**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**M/s Prakriti Enterprises**

**vs.**

**The Chief Commissioner of CGST and Central Excise And Anr**

CIVIL WRIT JURISDICTION CASE NO. 13976 OF 2019

18 June, 2025

**(Hon'ble Mr. Justice P.B. Bajanthri and Hon'ble Mr. Justice S.B.PD. Singh)**

## Issue for Consideration

Whether a writ petition under Article 226 of the Constitution is maintainable against the adjudication order dated 31.10.2014 when the petitioner did not avail the statutory appellate remedy under Section 86 of the Finance Act, 1994 within the prescribed limitation and approached the Court after an unexplained delay of more than five years.

## Headnotes

Constitution of India – Article 226 – Writ Petition – Maintainability – Delay and Laches – Availability of Statutory Remedy – Held, discretionary jurisdiction cannot be invoked to bypass statutory appeal – Petition dismissed due to delay of five years and availability of alternate remedy. Paras 6–10: Petitioner failed to file appeal under Section 86 of the Finance Act, 1994 against adjudication order dated 31.10.2014. Writ petition filed in 2019 was dismissed for gross delay and laches without sufficient justification.

Finance Act, 1994 – s. 86 – Statutory Appeal – Limitation – Mandatory Three-Month Limitation Period – Held, failure to file appeal within limitation renders adjudication order final – Writ not maintainable. Paras 5–7: Court emphasized that the petitioner was required to file statutory appeal within three months, which was not done. Delay not condoned.

Judicial Discipline – Precedents on Alternative Remedy – Writ Jurisdiction Not Substitute for Appeal – Relied upon Thansingh Nathmal, Glaxo Smith Kline,

Titaghur Paper Mills. Paras 7–9: Court reiterated settled law that existence of statutory remedy ordinarily bars writ unless exceptional circumstances shown.

Delay and Laches – Inordinate Delay in Filing Writ – No Explanation Given – Held, equity not in favour of indolent litigant – Petition dismissed. Para 9: Referring to Mrinmoy Maity v. Chhanda Koley and Tridip Kumar Dingal v. State of W.B., court reiterated that extraordinary delay disentitles a litigant to discretionary relief.

Pending Matters Before Supreme Court – No Automatic Relief – Mere Pendency of SLP Not Ground for Entertaining Time-Barred Writ. Para 10: Reference to pending SLP No. 5392/2025 (GMR Airport Infrastructure Ltd.) held inconsequential where delay was otherwise unexplained.

## Case Law Cited

Thansingh Nathmal v. Supdt. of Taxes, AIR 1964 SC 1419; Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433; Glaxo Smith Kline Consumer Health Care Ltd. v. Asst. Commr. (CT), (2020) 19 SCC 681; Mrinmoy Maity v. Chhanda Koley, 2024 SCC OnLine SC 551; Tridip Kumar Dingal v. State of W.B., (2009) 1 SCC 768

## List of Acts

Finance Act, 1994; Constitution of India

## List of Keywords

Delay and laches; alternative remedy; service tax; adjudication order; writ jurisdiction; Article 226; Finance Act; limitation; statutory remedy; inordinate delay.

## Case Arising From

Adjudication order dated 31.10.2014 served on 03.11.2014, not appealed under Section 86, challenged by writ after five years.

**Appearances for Parties**

**For the Petitioner/s:** Mr. D.V.Pathy, Sr. Advocate; Mr. Hiresh Karan, Advocate; Mr. Vivekanand, Advocate; Mr. Sadashiv Tiwari, Advocate; Ms. Shivani Dewalla, Advocate; Ms. Prachi Pallavi, Advocate

**For the Respondent/s:** Dr. K.N. Singh, ASG I; Mr. Anshuman Singh, Sr. SC, CGST and CX; Mr. Shivaditya Dhari Sinha, Advocate; Mr. Alok Kumar, Advocate; Mr. Girijish Kumar, Advocate

**For Bank:** Mr. K.K. Sinha, Advocate; Mr. Din Bandhu Singh, Advocate

**Headnotes prepared by the Reporter:** Akanksha Malviya

**Judgment/Order of the Hon'ble Patna High Court**

# IN THE HIGH COURT OF JUDICATURE AT PATNA
**Civil Writ Jurisdiction Case No.13976 of 2019**

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M/s Prakriti Enterprises 462, Nehru Nagar, Patliputra, Patna-800013, through its Partner Shri Shailendra Kumar Sharma, S/o Chandrika Sharma, Resident of 462, Nehru Nagar, P.O. and P.S. Patliputra, Patna-800013

... Petitioner/s

Versus

1. The Chief Commissioner of CGST and Central Excise 1st Floor, Annexy Central Revenue Building, Birchand Patel Path, Patna-800001
2. The Principal Commissioner of CGST and Central Excise, Patna-I, 3rd Floor, Annexy Central Revenue Building, Birchand Patel Path, Patna-800001
3. The Asst/Dy. Commissioner of CGST and Central Excise, Patna (Central) Division, Bank Road, Gandhi Maidan, Patna-800001
4. The State of Bihar through Principal Secretary, Department of Education, New Secretariat, Patna
5. The State Project Director, Bihar Education Project Council, Shishka Bhawan, Saidpur, Patna-800004
6. The Branch Manager State Bank of India, Kidwaipuri Branch, Kidwaipuri, Patna-800001 (IFC SBIN 0004142)

... Respondent/s

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**Appearance :**

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|---|---|---|
| For the Petitioner/s | : | Mr. D.V.Pathy, Sr. Advocate |
| | | Mr. Hiresh Karan, Advocate |
| | | Mr. Vivekanand, Advocate |
| | | Mr. Sadashiv Tiwari, Advocate |
| | | Ms. Shivani Dewalla, Advocate |
| | | Ms. Prachi Pallavi, Advocate |
| For the Respondent/s | : | Dr. K.N. Singh, ASG I |
| | | Mr. Anshuman Singh, Sr. SC, CGST and CX |
| | | Mr. Shivaditya Dhari Sinha, Advocate |
| | | Mr. Alok Kumar, Advocate |
| | | Mr. Girijish Kumar, Advocate |
| For Bank | : | Mr. K.K. Sinha, Advocate |
| | : | Mr. Din Bandhu Singh, Advocate |

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**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI**
**and**
**HONOURABLE MR. JUSTICE S. B. PD. SINGH**
**ORAL JUDGMENT**
**(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)**

**Date : 18-06-2025**

In the instant writ petition, petitioner has prayed for the following reliefs :

*"(a) That the Demand cum Show Cause Notice, vide C. No V (39)10- Audit/ Inv/2010/ Part-I /*

*3182, dated 23/04/2013, (contained in Annexure – 3) be quashed, as being illegal and without Jurisdiction.*

*(b) That the Notice, dated 10/05/2019, U/s 87 of the Finance Act, 1994 (contained in Annexure – 5), issued to the State Bank of India, S.K. Puri Branch (IFSC SBIN 0004142), vide C. No. V(30)321/ ARC/ CGST/ PD/ 2019/ 1767, initiating a proceeding for attaching the Petitioner's Bank (Current) Account No. 34963114466 and Bank (Current) Account No. 10636207919, be quashed as being illegal, without jurisdiction and is violation of fundamental right as well as constitutional right and is also in violation of Principle of Natural Justice.*

*(c) That any other lawful relief/s might be allowed for which petitioner is entitled."*

**2.** Petitioner is a firm providing certain goods and services insofar as Centrally Sponsored Schemes Services provided therein by the State government. There was an agreement on 19.06.2007 between the Bihar Shiksha Pariyojna Parishad (BSPP), the Society and the petitioner – M/s Prakriti Enterprises. They have executed service with goods as is evident from Paragraph No. 1 of the agreement read with various Clauses like Duration of Contract, Working Model, Payment Terms, Ownership/Transfer, Amendments, Counterparts, Force Majure, Arbitration and General. The contract was for a period of three years. The same was executed and completed in the year 2011 – 2012, in other words, for the period from 2007-2008 (from October, 2007 to March, 2008) to year 2011-2012. For the execution of the aforementioned agreement, the petitioner has

failed to register his firm, resultantly, he has failed to calculate service tax and remit in the concerned respondents/department. In this regard, Demand cum Show Cause Notice was issued on 23.04.2013. The petitioner had submitted his explanation/reply on 25.03.2014 which was not satisfied by the respondents/department, thus proceeded to pass final order on 31.10.2014 and it was communicated on 03.11.2014 to the petitioner whereas the petitioner has not invoked remedy of appeal before the appellate authority under Section 86 of the Finance Act, 1994 (hereinafter referred to as 'the Act, 1994'). Thus, the present writ petition was filed on 19.06.2019.

**3.** Learned counsel for the petitioner submitted that there is violation of Section 73 (4-B) of the Act, 1994 and it is in respect of limitation and it consisting of two folds *namely* 12 months and 5 years period limitation. Insofar as 5 years period is concerned, if there is any misrepresentation/fraud etc., the 5 years could be taken into consideration by the department. It is also submitted that identical matters are pending consideration before the Hon'ble Supreme Court in the case of ***Union of India and Others Vs. GMR Airport Infrastructure Ltd.*** in **Special Leave to Appeal (C) No. 5392/2025**, therefore, matter is required to be adjudicated after disposal of the Hon'ble Supreme Court decision cited *supra*.

**4.** *Per contra,* learned counsel for the respondents raised preliminary objection that there is delay and laches on the part of the petitioner insofar as assailing the show cause notice dated 23.04.2013 and consequently order dated 31.10.2014 and further actions only in the year 2019. It is also submitted that final order was communicated to the petitioner on 03.11.2014. That apart, he has failed to invoke the remedy of appeal before the appellate tribunal under Section 86 of the Act, 1994. On the other hand, learned counsel for the petitioner while replying to the aforementioned contention of the respondents submitted that question of delay and laches would not arise in view of violation of Section 73 (4-B) of the Act, 1994. It is further submitted that order dated 31.10.2014 has not been communicated to the petitioner. This Court under Article 226 can ignore the delay and laches in the light of the facts of the case in hand.

**5.** Heard learned counsels for the respective parties.

**6.** Preliminary issue raised on behalf of the respondents is that writ petition is barred by limitation and laches. Time and again Courts have held that delay and laches is required to be examined by the Writ Courts and so also in not exhausting alternative statutory remedy. In the present case, cause of action accrued to the petitioner on 31.10.2014 whereas the writ petition

was filed in the month of June, 2019. Petitioner had a statutory remedy of appeal before the appellate tribunal under Section 86 of the Act, 1994 and the same has not been exhausted. It is necessary to reproduce Section 86 of the Act, 1994 and it reads as under :

> ***"86. Appeals to Appellate Tribunal*** *– (1) Any assessee aggrieved by an order passed by a 10[Commissioner] of Central Excise under [section 73 section 83A [xxxx]], or an order passed by a [Commissioner] of Central Excise (Appeals) under section 85, may appeal to the Appellate Tribunal against such order "within three months of the date of receipt of the order".*
>
> *[(1A) (i) The Board may, by notification in the Official Gazette, constitute such Committees as may be necessary for the purposes of this Chapter.*
>
> *(ii) Every Committee constituted under clause (i) shall consist of two Chief Commissioners of Central Excise or two Commissioners of Central Excise, as the case may be.]*
>
> *[(2)The [Committee of Chief Commissioners of Central Excise] may, if it objects to any order passed by the Commissioner of Central Excise under [section 73 or section 83A [xxxx]], direct the Commissioner of Central Excise to appeal to the Appellate Tribunal against the order.*
>
> *[Provided that where the Committee of Chief Commissioners of Central Excise differs in its opinion against the order of the Commissioner of Central Excise, it shall state the point or points on which it differs and make a reference to the Board which shall, after considering the facts of the order, if is of the opinion that the order passed by the Commissioner of Central Excise is not legal or proper, direct the Commissioner of Central Excise to appeal to the Appellate Tribunal against the order.*
>
> *[(2A) The Committee of Commissioners may, if he objects to any order passed by the Commissioner of Central Excise (Appeals) under section 85, direct any Central Excise Officer to appeal on his behalf to the Appellate Tribunal against the order:]*
>
> *[Provided that where the Committee of Commissioners differs in its opinion against the order of the Commissioner of Central Excise (Appeals), it shall state the point or points on which it differs and make a reference to the jurisdictional Chief Commissioner who shall, after*

*considering the facts of the order, if is of the opinion that the order passed by the Commissioner of Central Excise (Appeals) is not legal or proper, direct any Central Excise Officer to appeal to the Appellate Tribunal against the order.*

*Explanation.— For the purposes of this sub-section, "jurisdictional Chief Commissioner" means the Chief Commissioner having jurisdiction over the concerned adjudicating authority in the matter.]]*

*[(3) "Every appeal under sub-section (2) or sub-section (2A) shall be filed within four months from the date on which the order sought to be appealed against is received by the Committee of Chief Commissioners or, as the case may be, the Committee of Commissioners.";]*

*(4) [The Commissioner of Central Excise or 15[any Central Excise Officer subordinate to him] or the assessee, as the case may be, on receipt of of a notice that an appeal against the order of the Commissioner of Central Excise or the Commissioner of Central Excise (Appeals) has been preferred under sub-section (1) or sub-section (2) or sub-section (2A)] by the other party may, notwithstanding that he may not have appealed against such order or any part thereof, within forty-five days of the receipt of the notice, file a memorandum of cross-objections, verified in the prescribed manner, against any part of the order of the 1[Commissioner] of Central Excise or the [Commissioner] of Central Excise (Appeals), and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).*

*(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-Section 1 or Sub Section 3 or Sub Section 4, if it is satisfied that there was sufficient cause for not presenting it within that period.*

*(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, irrespective of the date of of demand of service tax and interest or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of, —*

*a) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;*

*b) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than five lakh*

*rupees but not exceeding fifty lakh rupees, five thousand rupees;*

*c) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees:*

*Provided that no fee shall be payable in the case of an appeal referred to in sub-section (2) or sub-section (2A) or a memorandum of cross-objections referred to in sub-section (4).*

*(6A) Every application made before the Appellate Tribunal, —*

*a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or*

*b) for restoration of an appeal or an application, shall be accompanied by a fee of five hundred rupees :*

*Provided that no such fee shall be payable in the case of an application filed by the Commissioner of Central Excise or Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be under this sub-section.] (7) Subject to the provisions of this Chapter, in hearing the appeal and making orders under this section, the Appellate Tribunal shall exercise the same powers and follow the same procedure as it exercise and follows in hearing the appeals and making orders under the 4[Central Excise Act, 1944] (1 of 1944).”*

**7.** Statutory appeal is required to be filed within the time limit stipulated. To overcome the filing of appeal, the present writ petition has been filed after about five years from the date of cause of action accrued to the petitioner. In this regard, it is necessary to take note of Hon’ble Supreme Court decision *namely* ***State of Jammu and Kashmir V/s. R.K.Zalpuri and others*** reported in **AIR 2016 SC 3006,** in Paragraph No. 20 it is held as under:

***“20.*** *Having stated thus, it is useful to refer to a passage from City and Industrial Development Corporation V/s.Dosu Aardeshir Bhiwandiwala and others {(2009) 1 SCC 168}, wherein this Court while dwelling upon*

> *jurisdiction under Article 226 of the Constitution, has expressed thus:-*
>
> *"The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:*
>
> *(a) Adjudication of writ petition involves any complex and disputed question of facts and whether they can be satisfactorily resolved;*
>
> *(b) The petition reveals all material facts;*
>
> *(c) The petitioner has any alternative or effective remedy for the resolution of the dispute;*
>
> *(d) Person invoking the jurisdiction is guilty of unexplained delay and laches;*
>
> *(e) Ex facie barred by any laws of limitation;*
>
> *(f) Grant of relief is against public policy or barred by any valid law; and host of other factor*s"
>
> **Underline Supplied**

**8.** Identical views have been taken by the Hon'ble Supreme Court in yet another decision insofar as in not exhausting appeal remedy and to overcome the action in not filing statutory appeal within the time limit and filing of the writ petition. Such litigation are not entertainable. The Hon'ble Supreme Court in the case of ***Assistant Commissioner (CT) LTU, Kakinada and Ors. vs. M/s Glaxo Smith Kline Consumer Health Care Limited*** reported in **(2020) 19 SCC 681,** in Paragraph Nos. 1, 14, 15 and 16, it is held as under :

> ***"1.*** *Leave granted. The moot question in this appeal emanating from the judgment and order dated 19-11-2018 in Glaxo Smith Kline Consumer Healthcare Ltd. v. CCT [Glaxo Smith Kline Consumer Healthcare Ltd. v. CCT, 2018 SCC OnLine Hyd 1985] passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh (for short "the High Court") is : Whether the High Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India ought entertain a challenge to the assessment order on the sole ground that*

*the statutory remedy of appeal against that order stood foreclosed by the law of limitation?*

***14.*** *In the backdrop of these facts, the central question is : Whether the High Court ought to have entertained the writ petition filed by the respondent? As regards the power of the High Court to issue directions, orders or writs in exercise of its jurisdiction under Article 226 of the Constitution of India, the same is no more res integra. Even though the High Court can entertain a writ petition against any order or direction passed/action taken by the State under Article 226 of the Constitution, it ought not to do so as a matter of course when the aggrieved person could have availed of an effective alternative remedy in the manner prescribed by law (see Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad [Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad, AIR 1969 SC 556] and also Nivedita Sharma v. COAI [Nivedita Sharma v. COAI, (2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947] ). In Thansingh Nathmal v. Supt. of Taxes [Thansingh Nathmal v. Supt. of Taxes, AIR 1964 SC 1419] , the Constitution Bench of this Court made it amply clear that although the power of the High Court under Article 226 of the Constitution is very wide, the Court must exercise self-imposed restraint and not entertain the writ petition, if an alternative effective remedy is available to the aggrieved person. In para 7, the Court observed thus : (Thansingh Nathmal case [Thansingh Nathmal v. Supt. of Taxes, AIR 1964 SC 1419] , AIR p. 1423)*

> *"7. Against the order of the Commissioner an order for reference could have been claimed if the appellants satisfied the Commissioner or the High Court that a question of law arose out of the order. But the procedure provided by the Act to invoke the jurisdiction of the High Court was bypassed, the appellants moved the High Court challenging the competence of the Provincial Legislature to extend the concept of sale, and invoked the extraordinary jurisdiction of the High Court under Article 226 and sought to reopen the decision of the taxing authorities on question of fact. The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is*

*not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary : it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."*

*(emphasis supplied)*

***15.*** *We may usefully refer to the exposition of this Court in Titaghur Paper Mills Co. Ltd. v. State of Orissa [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] , wherein it is observed that where a right or liability is created by a statute, which gives a special remedy for enforcing it, the remedy provided by that*

*statute must only be availed of. In para 11, the Court observed thus : (SCC pp. 440-41)*

> *"11. Under the scheme of the Act, there is a hierarchy of authorities before which the petitioners can get adequate redress against the wrongful acts complained of. The petitioners have the right to prefer an appeal before the Prescribed Authority under sub-section (1) of Section 23 of the Act. If the petitioners are dissatisfied with the decision in the appeal, they can prefer a further appeal to the Tribunal under sub-section (3) of Section 23 of the Act, and then ask for a case to be stated upon a question of law for the opinion of the High Court under Section 24 of the Act. The Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226 of the Constitution. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in Wolverhampton New Waterworks Co. v. Hawkesford [Wolverhampton New Waterworks Co. v. Hawkesford, (1859) 6 CBNS 336, 356 : 141 ER 486] in the following passage:*
>
> *'There are three classes of cases in which a liability may be established founded upon statute. ... But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it.... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the*

*course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.'*

*The rule laid down in this passage was approved by the House of Lords in Neville v. London Express Newspaper Ltd. [Neville v. London Express Newspaper Ltd., 1919 AC 368 (HL)] and has been reaffirmed by the Privy Council in Attorney General of Trinidad & Tobago v. Gordon Grant & Co. Ltd. [Attorney General of Trinidad & Tobago v. Gordon Grant & Co. Ltd., 1935 AC 532 (PC)] and Secy. of State v. Mask & Co. [Secy. of State v. Mask & Co., 1940 SCC OnLine PC 10 : AIR 1940 PC 105] It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine."*

*(emphasis supplied)*

*In the subsequent decision in Mafatlal Industries Ltd. v. Union of India [Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536] , this Court went on to observe that an Act cannot bar and curtail remedy under Article 226 or 32 of the Constitution. The Court, however, added a word of caution and expounded that the Constitutional Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise its jurisdiction consistent with the provisions of the enactment. To put it differently, the fact that the High Court has wide jurisdiction under Article 226 of the Constitution, does not mean that it can disregard the substantive provisions of a statute and pass orders which can be settled only through a mechanism prescribed by the statute.*

***16.*** *Indubitably, the powers of the High Court under Article 226 of the Constitution are wide, but certainly*

*not wider than the plenary powers bestowed on this Court under Article 142 of the Constitution. Article 142 is a conglomeration and repository of the entire judicial powers under the Constitution, to do complete justice to the parties. Even while exercising that power, this Court is required to bear in mind the legislative intent and not to render the statutory provision otiose. In a recent decision of a three-Judge Bench of this Court in ONGC v. Gujarat Energy Transmission Corpn. Ltd. [ONGC v. Gujarat Energy Transmission Corpn. Ltd., (2017) 5 SCC 42 : (2017) 3 SCC (Civ) 47] , the statutory appeal filed before this Court was barred by 71 days and the maximum time-limit for condoning the delay in terms of Section 125 of the Electricity Act, 2003 was only 60 days. In other words, the appeal was presented beyond the condonable period of 60 days. As a result, this Court could not have condoned the delay of 71 days. Notably, while admitting the appeal, the Court had condoned the delay in filing the appeal. However, at the final hearing of the appeal, an objection regarding appeal being barred by limitation was allowed to be raised being a jurisdictional issue and while dealing with the said objection, the Court referred to the decisions in Singh Enterprises v. CCE [Singh Enterprises v. CCE, (2008) 3 SCC 70] , CCE v. Hongo (India) (P) Ltd. [CCE v. Hongo (India) (P) Ltd., (2009) 5 SCC 791] , Chhattisgarh SEB v. CERC [Chhattisgarh SEB v. CERC, (2010) 5 SCC 23] and Suryachakra Power Corpn. Ltd. v. Electricity Deptt. [Suryachakra Power Corpn. Ltd. v. Electricity Deptt., (2016) 16 SCC 152 : (2017) 5 SCC (Civ) 761] and concluded that Section 5 of the Limitation Act, 1963 cannot be invoked by the Court for maintaining an appeal beyond maximum prescribed period in Section 125 of the Electricity Act.*

In the case of ***Mrinmoy Maity vs. Chhanda Koley and Others*** reported in **2024 SCC OnLine SC 551,** in Paragraph Nos. 9, 10, 11, the Hon'ble Supreme Court has held as under :

***9.*** *Having heard rival contentions raised and on perusal of the facts obtained in the present case, we are of the considered view that writ petitioner ought to have been non-suited or in other words writ petition ought to have been dismissed on the ground of delay and latches itself. An applicant who approaches the court belatedly or in other*

*words sleeps over his rights for a considerable period of time, wakes up from his deep slumber ought not to be granted the extraordinary relief by the writ courts. This Court time and again has held that delay defeats equity. Delay or latches is one of the factors which should be born in mind by the High Court while exercising discretionary powers under Article 226 of the Constitution of India. In a given case, the High Court may refuse to invoke its extraordinary powers if laxity on the part of the applicant to assert his right has allowed the cause of action to drift away and attempts are made subsequently to rekindle the lapsed cause of action.*

***10.*** *The discretion to be exercised would be with care and caution. If the delay which has occasioned in approaching the writ court is explained which would appeal to the conscience of the court, in such circumstances it cannot be gainsaid by the contesting party that for all times to come the delay is not to be condoned. There may be myriad circumstances which gives rise to the invoking of the extraordinary jurisdiction and it all depends on facts and circumstances of each case, same cannot be described in a straight jacket formula with mathematical precision. The ultimate discretion to be exercised by the writ court depends upon the facts that it has to travel or the terrain in which the facts have travelled.*

***11.*** *For filing of a writ petition, there is no doubt that no fixed period of limitation is prescribed. However, when the extraordinary jurisdiction of the writ court is invoked, it has to be seen as to whether within a reasonable time same has been invoked and even submitting of memorials would not revive the dead cause of action or resurrect the cause of action which has had a natural death. In such circumstances on the ground of delay and latches alone, the appeal ought to be dismissed or the applicant ought to be non-suited. If it is found that the writ petitioner is guilty of delay and latches, the High Court ought to dismiss the petition on that sole ground itself, in as much as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own wrong. It is true that there cannot be any waiver of fundamental right but while exercising discretionary jurisdiction under Article 226, the High Court will have to necessarily take into consideration the delay and latches on the part of the applicant in approaching a writ court. This Court in the case of Tridip Kumar Dingal v. State of W.B., (2009) 1 SCC 768 has held to the following effect:*

*"56. We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.*

*57. If the petitioner wants to invoke jurisdiction of a writ court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhume matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime (vide State of M.P. v. Bhailal Bhai, [AIR 1964 SC 1006 : (1964) 6 SCR 261], Moon Mills Ltd. v. Industrial Court, [AIR 1967 SC 1450] and Bhoop Singh v. Union of India, [(1992) 3 SCC 136 : (1992) 21 ATC 675 : (1992) 2 SCR 969]). This principle applies even in case of an infringement of fundamental right (vide Tilokchand Motichand v. H.B. Munshi, [(1969) 1 SCC 110], Durga Prashad v. Chief Controller of Imports & Exports, [(1969) 1 SCC 185] and Rabindranath Bose v. Union of India, [(1970) 1 SCC 84]).*

*58. There is no upper limit and there is no lower limit as to when a person can approach a court. The question is one of discretion and has to be decided on the basis of facts before the court depending on and varying from case to case. It will depend upon what the breach of fundamental right and the*

*remedy claimed are and when and how the delay arose."*

In the light of these facts and circumstances, on the preliminary issue relating to maintainability of the present writ petition, on the ground of delay and laches, the petitioner has not made out a case so as to interfere with the impugned action of the respondents. Accordingly, the present writ petition is liable to be dismissed.

**9.** The Hon'ble Supreme Court in the case of ***Tamil Nadu Cements Corporation Limited vs. Micro and Small Enterprises Facilitation Council and Another*** reported in **(2025) 4 SCC 1,** in paragraph Nos. 54 to 63 analyzed maintainability of writ petition where alternative remedy or exhaustion of remedies, while it is held that Writ Court, despite existence of alternative remedy can exercise jurisdiction in case of (i) violation of principles of natural justice; (ii) order in proceeding without jurisdiction; (iii) the *vires* of the Act is challenged; or (iv) remedy under Statute is onerous or burdensome in character, like where party is required to deposit full amount of tax before filing appeal. In the present case, if the petitioner had approached within a reasonable period of time, we could have examined the aforementioned principles. On the other hand, the petitioner could not explained undue delay and laches for about five years in filing.

Therefore, on the ground of laches, petitioner has not made out a case.

**10.** Learned counsel for the petitioner submitted that identical matter is pending consideration before the Hon'ble Supreme Court insofar as interpretation of Section 73 (4-B) of the Act, 1994 is concerned, the same would not assist in the present case in view of the fact that petitioner has slept over the matter for about five years, therefore, it is not appropriate to defer this matter till disposal of the aforementioned decision which is required to be decided on merits. On the other hand, we are proceeding to decide the present writ petition on the preliminary issue of delay and laches on the part of the petitioner. Hence, present CWJC No. 13976 of 2019 stands dismissed.

**(P. B. Bajanthri, J)**

**(S. B. Pd. Singh, J)**

GAURAV S./-

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| **AFR/NAFR** | **AFR** |
| **CAV DATE** | |
| **Uploading Date** | 24.06.2025 |
| **Transmission Date** | |