

28th April, 2023

THE LIMITATION PERIOD ASPECT IN FILING OF WRIT PETITIONS



Amit Meharia

Managing Partner, MCO Legals

LLB (Hons) King's
College London, Solicitor
(Supreme Court of England & Wales)

Expertise:

Corporate Due Diligence &
Corporate/Commercial Arbitration

✉ amit.m@mcolegals.co.in



Abinash Agarwal

Senior Associate, MCO Legals

LLB., Faculty of Law,
University of Delhi, B.Com(Hons.)
University of Delhi

Expertise:

Civil Litigation, Commercial
Arbitration, Legal Due Diligence,
Legal Compliances

✉ abinash.a@mcolegals.co.in

Introduction

1. The Limitation Act, 1963 provides for the period of limitation within which applications, suits, appeals, etc. may be filed before a court.
 2. When the period specified under the said Act for filing of specific classes of appeals and applications expires, the court may either condone such delay on reasonable cause being shown or dismiss the case for being barred by limitation. Evidently, the court in certain scenarios, such as institution of suits does not have power to condone the delay. Thus, the limitation period plays a huge role in the grant of relief to a litigant.
 3. While the limitation period clearly applies to the categories of cases mentioned in the Limitation Act, there is no limitation period expressly provided for writ petitions, either under the said Act or under the Constitution of India.
 4. Articles 32 and 226 of the Constitution specify the writ remedies that any person may seek when there is a violation of a fundamental right. A writ petition to such effect may be filed before the Supreme Court or the High Courts.
 5. Due to lack of a specific and statutory limitation period in case of writ petitions, the issue that arises is whether a limitation period is applicable to writ petitions and the effect on grant of relief when the writ petition is filed at a delayed stage.
3. The Bombay High Court in *Laxmikant Sambhaji Khade vs. The State of Maharashtra* (8th February, 2021) held that whenever no specific period of limitation is prescribed, a party has to approach the High Court within a reasonable period which has to be construed in the facts and circumstances of each case.
 4. The High Court may consider the parameters based on justice, equity and good conscience and adopt these principles for its guidance. Under normal circumstances, a party must be expected to act expeditiously.

The Limitation Act does not apply to writ petitions

1. In *Smt. Sudama Devi vs. Commissioner, AIR 1983 SC 653*, the Supreme Court clearly held that no period of limitation may be prescribed under the rules or by the High Courts in filing of writ petitions since a fundamental right of an individual is in question in such cases. In fact, it clarified that the argument of laches may be adjudicated upon by the courts but that must not be founded upon the law of limitation.
2. Calcutta High Court in *Purna Chandra Mondal vs. State of West Bengal 2018 SCC OnLine Cal 7366* held that the Limitation Act does not apply to writ petitions hence even a litigant who approaches the court much later than when the cause of action arose is entitled to his rightful dues.
3. In *Laxmikant Sambhaji (supra)*, the Court held that while strictly no period of limitation is prescribed under the Limitation Act or otherwise for the exercise of inherent powers under Article 226 of the Constitution of India, yet there must not be inordinate delay, laches or negligence on the part of the litigant in approaching the courts.

When no limitation period is prescribed

1. In *B.S. Sheshagiri Setty vs. State of Karnataka (2016) 2 SCC 123*, the Supreme Court while dealing with a review petition, observed that when the limitation period to exercise certain remedy is not specified then it must be exercised within a reasonable time-frame.
2. The Court also clarified that in cases of possibility of miscarriage of justice being caused to a litigant, a technical or pedantic approach should not be taken by the courts.

4. The above decisions show that courts have altogether extricated the scope of limitation period in writ petitions but have also applied the proviso, i.e., of petitions being filed within a reasonable time. However, relief cannot be denied on the ground of delay in filing the writ petition, unlike appeals, applications, etc. when courts have the power to deny relief for the reason of such appeal, application being barred by limitation.
 5. In such context, it is important to understand what a reasonable time is.
 6. *Veerayeeammal vs. Seeniammal (2002) 1 SCC 134*, Supreme Court defined reasonable time to mean so much time as is necessary. It was opined that there should be no inordinate delay and that the claimant should act as soon as the circumstances allow him to. “Reasonable time depends on the facts and circumstances of the case.”
 7. Interestingly, courts have also advised parties to apply the theory of reasonable time in counter-context as well, i.e., when a litigant approaches a writ court seeking an order on a representation, the litigant must also wait for a reasonable time before seeking a remedy.
 8. The High Court of Orissa in *Madan Mohan Sahu vs. Collector, Angul (30th March, 2021)* addressed such issue and advised the litigants to give time to the respondents to examine representations except in urgent cases where waiting for the response would cause irreparable injury or damage.
 9. Thus, the writ courts have used their discretion to grant relief in writ petitions despite any delay in filing such petitions on the basis of compelling facts and the principles of justice and equity and balance of convenience.
3. In *Mrs. R.K. Jodhka vs Director of Education*, (8th February, 2017) the High Court of Delhi dismissed the writ petitions as they had been filed after a period of three years since the cause of action arose.
 4. Reliance also placed on *State of Orissa vs Mamta Mohanty (2011) 3 SCC 436* wherein Supreme Court held that the doctrine of limitation, rooted as it is in public policy, can lead to the dismissal of a writ petitions at the initial stage on the ground of delay and laches.
 5. In *S. Vaidyanathan v. Government of Tamil Nadu*, (11th December, 2018) the Madras High Court dismissed the writ appeal on grounds of delay and laches.
 6. In *P.S. Sadasivasamy v. State of Tamil Nadu (1975) 1 SCC 152*- While the writ court can intervene at any time, should there be any undue delay in filing a writ petition, the court can refuse to exercise its extraordinary powers under Art. 226 and the petition should be dismissed *in limine*.
 7. In *New Delhi Municipal Council v. Pan Singh, 2007 9 SCC 278*- Discretionary jurisdiction cannot be exercised after the passage of such a long time, 17 years in this case.

Conclusion

The other view

1. A second school of thought is that while the Limitation Act does not apply to writ petitions, the doctrine of limitation or the underlying principle of limitation does apply, and writ petitions are liable to be dismissed at the initial stage on the ground of delay and laches.
2. In *Maharashtra State Road Transport Corporation vs. Balwant Regular Motor Service AIR 1969 SC 329* the Supreme Court held that the doctrine of laches would apply to writ petitions. Laches and neglect on the part of the litigant seeking the remedy may render the relief unjust. However, if the relief were to be denied merely on the ground of delay where otherwise the relief would have been granted, then the delay must be tested on two principles, the length of the delay and the nature of the acts done during the interval.
1. In writ petitions or even in applications outside the scope of writ petitions where no period of limitation has been specified by any statute, the court determines the issue based on its discretionary power on the assessment of the compliance of “reasonable time” mandate in the facts and circumstances of each case.
2. However, it is imperative to mention that courts have taken into account the aspect of delay, laches and negligence on the part of a litigant who has not exercised the option of availing a remedy with due promptness without sufficient cause.
3. But the Courts have been also seized of the issue that delay in filing Writ Petitions for enforcement of Fundamental rights should not be constructed as the sole ground for dismissal of the Writ Petition, as can be done with Appeals, applications, etc. The very premise of non-applicability of Limitation Act or prescribing a period of limitation to petition under Article 32 or 226 of the Constitution is to uphold the mandate of Courts as “Guardians” of the Fundamental rights of the citizens.