IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 951 of 2022

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GUJARAT RAJYA KAMDAR SENA

Versus

GOVERNMENT OF GUJARAT

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Appearance:
MR M V PATEL (7602) for the Petitioner(s) No. 1
MR DHARMESH DEVNANI, ASSISTANT GOVERNMENT PLEADER for the Respondent(s) No. 1,2,3

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CORAM: **HONOURABLE THE CHIEF JUSTICE MR. JUSTICE ARAVIND KUMAR**
and
HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI

Date : 20/01/2022

ORAL ORDER

(PER : HONOURABLE THE CHIEF JUSTICE MR. JUSTICE ARAVIND KUMAR)

1. Present petition under Article 226 of the Constitution of India has been filed by the petitioner union which is said to be a union registered under the Trade Unions Act, 1926 comprising of 18 employees of respondent No.3 as its *bona fide* members and espousing the cause on their behalf. The following prayers have been sought for:

> *"6(i) YOUR LORDSHIPS may be pleased to issue a writ in the nature of mandamus or any other appropriate writ, order or direction directing the act of the respondent No.2 in recording settlement on 02/03/2012 under section 12(3) of the Act is illegal, improper, arbitrary and contrary to the provision of the Act.*
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> *(ii) YOUR LORDSHIP may be pleased to issue a writ in the nature of mandamus or any other appropriate writ, order or direction directing the act of the respondent No.2 in rejecting the dispute of wage revision raised by the petitioner is illegal, improper,*

arbitrary and contrary to the provision of the Industrial Disputes Act, 1947.

(iii) YOUR LORDSHIP be further pleased to quash and set aside the settlement dated 02/03/2012 and the letter/order dated 07/11/2012 and 12/02/2016 passed by the respondent No.2."

2. We have heard Mr. M.V. Patel, learned counsel appearing for the petitioner union.

3. The thrust of the arguments canvassed by Mr. M.V. Patel, learned counsel appearing for the petitioner union can be crystallised as under:

(i) The settlement dated 2.3.2012 arrived at between one set of workmen and the management under Section 12(3) of the Industrial Disputes Act, 1947 is not beneficial to the members of the petitioner union and despite petitioner union seeking to get impleaded as parties in the conciliation proceedings has been turned down illegally by the Assistant Labour Commissioner / Conciliation Officer;

(ii) The rejection of the application by not permitting the petitioner union to participate in the conciliation proceedings is illegal and in violation of principles of natural justice;

(iii) The Assistant Labour Commissioner has no power to reject the reference and it is only the appropriate government which can reject the reference;

By way of alternate argument, Mr. M.V. Patel, learned counsel for petitioner has contended that benefits flowing from the settlement which has been arrived at between one set of workmen and respondent No.3 management is not being extended to the petitioner or in other words, petitioner is being singled doubt and, as such, it is prejudicial to the interest of the petitioner.

4. At the outset, it requires to be noticed that there was a dispute between the workmen and respondent No.3 union which resulted in the matter landing before the Conciliation Officer. As contemplated under sub-section (2) of Section 12 of the Act, the Conciliation Officer has made all efforts to bring about a settlement between the warring groups viz. workmen on the one hand and respondent No.3 management on the other hand. Such negotiation and conciliation held between the workmen and respondent No.3 union resulted in a settlement being arrived at and an agreement was entered into in the conciliation proceedings on 2.3.2012 under sub-section (3) of Section 12 of the Act. There is a presumption that the settlement arrived at in the course of conciliation proceedings is just and fair; it becomes binding on all the parties to the dispute as well as to the other workmen in the establishment to which the dispute relates and all other persons who may be even subsequently employed in the establishment. As held by the Hon'ble Apex Court in the

case of *ITC Limited Workers Welfare Association vs. Management of ITC Limited*, reported in *AIR 2002 SC 937*, an individual employee cannot seek to wriggle out of such settlement merely because it does not suit him.

5. It is a trite law that the settlement is a product of collective bargaining as held by the Hon'ble Apex Court in the case of *ITC* referred to herein *supra*. Such settlement can only be ignored in exceptional circumstances viz. if it is demonstrably unjust, unfair or the result of *mala fides* such as corrupt motives on the part of those who were instrumental in effecting the settlement. Collective bargaining is always resorted to by the trade union with the management in order to gain maximum benefits to the workmen and to avoid any hostile atmosphere at the place of work or otherwise to ensure there is cordial relation with the management and in the best interest of both management and management. In such circumstances, it is always the trade union which represents large workmen which would bargain in the conciliation process with the management which is termed as collective bargaining for the purposes of getting the best out of such collective bargaining. Keeping this principle in mind, when we turn our attention to the facts on hand, it would clearly emerge therefrom, that out of 140 permanent workmen of respondent No.3 management, 124 workmen who

represented the large workforce of respondent No.3 entered into a settlement under Section 12(3) of the Act after collective bargaining. When the conciliation process was going on, petitioner union (with only 13 members) which claims to be a registered trade union (as to when it was registered there is no material on record) attempted to join into the conciliation proceedings and as such made an application on 1.3.2012 for getting itself impleaded and to participate in the conciliation proceedings. This application was rejected by the office of the Assistant Labour Commissioner as could be seen from the reply communication dated 12.3.2012 addressed to the Vice President of the petitioner union by the office of the Assistant Labour Commissioner. Thus, petitioner was well aware of its claim having been turned down and yet it did not raise its little finger. In other words, it kept quite and did not take any steps to challenge the said rejection or challenge the settlement agreement which came to be entered into on 2.3.2012 pursuant to such negotiation. However, in order to revive the dead cause of action, the petitioner waked up from its slumber and submitted a representation on 26.8.2015 (Annexure-G) to the Assistant Labour Commissioner with a prayer to re-open the Conciliation Case No.26 of 2012 under which proceedings the agreement dated 2.3.2012 entered into between respondent No.3 management and majority of the workmen had been entered into under Section 12(3) of the Act. Again it did not pursue the said application.

Thus, the inaction on the part of the petitioner union from 12.3.2012 to 26.8.2015 has remained unexplained in the petition. In other words, there is no reason or cause shown for such delay. Thereafter, Special Civil Application No.1639 of 2016 came to be filed, wherein the settlement dated 2.3.2012 arrived at under Section 12(3) of the Act was not questioned. However, without pursuing the said petition, petitioner withdrew the same and again the petitioner union went into deep sleep or which can be construed as comma. Yet again after a lapse of 5 ½ years, they have filed the present petition, i.e. on 23.1.2022. There is no explanation whatsoever offered in the petition for not questioning the settlement agreement dated 2.3.2012 immediately thereafter. The Hon'ble Apex Court in the case of *K.V. Rajalakshmiah Setty vs. State of Mysore*, reported in *AIR 1967 SC 993*, has held that merely because the petitioner had espoused its cause with superior authority by writing letters frequently to Government to do something could not rely upon the memorials or representations to rest upon their oars if they were really discriminated against others. In other words, the delay of 13 years in the said case which had obtained was not held as not acceptable. The Hon'ble Apex Court in the case of *Karnataka Power Corporation Limited vs. K. Thangappan*, reported in *(2006) 4 SCC 322*, has held that the delay not satisfactorily explained would itself be a ground for not exercising the extraordinary jurisdiction. In fact, in the said case, petitioner therein

sought for employment in terms of the settlement arrived at under Section 12 of the Act after a delay of 20 years claiming that he is also entitled to the benefits flowing from such settlement. Both on the grounds of delay and merits relief was declined. The Hon'ble Apex Court dismissed the writ petition viz. on the ground of delay and laches as well as on the ground of the terms of settlement arrived at would not enure to the benefit of the party who did not exercise his rights flowing from them said settlement. It was held:

> *"6. 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.*
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> *7. 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:*
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> > *"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."*

8. 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.

9. 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.

10. 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).”

6. Keeping the aforesaid authoritative principles laid down by the Hon'ble Apex Court when the facts on hand or examined at the cost of repetition, it would clearly go to show that there is delay in approaching this Court in three stages viz. ***firstly*** when the application came to be filed by the petitioner union for being impleaded in the conciliation proceedings was rejected on 12.3.2012 till submitting a fresh representation for reopening on 26.8.2015. No explanation much less cause has been shown as to what steps the petitioner took for these three years. ***secondly***, on submitting the representation on 26.8.2015 (Annexure-G) till filing of Special Civil Application No.1639 of 2016 as to what are the steps were taken by the petitioner union and as to why it did not pursue its grievance is also not forthcoming. ***thirdly***, on withdrawing Special Civil Application No.1639 of 2016 on 6.9.2019 till the date of filing of the present petition, i.e. on 23.1.2022, no explanation is forthcoming as to why the petitioner had gone into hibernation. Thus, unexplained delay and laches on the part of the petitioner itself is suffice for this Court not to exercise the extraordinary jurisdiction vested in this Court. The principle of delay defeats equity is squarely applicable to the facts on hand. That apart, even on merits, we find that in the process of collective bargaining made during the course of conciliation proceedings it has resulted in a settlement being arrived at by 128 members (majority

workmen of respondent No.3) who were all the members of the petitioner union itself and they had tendered resignation on 7.2.2012 and it was unanimously approved in the general meeting of the union held on 7.2.2012. As such, the collective bargaining which has been done by majority workmen of respondent No.3 being in the best interest of the workmen, it cannot be gainsaid that petitioner union would be espousing the cause of the larger group of workmen or the greater interest of the workmen having been sacrificed by these 128 workmen so as to contend that it would come within the four corners of such settlement not being reasonable or is to be termed as *mala fide* or it did not cater to the interest of the workmen. Said contention deserves to be rejected and accordingly it stands rejected.

7. Hence, for the myriad reasons aforestated, we are of the considered view that this is not a fit case for even issuance of notice and at the threshold, the petition stands dismissed.

(ARAVIND KUMAR,CJ)

(ASHUTOSH J. SHASTRI, J)

Bharat