

Durga Prashad

Vs

Chief Controller of Imports and Exports

Civil Appeal No. 11/916 of 1965

(S. M. Sikri, K. S. Hegde JJ)

22.11.1968

JUDGMENT

SIKRI, J. –

1. The appellant, Durga Prashad, filed a petition under Article 226 of the Constitution against the respondents. The High Court of Punjab, Circuit Bench, Delhi, dismissed the petition in limine. Thereupon the appellant applied for a certificate under Article 133(1)(a) of the Constitution. The High Court gave this certificate on the ground that the value of the subject-matter directly involved in the petition exceeds Rs. 20,000/-.
2. In our opinion this appeal must fail on the ground that the petition under Article 226 of the Constitution was filed after great delay. The relevant facts are as under. The Appellant was carrying on business of export and import, and exported goods of the value of Rs. 8,10,325/-, f.o.b. value Rs. 8,03,530-45, during the period August 25, 1958 to September 29, 1958. On November 12, 1958, the appellant applied for an import licence for art silk yarn of the f.o.b. value of Rs. 8,03,530.45 under the Export Promotion Scheme. The Export Promotion Scheme was discontinued with effect from March 6, 1959. On October 9, 1959, import licence of the value of Rs. 3,27,841/- only was issued to the appellant by the Joint Chief Controller of Imports and Exports, Bombay. His appeal against this order was rejected by the Joint Chief Controller on March 4, 1960. It is alleged by the appellant that he was not given a hearing. The appellant filed a second appeal to the Chief Controller of Imports and Exports, and this was dismissed on April 22, 1961. Here again it is alleged that no hearing was given to the appellant. He filed a representation against the order, dated April 22, 1961 and on that representation a supplementary import licence for import of art silk yarn of the value of Rs. 30,000/- was issued to the appellant. This exhausted all the remedies he had under Para 85 of the order relating to the Export Promotion Scheme, but he instead of filing a writ chose to wait. The appellant apparently approached the Minister of International Trade by letter dated, April 6, 1964 - this is the letter referred to in the letter of the Private Secretary to the Minister of International Trade - and the Private Secretary, vide his letter, dated April 16, 1964, wrote to him saying that his letter had been passed on to the Chief Controller of Imports and Exports, New Delhi and if so desired the appellant may see him in the matter. Apparently the Chief Controller invited him and on June 22, 1964, he was informed that no further licence would be issued to him. On August 24, 1964, the appellant filed the petition above mentioned in the High Court. No explanation has been given in the petition for the delay in filing the petition and it has not been explained what the appellant was doing between March 5, 1962, when the supplementary licence was issued and April 6, 1964.
3. It is well-settled that the relief under Article 226 is discretionary, and one ground for refusing relief under Article 226 is that the petitioner has filed the petition after delay for which there is no

satisfactory explanation.

4. Gajendragadkar, C.J., speaking for the Constitution Bench, in *Smt. Narayani Debi Khaitan v. The State of Bihar* (CA No. 140 of 1964; judgment dated September 22, 1964), observed :

"It is well-settled that under Article 226, the power of the High Court to issue an appropriate writ is discretionary. There can be no doubt that if a citizen moves the High Court under Article 226, and contends that his fundamental rights have been contravened by any executive action, the High Court would naturally like to give relief to him; but even in such a case, if the petitioner has been guilty of laches, and there are other relevant circumstances which indicate that it would be inappropriate for the High Court to exercise its high prerogative jurisdiction in favour of the petitioner, ends of justice may require that the High Court should refuse to issue a writ. There can be little doubt that if it is shown that a party moving the High Court under Article 226 for a writ is, in substance, claiming a relief which under the law of limitation was barred at the time when the writ petition was filed, the High Court would refuse to grant any relief in its writ jurisdiction. No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. That is a matter which must be left to the discretion of the High Court and like all matters left to the discretion of the Court, in this matter too discretion must be exercised judiciously and reasonably."

Relying on the judgment of this Court in *Maharashtra State Road Transport Corporation v. Shri Balwant Regular Motor Services, Amravati*, (CAS Nos. 825 to 851 of 1968; judgment delivered on August 22, 1968) the learned counsel for the appellant contends that the delay should not debar him from seeking relief because the respondents have not suffered in any manner because of the delay. In this case Ramaswami, J., speaking for the Court, referred to an earlier decision in *Moon Mills v. Industrial Court* (AIR 1967 SC 1450, 53, 54). In that case Ramaswami, J., speaking for the Court, observed :

"It is true that the issue of a writ of certiorari is largely a matter of sound discretion. It is also true that the writ will not be granted if there is such negligence or omission on the part of the applicant to assert his right as, taken in conjunction with the lapse of time and other circumstances, causes prejudice to the adverse party. The principle is to a great extent, though not identical with, similar to the exercise of discretion in the Court of Chancery."

5. It would be noticed that Ramaswami, J., had first examined the question of delay and came to a finding that in fact there was no delay. Ramaswami, J., observed :

"On behalf of the respondent, Mr. B. Sen, however, pointed out that the conduct of the appellant does not entitle it to the grant of a writ, because it has been guilty of acquiescence or delay. It was pointed out that the award of Mr. Bhat was given on April 25, 1958, but an application to the High Court for grant of a writ was made long after on November 16, 1959. We do not think there is any substance in this argument, because the second respondent had made an application, dated August 19, 1958, to the Labour Court for enforcement of the award and the appellant had contested that application by a written statement, dated September 15, 1958. The

Labour Court allowed the application on August 4, 1959 and the appellant had preferred an appeal to the Industrial Court on August 31, 1959. The decision of the Industrial Court was given on October 24, 1959, and after the appeal was dismissed the appellant moved the High Court for grant of a writ on November 16, 1959."

6. The Appellant in this case had claimed a mandamus or a direction to the respondents to issue to the appellant import licence for art silk yarn of the value of Rs. 8,03,530.45. It is well-known that the exchange position of this country and the policy of the Government regarding international trade varies from year to year and it would be rather odd for this court to direct that an import licence be granted in the year 1968 in respect of alleged default committed by the Government in 1959 or 1962. In these matters it is essential that persons who are aggrieved by orders of the Government should approach the High Court after exhausting the remedies provided by law, rule or order with utmost expedition.

7. The learned counsel for the appellant contends that this matter involved fundamental rights and this Court atleast should not refuse to give relief on the ground of delay. But we are exercising our jurisdiction not under Article 32 but under Article 226, and as observed by Gajendragadkar, C.J., in the passage extracted above, even in the case of alleged breach of fundamental rights the matter must be left to the discretion of the High Court.

In the result the appeal fails. Parties will bear their own costs.

</html