of the existence of an alternative remedy and unexplained delay and laches, it is unnecessary to express any considered opinion on the question, which induced me to refer this case to a larger Bench. The respondent is entitled to have his

costs of these proceedings.

