Karnataka Power Corporation Ltd ... vs K. Thangappan & Anr on 4 April, 2006

Equivalent citations: AIR 2006 SUPREME COURT 1581, 2006 AIR SCW 1828, 2006 (3) AIR KANT HCR 290, 2006 (2) ALL CJ 1284, 2006 (5) SRJ 475, (2006) 4 ALLMR 41 (SC), 2006 (2) UPLBEC 1552, 2006 (4) SCALE 56, 2006 (4) SCC 322, 2006 ALL CJ 2 1284, (2006) ILR (KANT) 3043, 2006 (4) ALL MR 41 NOC, (2006) 3 KANT LJ 505, (2006) 2 LABLJ 421, (2006) 2 LAB LN 864, (2006) 2 SCT 417, (2006) 4 SCJ 608, (2006) 3 SERVLR 27, (2006) 2 UPLBEC 1552, (2006) 3 SUPREME 370, (2006) 4 SCALE 56, (2006) 2 ALL WC 2021, (2006) 2 CURLR 736, (2006) 109 FACLR 724

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Bench: Arijit Pasayat, Tarun Chatterjee

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           CASE NO.:
Appeal (civil)  3726 of 2000

PETITIONER:
Karnataka Power Corporation     Ltd Through its Chairman & Managing Director and Anr

RESPONDENT:
K. Thangappan & Anr

DATE OF JUDGMENT: 04/04/2006

BENCH:
ARIJIT PASAYAT & TARUN CHATTERJEE

JUDGMENT:
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J U D G M E N T ARIJIT PASAYAT, J.

Challenge in this appeal is to the legality of the judgment rendered by a Division Bench of the Karnataka High Court upholding the view of the learned Single Judge directing the appellants to appoint respondent No.1 (hereinafter referred to as the 'workman') in an appropriate vacancy in terms of Clause 4 of the Settlement dated 29.1.1979.

Factual position in a nutshell is as under:

> Respondent No.1 was working as a nominal muster roll workman with the appellant No.1- Karnataka Power Corporation Ltd. (In short "Corporation"). On 29.1.1979 a settlement was arrived at in terms of Section 12(3) of the Industrial Disputes Act,

1947 (in short the 'Act'). Clause 4 of the Settlement which is relevant reads as follows:

> "Casual Labour- Casual workmen who have worked for a period of not less than 240 days during a period of 12 calendar months are agreed to be brought on monthly establishment from the first of the following month effective from 1.10.1978, subject to availability of vacancies. The surplus workmen, if any, will be kept on the waiting list and appointed as and when vacancies occur. In the case of workmen who are not provided with work during monsoon period, the number of days worked in two consecutive seasons will be counted to determine their eligibility".

According to the appellants, the respondent did not report for duty since February, 1979 and accordingly his name was removed from the nominal muster roll. In October 1997, respondent No.1-workman addressed a letter to the Corporation and sought employment as a Mason. The request was repeated on 17.1.1998 and thereafter in June, 1998. In reply, the appellant-Corporation stated that since respondent No.1 was not working with the Corporation at the time of confirmation of other nominal muster roll employees and the matter was 20 years old, it would not be possible to consider the request for providing employment. On 18.8.1998 a writ application was filed before the Karnataka High Court praying, inter- alia, for a direction to consider the writ petitioner for the post of Ist Class Mason. Corporation filed its reply pointing out that the writ petition was liable to be dismissed on the grounds of delay and laches. However, by order dated 18.8.1999 the writ petition was allowed by a learned Single Judge holding that it would be too much to expect a writ petitioner to retain copies of the communications that he had sent to the Corporation. Since the alleged acknowledgments produced had shown that some officers of the Corporation received the communications it would be desirable to accept the stand that representations were made and it would not be correct to say that the writ petitioner had slept over the matter for 18 years, as he was agitating the matter. The Writ Appeal filed by the Corporation was dismissed on the ground that Clause (4) of the Settlement clearly provided that as and when vacancy would arise, the workman would be appointed. That being the position, there was no scope for interference with the order of the learned Single Judge.

Learned counsel for the appellant-Corporation and its functionaries submitted that there was no evidence produced by the respondent to show that in 1982 and/or 1989 he approached the Corporation for employment. Even if it is accepted for the sake of argument that he sent representations it is clear that one was filed after three years and the other after 10 years. Significantly, in the representations sent in 1997 and 1998 there was no reference to so-called earlier representation, if any. This itself shows that there was no substance in the plea of respondent No.1 that he had been agitating the matter. In any event, making a representation is not sufficient for filing a belated writ petition. In response, learned counsel for respondent No.1-workman submitted that the High Court had proceeded on equitable premises and no interference was called for.

The factual position as noted above clearly shows that for nearly 2 decades the respondent No.1-workman had remained silent. As rightly pointed out by learned counsel for the appellants even in the representations made in 1997 and 1998 there was no reference to the representations claimed to have been made in 1982 and/or 1989. Even if that would have been made, there was

considerable delay even in making the representations. There is no dispute that mere making of representations cannot justify a belated approach.

Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers 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 opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prasad v. Chief Controller of Imports and Exports (AIR 1970 SC 769). Of course, the discretion has to be exercised judicially and reasonably.

What was stated in this regard by Sir Barnes Peacock in Lindsay Petroleum Company v. Prosper Armstrong Hurd etc. (1874 (5) P.C. 221 at page 239) was approved by this Court in Moon Mills Ltd. v. Industrial Courts (AIR 1967 SC 1450) and Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service (AIR 1969 SC 329). Sir Barnes had stated:

> "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. But in every case, if an argument against relief, which otherwise would be just, if founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. 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."

It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation with Article 32 of the Constitution. It is apparent that what has been stated as regards that Article would apply, a fortiori, to Article 226. It was observed in R.N. Bose v. Union of India (AIR 1970 SC 470) that no relief can be given to the petitioner who without any reasonable explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay.

It was stated in State of M.P. v. Nandlal (AIR 1987 SC

251), that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner

and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

It has been pointed out by this Court in a number of cases that representations would not be adequate explanation to take care of delay. This was first stated in K.V. Raja Lakshmiah v. State of Mysore (AIR 1967 SC 973). This was re- iterated in R.N. Bose's case (supra) by stating that there is a limit to the time which can be considered reasonable for making representations and if the Government had turned down one representation the making of another representation on similar lines will not explain the delay. In State of Orissa v. P. Samantaraj (AIR 1976 SC 1617) making of repeated representations was not regarded as satisfactory explanation of the delay. In that case the petition had been dismissed for delay alone. (See State of Orissa v. Arun Kumar (AIR 1976 SC 1639 also).

Additionally, whether Clause (4) of the Settlement was applicable to respondent No.1-workman could not have been adjudicated in a writ petition. In fact, the High Court has not even given any finding in that regard. As has been observed by this Court in ONGC Ltd. and Anr. v. Shyamal Chandra Bhowmik (2006 (1) SCC 337) in cases of this nature a writ petition is not the proper remedy.

Looked at from any angle, respondent No.1-workman was not entitled to any relief. The orders of the learned Single Judge and the Division Bench cannot be maintained and are set aside.

The appeal is allowed but in the circumstances with no order as to costs.