

SUPREME COURT OF INDIA

Ashok Kumar

Vs.

State of Bihar

C.A.No.3243 of 2008

(Tarun Chatterjee and Harjit Singh Bedi JJ.)

02.05.2008

JUDGMENT

Tarun Chatterjee,J.

1. Leave granted.

2. This appeal is directed against an order dated 24th of January, 2007 passed by a Division Bench of the High Court of Judicature at Patna in LPA NO.1348 of 2005 by which the writ petition filed by the writ petitioner/appellant was dismissed not on merits but on the ground of delay and latches.

3. On grant of leave, we have heard the learned counsel for the parties. Having heard the learned counsel for the parties and after examining the orders of the High Court, viz., the order of the Division Bench impugned in this appeal and the order of the learned Single Judge, we are of the view that the Division Bench as well as the learned single Judge of the High Court were not justified in rejecting the writ petition as well as the writ appeal on the ground of delay and latches as the writ petitioner i.e. the appellant had moved the writ petition before the High Court against the decision of the State Government only in 1996, i.e. after 4 years from the date of passing of such order. The Division Bench as well as the learned Single Judge, in our view, had committed an error in holding that the pendency of the review/representation of the writ petitioner/appellant could not be taken to be a ground for condoning the delay after 4 years of the decision of the State Government. In our view, the High Court had fallen into error in not holding that the appellant had sufficiently explained why the writ petition could not be moved or why it was moved after 4 years of the decision of the State Government. Since the appellant had filed a representation/review of the decision of the State Government, it was expected by him that an order should be passed on the said representation/review. Therefore, in our view, the delay in moving the writ application against the decision of the State Government was sufficiently explained by the appellant and, therefore, the writ petition ought not to have been dismissed on the ground of delay and

latches. Accordingly, we set aside the impugned orders of the Division Bench as well as of the learned Single Judge. The writ petition is, accordingly, restored to its file. The High Court is requested to decide the writ petition on merits in accordance with law after giving opportunity of hearing to the parties and after permitting the parties to exchange their affidavits, if not already exchanged in the meantime. Accordingly, the appeal is allowed to the extent indicated above. There will be no order as to costs.