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LACHES: DENIAL OF JUDICIAL RELIEF UNDER ARTICLES 32 and 226

By

Alice Jacob*

It is a fundamental principle of administration of justice that the courts will aid those who are vigilant and who do not sleep on their rights. In other words, the courts would refuse to exercise their jurisdiction in favour of a party who moves them after considerable delay and is otherwise guilty of laches. This principle embodied in the equity's maxim "Delay defeats equity" and in the statutes of limitations is intended to discourage unreasonable delay in presentation of claims and enforcement of rights. Claims which have been delayed unreasonably in being brought forward may be rejected. However, this rule is not absolute. The laches which will disqualify for relief must be "unreasonable" under the particular circumstances. Delays which have caused no harm to the other party to the proceedings may not be considered such "unreasonable" delays. Only if the delay has changed the situation so that such late enforcement of rights will be unfair, will it disentitle the party to relief. This, of course, requires

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* LL.M. (Delhi); LL.M., J.S.D. (Yale), Research Professor, The Indian Law Institute, New Delhi-1.

exercise of sound judicial discretion. It is proposed to examine in this paper the approach of our higher judiciary, the Supreme Court and the High Courts towards the problem of laches in the exercise of their writ jurisdiction under articles 32 and 226 respectively.

Article 32: Enforcement of Fundamental Rights

Article 32 empowers the Supreme Court to issue directions or orders or writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of fundamental rights. Further, the right to move the Supreme Court for enforcement of fundamental rights has been made a guaranteed right. In the context of laches vis-a-vis writ petitions under article 32, the relevant questions which arise for consideration are:- (i) whether any time-limit at all can be imposed on article 32 petitions and (ii) whether the Supreme Court would apply by analogy the provisions of the Indian Limitation Act appropriate to the facts of the case or any other limit.

These issues came up for judicial scrutiny for the first time in Tilokchand Motichand v. H.B. Munshi.[1] The facts were:- The Assistant Collector of Sales Tax gave a refund of a certain amount of sales tax paid by the petitioners with the direction that the refund should be passed on to the customers and receipts be produced before the officer. The petitioner, however, did not fulfil the condition and consequently the amount was forfeited to the state under s. 21(4) of the Bombay Sales Tax Act, 1953. The petitioner challenged the order of forfeiture under article 226 of the Constitution on the basis that the order

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1. (1970)25 S.T.C. 289.

of forfeiture was without authority of law in that it violated articles 19(1)(g) and 265 of the Constitution. The Single Judge dismissed the writ petition. On appeal the Division Bench dismissed it without examining the merits of the contention that the order was without authority of law. The petitioner did not thereafter take the matter in appeal to the Supreme Court. When the Collector attached the petitioner's properties, the petitioner paid the amount in instalments in 1959 and 1960.

Subsequently in 1963 the Gujarat High Court had upheld the validity of S. 12A(4) of the Bombay Sales Tax Act, 1946, corresponding to S.21(4) of the Act of 1953. On appeal the Supreme Court in Kantilal Babulal and Brothers v. H.C. Patel[2] held in 1967 that S. 12A(4) of the Act of 1946 violated article 19(1)(f) inasmuch as it did not lay down any procedure for ascertaining whether in fact the dealer concerned had collected any amount from the purchasers. On coming to know of the Supreme Court decision in the Kantilal case, the petitioners in 1968 filed a writ petition under article 32 for quashing the order of forfeiture passed in 1958. What prompted the petitioners to come to the Supreme Court directly under article 32 nearly ten years after their futile attempts in the High Court, was the fact that the law was declared unconstitutional in a subsequent decision by the Supreme Court. The main issue before the Supreme Court in the instant case was whether any period of limitation could be specified for writ petitions under article 32.

The Court by majority rejected the petition. The issue produced sharp differences of opinion among the Judges who constituted the Bench. Justices Bachawat and Mitter thought that in the context of the facts in the instant

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2. (1968)21 S.T.C. 174.

case, the money was not paid under "mistake of law" but under coercion and applied the analogy of the statute of limitation. The normal remedy by way of a suit for recovery of money paid under coercion is three years from the date of payment. As the petition was filed three years after the date of payment of the tax they would dismiss the petition. In the words of Justice Bachawat:

> Where the remedy in a writ application under article 32 or article 226 corresponds to a remedy in an ordinary suit and the latter remedy is subject to the bar of a statute of limitation, the court in its writ jurisdiction acts by analogy to the statute, adopts the statute as its own rule of procedure and in the absence of special circumstances imposes the same limitation on the summary remedy in the writ jurisdiction. 3

Similar in vein were the observations of Justice Mitter:

> While not holding that the limitation Act applies in terms, I am of the view that ordinarily the period fixed by the Limitation Act should be taken to be a <u>true measure</u> of the time within which a person can be allowed to raise a plea successfully under article 32 of the Constitution. 4 (emphasis added).

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3. (1970)25 S.T.C. 289 at 304.

4. <u>Ibid.</u> at 314.

Justice Sikri (as he then was) though against the enforcement of stale claims was disposed to the view that the period of limitation for entertaining writ petitions should normally be one year.

> I favour one year because this court should not be approached lightly and competent legal advice should be taken and pros and cons carefully weighed before coming to this court. 5

He would allow the petition as in his view the payment was made under "mistake of law" and the petitioner came within six months of the discovery of the mistake, namely, the date of the subsequent decision of the Supreme Court.

Justice Hegde, however, took the view that laches should not be applied for a petition under article 32.

> I am firmly of the view that a relief asked for under article 32 cannot be refused on the ground of laches. The provisions of the Limitation Act have no relevance either directly or indirectly to proceedings under article 32. Considerations which are relevant in proceedings under article 226 are wholly out of place in a proceeding like the one before us. 6

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5. Id. at 298.

6. Id. at 319.

Justice Hegde reiterated that the power of the court under article 32 is not discretionary and that anyone aggrieved by the violation of any of his fundamental rights had a right to come to the Court. But he did not decide the petition exclusively on the ground of laches. He held that even assuming that the period of limitation under article 32 was the same as under article 226, the petitioner was entitled to the relief because he came to the Supreme Court soon after the discovery of mistake of law.

Chief Justice Hidayatullah felt that the Supreme Court and the High Courts should not deny relief under articles 32 and 226 by applying the statute of limitation. The courts should adopt a flexible approach and examine the facts of each case to see whether laches should disqualify the claim or not.

> The question is one of discreion for this court to follow from case to case. There is no lower limit and there is no upper limit. A case may be brought within the Limitation Act by reason of some article but this court need not necessarily give the total time to the litigant to move this court under article 32. Similarly in a suitable case this court may entertain such a petition even after a lapse of time. It will all depend on what the breach of the fundamental right and the remedy claimed are and how the delay arose. 7

Applying these principles to the instant case, the Chief Justice held that the petitioner was guilty of laches which disentitled him to the relief under article 32. There was no question of mistake of law on the part of the petitioners.

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7. Id. at 295.

In his view the petitioners should have pursued the remedy up to the Supreme Court and should not be allowed to take advantage of a later Supreme Court decision favourable to him. The petitioner's lack of knowledge of the correct ground of law at the time he challenged the administrative action in the High Court could not absolve him from the guilt of laches in agitating his rights.

Consequently the majority rejected the petition on the ground of delay. The correct approach seems to be the one adopted by Chief Justice Hidayatullah who would not be bound down by the analogy of the statute of limitations. No upper or lower limit can be prescribed for article 32 petitions. It is a matter to be left to the sound exercise of judicial direction. The overriding principle should be that stale claims should not be allowed to be agitated to the detriment of rights which have come into existence in the period of interrgnum when the aggrieved party slept over his rights. Though article 32 is itself a guaranteed right, it could not be contended that the Supreme Court does not have the discretion to deny relief. Undoubtedly article 32 guarantees the right to approach the Supreme Court but that does not restrict the Court's discretion to grant relief. One of the considerations relevant for the exercise of such discretion is laches.

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In Rabindra Nath v. Union of India, the counsel for the petitioners urged the Supreme Court fora a review of the decision in Trilokchand and Motichand case. In the instant case the petitioners, Assistant Commissioners of Income Tax, challenged under article 32 the changes made in the Seniority List of Income Tax Officers Class I Grade II in 1953 as a result

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8. A.I.R. 1970 S.C. 470.

of change in 1952 seniority rules as violative of articles 14 and 16. The respondents contended that petition should be dismissed on the basis that there had been gross delay in filing the petition namely, 15 years after the 1952 Rules were promulgated. The petitioners, however, argued that the Court had no discretion and could not dismiss the petition under article 32 on the basis of delay and requested the court to reconsider their decision in the Trilokchand case. The Bench consisted of five judges of whom three had delivered separate opinions in the Trilokchand case (Chief Justice Hidayatullah, and Justices Sikri and Mitter). Justice Sikri delivering the opinion of the Court in the Rabindra Nath case rejected the demand for reconsideration of the Trilokchand case in these words:

> /A/fter carefully considering the matter, we are of the view that no relief should be given to petitioners who without any reasonable explanation, approach this Court under article 32 of the Constitution after inordinate delay.... It is said that article 32 is itself a guaranteed right. So it is, but it does not follow from this that it was the intention of the Constitution makers that the court should discard all principles and grant relief in petitions filed after inordinate delay. 9

The Court did not condone the delay for the reasons that it did not want to disturb the rights which accrued to the respondents in the interval and also that it did not consider the explanation for the delay justifiable.

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9. Ibid. at 478.

These two cases establish that unreasonable laches will disentitle a party to relief under article 32. As article 32 is a guaranteed right and the Constitution does not prescribe any time-limit for filing petitions under the article, a strict application of the analogy of statute of limitation may not be justified. Either the Court may adopt a case by case approach to examine the question of laches; or the Court in the exercise of its rule-making powers under article 145(1)(c) of theConstitution may make rules specifying the time within which applications to the Court are to be entered under article 32.

(ii) Article 226: Emforcement of fundamental rights and other rights

The power of the High Courts to give relief under article 226 is a discretionary power. This is specially true in the case of a power to issue writs in the nature of mandamus. Among the several matters which the High Courts rightly take into consideration in the exercise of that discretion is the delay made by the aggrieved party in seeking this special remedy and what excuse there is for it. Delay respecting writ petitions can be of two types: (1) delay which falls short of period of limitation prescribed for challenging the right infringed in the ordinary courts by the normal procedure and (2) delay which goes beyond such prescribed period of limitation. What has been the attitude of our higher judiciary towards laches in claiming relief under article 226?

In Madhya Pradesh v. Bhailal Bhai [10] the petitioners filed a writ petition under article 226 for refund of the tax paid after a subsequent

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10. (1964) 15 S.T.C. 450(S.C.). See also Kerala v. Aluminium Industries Ltd. (1965) 16 S.T.C. 689.

judicial decision declaring the law ultra vires. Some of the petitioners applied for refund within three years of the decision but others later than three years. Applying the analogy of the statute of limitations which stipulated a time-limit of three years for a suit for recovery of money paid under mistake of law, the High Court of Madhya Pradesh ordered refund of tax paid for those petitioners who came to the court within three years after the discovery of mistake of law (later judicial decision) and denied relief to those who exceeded the time-limit of three years in filing the petition under article 226. Refusing to interfere with the exercise of discretion by the High Court, the Supreme Court held that:

> [T]hat the provisions of the Limitation Act do not as such apply to the granting of relief under article 226. It appears to us however that the maximum period fixed by the Legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under article 226 can be measured... The period of limitation prescribed for recovery of money paid by mistake under the Limitation Act is three years from the date when the mistake is known.

As the mistake involved in the instant case was mistake of law, the period of three years was to be computed from the date of the subsequent decision. But the court was fixing only the upper limit of limitation and that it was not incumbent upon it to entertain cases even within the three years limitation period, if there is unreasonable delay otherwise. The court observed:

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11. (1964)15 S.T.C. 450 at 460-61.

> The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable. 12

In the Bhailal case the law was involved the unconstitutionality of the law. But there may be cases wherein without declaring the law ultra vires, the subsequent judicial decision may construe the relevant statute in a manner favourable to the petitioner. In Challa Appa Rao & Co. v. Commercial Tax Officer,[13] the petitioner filed a writ petition in the High Court of Andhra Pradesh for refund of money mistakenly paid as tax because the Supreme Court in another case interpreted the law in favour of him. The court made a distinction between situations where the refund was claimed on the ground of the law being unconstitutional and those where it was claimed on the basis of misconstruction of the law by an assessing authority which mistake came to light by a supervening Supreme Court decision. The instant case fell under the latter category and hence the high Court applied the limitation period of six months which it considered to be reasonable for filing writ petitions and as the petition was filed six months after the Supreme Court decision, the High Court would not entertain the petition. The reason for the distinction made out by the High Court was that the relevant statute, namely, the Andhra Pradesh General Sales Tax Act had a provision in it according to which no suit could be filed to set aside or modify or question the validity of any

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12. Ibid.

13. [1970] 25 S.T.C. 256.

assessment under the Act or the rules made therein. In the light of such an exclusionary provision, a suit could only be filed if the law under which tax was collected was itself ultra vires but not to challenge the incorrect interpretation of the law by the assessing authority. The analogy of the limitation period under the Limitation Act provided for suits could not be applied to the instant writ petition because the statute had barred a suit to challenge mistake of law committed by the assessing authority.

In keeping with the distinction adopted in the Challa Appa Rao case, the Andhra Pradesh High Court in Caltex (India Ltd. v. Asstt. Commr. of Sales Tax[14] held that the period of limitation for claiming refund of tax under article 226 on the discovery of mistake of law resulting from the subsequent judicial declaration of the invalidity of rule or statute is three years from the date of the discovery of the mistake. It is not material that this period is more than three years from the date of payment of the tax.

The question that arises in the cases dealing with claims for refund of taxes on the discovery of mistake of law is that the aggrieved party should pursue his remedies diligently without waiting to take advantage of a subsequent judicial decision favourable to him. But under the various sales tax laws, the department is empowered to reopen cases within the stipulated time consequent upon a judicial decision favourable to it. In that situation, it would be unjust to deny that right to the assessee in the context of another judicial decision favourable to him. Therefore, so long as the law allows the department to reopen assessment proceedings, that right should be given to the assessee also and the period of limitation should be the same for both subject to the rider that the reasonableness of the delay is

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14. (1971)28 S.T.C. 558.

to be measured from the date of the supervening judicial decision provided the decision occurred within the above limitation period. 15

In the application of laches as a ground for denial of relief under article 226 have the High Courts made any distinction between the enforcement of fundamental rights and other rights? The Calcutta High Court in Metal Corp. of India v. Union of India,[16] has held that the court should be cautious in denying relief to the petitioner on the ground of laches when the complaint is one of violation of fundamental rights. The fact situation was that a writ petition was filed in the Supreme Court under article 32 to challenge the validity of the Metal Corporation of India (Acquisition of Undertaking) Act, 1966, on 23 February, 1967 which was dismissed in limine on 20 March, 1968. After a delay of 18 months, the aggrieved party moved the High Court under article 226. The Court did not consider the delay to be unreasonable as to disentitle the party to relief.

In Sathya Kumar v. State,[17] the Andhra Pradesh High Court observed that a writ petition under article 226 should not be rejected simply on the ground of delay if the order complained of is manifestly erroneous, or without jurisdiction or affects fundamental rights. Negativing the basis of delay for refusing relief the court issued mandamus to consider the cases of the petitioners for the purpose of readjusting the common seniority list of sub-judges in the State of Andhra Pradesh. The court also condoned the time spent in proper departmental representations in assessing the delay.

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15. See S.N. Jain, Law of Sales Tax, 1970 Annual Survey of Indian Law 141 at 171.

16. A.I.R. 1970 Cal. 15.

17. A.I.R. 1971 S.C. 320.

In I.M. Patel v. Ahmedabad Municipality[18] after a lapse of seven years the petitioners who were tenants of the land under acquisition challenged the award of compensation made in 1960. The petition was contested on the basis of gross delay by the state. The court found on the facts of the case that the petitioners entered into possession of the land in question after the award was made and that whatever rights they had to possession of the land was subject to the land acquisition proceedings. The court observed that the petitioners had no fundamental rights to enforce and found that the petitioners were guilty of inordinate delay which showed indifference to their rights and consequently denied relief. The court's observation that no breach of the fundamental rights was made out in the instant case and hence delay could not be justified might lead to the inference that the court might have condoned the delay if infringement of fundamental rights were involved.

The Supreme Court, however, did not draw any distinction between the enforcement of fundamental rights and other rights under article 226 with reference to laches. In Durga Prasad v. Chief Controller[19] the appellant, an applicant for an import licence in 1959 was granted licence only for a fraction of the amount applied for. He exhausted the administrative remedies available to him on the basis of which a supplementary licence was given to him in 1962. Unsatisfied with the order, in 1964 he moved the High Court for a mandamus or a direction to the respondents to issue the licence for the balance. The High Court dismissed it in limine and on appeal the Supreme Court dismissed it on the ground of "great delay." Justice Sikri (as he then was) on behalf of Justice Hegde and himself held

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18. A.I.R. 1971 Guj. 145.

19. A.I.R. 1970 S.C. 769.

held that the delay between 1962 and 1964 had not been explained by the appellant and even if his fundamental rights were involved the matter was discretionary with the High Court. The High Court could refuse relief to the appellant on the ground of laches, especially in a fluid area such as international trade where the enforcement of state claims would defeat the ends of fairness and justice. In such matters it was essential that the aggrieved person should approach the High Court with utmost expedition.

In Kamini Kumar v. State of West Bengal[20] which involved an appeal arising out of the dismissal of a writ petition by the Calcutta High Court challenging the order of dismissal from service of the appellant on the ground of delay, it was contended that the writ petition was filed within three years of the order of dismissal(in 1951 - the order of dismissal was passed and writ petition was filed in 1953) and a suit if filed for a declaration that the dismissal was wrongful would have been within time. Hence by applying the analogy of the statute of limitations, the court was asked to condone the delay. The Supreme Court, however, held that the analogy of the statute of limitations could not be applied in a case such as the present one in which disputed questions of fact had to be decided before the order of dismissal of a public servant could be declared to be void. Stating that the public servant should have come to the High Court at the "earliest reasonably possible opportunity", the court considered the delay unreasonable even though it was less than the period of limitation prescribed for a civil action.

In terms of time sequence Bhailal Bhai case which came on appeal to the Supreme Court from article 226 petition involving a claim of refund for tax illegally paid was prior to

20. A.I.R. 1972 S.C. 2060.

the Triloki Singh case which involved similar facts and a writ petition directly under article 32. One point of view is that the principles relevant for article 226 proceedings have no relevance to article 32 proceedings because the former is a discretionary remedy whereas the latter is not and further still it is a guaranteed fundamental right. A party aggrieved by the infringement of fundamental rights should not be denied relief under article 32 on the ground of laches. According to this view the Supreme Court is gradually circumscribing its powers under article 32 as it did earlier in Daryao[21] (application of re judicata to article 32 petitions) and Ujjam Bhai[22] cases (denial of relief under article 32 for mistakes of law committed by quasi-judicial authorities). The Supreme Court in the Triloki Singh case has in effect curtailed the width and amplitude of article 32. However, it may not be possible to subscribe to this view point. True, under article 32(1) the right to move the Supreme Court by appropriate proceedings for the enforcement of fundamental rights is guaranteed. But clause (2) only says that the Court shall have power to issue directions or orders or writs for the enforcement of fundamental rights. It is an enabling provision and the Court is not bound to give relief in all instances of infringement of fundamental rights discarding certain cardianl principles of administration of justice to ensure fairness and justice. Laches is a limitation the courts have put on themselves because the remedies provided by the writs are extra-ordinary remedies. A party aggrieved by the violation of his rights, fundamental or otherwise, should move the courts with utmost expedition. Claims agitated after unreasonable delay should not be enforced. Otherwise enforcement of stale claims will prove detrimental to

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21. A.I.R. 1961 S.C. 1457.

22. A.I.R. 1962 S.C. 1621.

the rights which have sprung into existence during the interval. Further, inordinate delay gives rise to a presumption of abandonment of the right to move the courts. This presumption may of course be rebutted by the parties to the satisfaction of the courts by explaining the delay.

The cases dealing with delay or laches, however, do not indicate any coherent pattern. There are cases in which it has been held that delay may be a ground for refusing relief but in which delay has been condoned; the court indicated its displeasure by making no order as to costs. Should definite time-limit be prescribed by rules of the Supreme Court and High Court for moving the courts under articles 32 and 226? In this connection it may be pointed out that in England the rules of court prescribe a time-limit of six months for certiorari, though the court has discretion to extend it. 23 In India also rules of the Supreme Court and the High Courts may provde a time-limit with discretion to the courts to extend it in suitable circumstances. This would enable the courts to exercise their discretion to examine the reasonableness of the delay in the cases coming before them.

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23. R.S.C. 1965 Order 53 rule 2; Order 3 rule 5, Wade, Administrative Law (1971) 139.