

(1993) 04 GUJ CK 0006

In the Gujarat High Court

Case No : Special Civil Application No. 1617 of 1991

Ashoka Mills Ltd., Ahmedabad

APPELLANT

Vs

Nagindas Parsottamdas Modi and Another

RESPONDENT

Date of Decision : 17-04-1993

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (1994) 2 GLR 1073 : (1994) 1 LLJ 655

Hon'ble Judges : J.M. Panchal, J;A.P. Ravane, J

Bench : Division Bench

Judgement

Panchal, J.—Whether provisions of S. 5 of the Limitation Act, 1963 can be made applicable to an application filed under S. 79(1) read with Sub-sec 3(a) of the Bombay Industrial Relations Act, 1946 (for short "the Act") for deciding dispute regarding propriety or legality of an order passed by an employer acting or purporting to act under the Standing Orders as postulated by Sub-clause (i) of Clause (a) of para A of Sub-section (1) of S. 78 of the Act before the Labour Court constituted under S. 9 of the Act is the question which arises for consideration in this petition filed under Arts. 226 and 227 of the Constitution of India.

2. The facts giving rise to the petition may now be stated : The petitioner is a Cotton Textile Industry and is governed by the provisions of the Act. The respondent-workman was working as a permanent Patiwalla in Mechanic Department of the petitioner - undertaking since December 1, 1982. It is the case of the petitioner that the respondent-workman reported for duty on January 18, 1983 in the day shift and while leaving the Mills premises, his person was searched at the Gate and he was found clandestinely carrying four pieces of Gun Metal concealed in the shoes put on by him. According to the petitioner, respondent-workman made a confession about his guilt and tendered voluntary resignation in presence of the officers of the petitioner-undertaking. It is the case of the petitioner that the resignation tendered by the petitioners that the

resignation tendered by the respondent-workman was accepted by the petitioner and the acceptance was communicated to the respondent-workman and thus, the respondent-workman was relieved from service on January 18, 1983. The case of the respondent-workman was that he was forced to submit his resignation and his services were illegally terminated on January 18, 1983.

3. The respondent-workman addressed a notice dated January 30, 1983 to the petitioner-undertaking. The said notice was replied by the petitioner-undertaking vide its letter dated February 3, 1983. Therefore, the respondent-workman filed T. Application No. 555/83 under S. 79(1) read with Section 78(1)A(a)(i) of the Act on July 16, 1983 alleging that he was forced to submit his resignation and his services were illegally terminated on January 18, 1983. In the premises, the respondent prayed for reinstatement in service with full back wages. The petitioner-undertaking filed written statement on September 14, 1983. The Labour Court, after appreciating the evidence led by the parties, came to the conclusion that the respondent-workman had not tendered resignation voluntarily on January 18, 1983. However, the Labour Court dismissed the application filed by the respondent-workman by judgment and order dated December 27, 1988 holding that the respondent-workman had not given letter or request which is popularly known as "approach letter" as required by S. 42(4) of the Act and, therefore, the application was not maintainable and even if the letter dated January 30, 1983 was treated as "approach letter", the application was not filed within the prescribed time of three months and was barred by limitation.

4. Feeling aggrieved by the aforesaid judgment dismissing the application, respondent-workman filed Appeal (IC) No. 13/89 before the Industrial Court, Ahmedabad. According to the petitioner-undertaking Labour Court had no jurisdiction to enter into merits and record finding on merit after holding that the application filed by the respondent-workman was barred by time and, therefore, being aggrieved by the finding that the respondent-workman had not voluntarily resigned on January 18, 1983, the petitioner-undertaking filed Appeal (IC) No. 15/89 before the Industrial Court, Ahmedabad.

5. As the above referred two appeals were arising from the common judgment and order delivered by the Labour Court in T. Application No. 555/83, the Industrial Court took up both the appeals for hearing together and disposed them of by common judgment and order dated June 21, 1990. The Industrial Court held that the letter dated January 30, 1983 was an approach letter as contemplated by S. 42(4) of the Act. After placing reliance on Full Bench decision of this Court rendered in the case of Mohammedbhikhan Hussainbhai and etc. Vs. The Manager, Chandrabhanu Cinema and Others etc., it held that the Labour Court exercising powers under the Act is a Court and provisions of S. 5 of the Limitation Act, 1963 are applicable to an application filed under S. 79 of the Act. The Industrial Court was of the view that sufficient cause was made out by the respondent-workman workman for condonation of delay in filing application

under S. 79(1) of the Act and with the premises, Industrial Court allowed the appeal filed by the respondent-workman and dismissed the appeal filed by the petitioner-undertaking and further directed the petitioner-undertaking to reinstate the respondent-workman in service with full back wages.

6. It appears that thereafter the petitioner-undertaking filed Review Application (IC) No. 3/90 under S. 95 of the Act against the above referred common judgment and order delivered by the Industrial Court on June 21, 1990. The petitioner-undertaking also made an application to the President, Industrial an application to the President, Industrial an application to the President, Industrial Court praying for a reference of the issues involved in the review application to the Full Bench. The application filed by the petitioner-undertaking seeking a reference of the issues involved in the review application to the Full Bench was disposed of by the President of Industrial Court by order dated November 19, 1990 by observing that such an application should be made to the Industrial Court dealing with the matters. So far as the review application is concerned. Industrial Court dismissed the same by judgment and order dated February 8, 1991.

7. The petitioner-undertaking has challenged legality and propriety of judgment and order dated June 21, 1990 delivered by the Industrial Court, Ahmedabad, in Appeal (IC) No. 13/89 and Appeal (IC) No. 15/89 in this petition filed under Arts. 226 and 227 of the Constitution of India.

8. Mr. V. B. Patel, learned Senior Advocate submitted that Labour Court constituted under S. 9 of the Act and exercising powers under S. 78 of the Act is not a Court within the meaning of the provisions of the Limitation Act, 1963 and as the provisions of S. 5 of the Limitation Act are not applicable to an application instituted under S. 79 of the Act, Industrial Court committed an error apparent on the face of the record in entertaining time barred application. It was submitted that the Labour Court has no jurisdiction to entertain an application which is time-barred and, therefore, the order of the Industrial Court being without jurisdiction requires to be set aside and quashed by this Court in exercise of powers under Art. 227 of the Constitution of India. In support of his submissions, learned counsel placed reliance on the decisions rendered in the cases of (1) Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others, , (2) The Raipur Manufacturing Co. Ltd. Vs. Okhabhai Devrajbhai Patni, , (3) Sakuru Vs. Tanaji, , (4) Ishwarbhai Mulchanddas Modi Vs. Vadnagar Nagrik Coop. Bank Ltd., and (5) Vithaldas Vallabhadas Vaishnav v. Kohinoor Mills Co. Ltd. Bombay 1980 LIC 6 Bom.

9. Shri K. K. Shah, learned counsel for the respondent-workman referred to the preamble of Limitation act, 1908 and submitted that alteration in the preamble of the Limitation Act, 1963 makes it clear that the word "Court" found in the preamble of the Limitation Act, 1908 has been omitted and the words "other proceedings" have been substituted and, therefore, in view of the alteration made in the preamble of the Limitation Act, 1963, provisions of S. 5 of the

Limitation Act, 1963 would be applicable to an application filed before Labour Court under S. 79 of the Act. Learned counsel for the respondent-workman submitted that the "Act" is a special law and, therefore in view of the provisions of S. 29 of the Limitation Act, 1963, provisions of S. 5 of the Limitation Act, 1963 would be applicable to the application instituted before the Labour Court under S. 79 of the Act and the Labour Court would have power to condone the delay in filing the application if sufficient cause was made out. It was further submitted that in Nityanand M. Joshi's case (supra), the Supreme Court has neither referred to the preamble of the limitation Act, 1963, nor referred to S. 29 of the said Act and, therefore, said case be not considered as a decision on the point. In support of his submission that provisions of S. 5 of the Limitation Act, 1963 would be applicable to an application instituted under S. 79(1) of the Act, learned Counsel for the respondent placed reliance on the decisions rendered in the case of (1) Raj Chopra Vs. Shanno Devi and Others, , (2) Mahesh Harilal Khamar Vs. B.N. Narasimhan and Another, , (3) Mohan Vasta Vs. State of Gujarat, , (4) Shaikh M. Hussainbhai v. Manager, Chandrabhanu Cinema, Sardarnagar 1986 (1) GLR (5) Mangu Ram Vs. Municipal Corporation of Delhi, , and, (6) The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma, .

10. In our opinion, Labour Court constituted under S. 9 of the Act and exercising powers u/s 79 of the Act has no jurisdiction to entertain an application for deciding a dispute referred to under sub-clause (i) of Clause (a) of para A of sub-section (1) of S. 78 of the Act if the application is not filed within three months of the arising of the dispute. In Nityanand M. Joshi's case (supra) the appellant therein had filed application against the respondent under S. 33(c)(2) of the Industrial Disputes Act, 1947 for computation in terms of money benefit of holidays and for recovering the amount. The Labour Court dismissed the applications in so far as the claim was for a period beyond three years on the ground that the applications were barred under Art. 137 of the Limitation Act, 1963. While allowing appeals against the judgments of the Labour Court it has been held by the Supreme Court that Art. 137 of the limitation Act, 1963 only contemplates applications to Courts. Reaffirming the view of the Supreme Court expressed in the decision rendered in the case of Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., , it has been held by the Supreme Court in Nityanand M. Joshi's case that the provisions of Limitation Act, 1963 do not apply to applications under S. 33(c)(2) of the Industrial Disputes Act, 1947, as the Labour Court is not a Court within the Indian Limitation Act, 1963.

11. In our view, the ratio laid in Nityanand M. Joshi's case (supra) squarely applies to the facts of the present case. The decision rendered by the Hon'ble Supreme Court with reference to the applications filed under S. 33(c)(2) of the Industrial Disputes Act, 1947 to the Labour Court constituted under the provisions of the Industrial Disputes Act, 1947 would apply with equal force to an application filed under S. 79(1) of the Act to a Labour Court constituted under s. 9 of the Act.

12. In the Raipur Manufacturing Co. Ltd.'s case (supra) the respondent who was due to superannuate on 7th January, 1971 on reaching the age of 60 years, was continued in service by giving extension upto 8th January, 1973. Though the respondent requested the appellant to grant further extension in service, said request was not acceded to by the appellant. After retirement, the respondent for the first time by his letter dated 13th February, 1973 gave notice to the appellant that his age was only 56 years on 8th February, 1973 and his retirement was therefore, null and void and he should be reinstated in service. The appellant did not send any reply to the letter of the respondent. The respondent made an application to the Labour Commissioner on 17th March, 1973 requesting his intervention in the matter, but no compromise was arrived at between the parties and, therefore, the respondent ultimately on 7th June, 1973 filed an application before, the respondent ultimately on 7th June, 1973 filed an application before the Labour Court under S. 79(1) read with S. 78(1)(A)(a)(i) of the Act praying that the order passed by the appellant retiring him from service should be treated as null and void and he should be reinstated in service with all benefits. The respondent had also filed along with application under S. 78(1)(A)(a)(i) of the Act an application for condonation of delay. The appellant resisted the main application on various grounds and raised preliminary objection that the application was barred by time under S. 79(3)(a) of the Act since it was filed more than three months after the arising of the dispute. As far as the application for condonation of delay was concerned, the answer of the appellant was that the Labour Court had no jurisdiction to condone the delay in filing the application under S. 78(1)(A)(a)(i) of the Act. The Labour Court took the view that the application of the respondent under S. 78(1)(A)(a)(i) of the Act. The Labour Court took the view that the application of the respondent under S. 78(1)(A)(a)(i) of the Act was barred under S. 79(3)(a) of the Act, as it was not filed within three months of the arising of the dispute and the Labour Court had no jurisdiction to condone the delay in filing the application and in this view, the Labour Court rejected the application. The appeal filed by the respondent before the Industrial Court also failed. The respondent thereupon preferred a petition in the High Court under Art. 226 of the Constitution of India. The High Court reversed the view taken by the Labour Court and the Industrial Court and held that the application filed by the respondent under S. 78(1)(A)(a)(i) of the Act was within three months of the arising of the dispute and hence it could not be said to be barred under S. 79(3)(a) of the Act. The High Court accordingly set aside the order passed by the Industrial Court and remanded the application to the Labour Court to dispose it of on merits. While setting aside the order passed by the High Court to dispose it of on merits. While setting aside the order passed by the High Court and restoring the order of the Industrial Court rejecting the application of the respondent as barred under S. 79(1)(a) of the Act, the Supreme Court has held as under (para 6) :-

"The relief that he asked for from the Labour Court as well as industrial Court was condonation of delay but so far as this relief is concerned, the Labour Court

had unfortunately no power to condone the delay and hence his request was rejected. We are, therefore, of the view that the High Court was in error in holding that the application made by the respondent under S. 78(1)(a)(i) was within three months of the arising of the dispute and was hence not barred under S. 79(3)(a)".

13. In our view, by implication in the above referred judgment, Supreme court has held that the Labour Court has no power to condone delay if the application is time barred. It done delay if the application is time barred. It is true that the question as to whether Labour Court and Industrial Court constituted under the Act have power to condone delay u/s 5 of the Limitation Act, 1963, has not been specifically raised, nor the same is considered as a question directly arising before it by the Supreme Court. But, it may be said that by necessary implication, the Supreme Court has decided this point also. In the case of Vithaldas Vallabhadas Vaishnav, (supra) the petitioner was employed as a Store-keeper in respondent No. 1 Mill since September 21, 1949 and his services were terminated with effect from October 1, 1973. He approached the employer for reinstatement and addressed notices dated October 4, 1973. October 8, 1973 and October 1, 1973. He approached the employer for reinstatement and addressed notices dated October 4, 1973. He also made an application to the Assistant Commissioner of Labour on November 12, 1973. He then filed application for reinstatement and back wages before the Labour Court on June 4, 1974 u/s 78 of the Act. The employer resisted the said claim on several grounds and one of the grounds was that it was barred by limitation. The issue of limitation was tried as a preliminary issue. The Labour Court held that the application dated June 4, 1974 was beyond three months and fifteen days after the employer was approached and the Labour Court had no power to condone delay. The validity of that order was challenged before the Bombay High court and the Division Bench of the Bombay High Court has held that the reliance placed by the petitioner on Section 5 of the Indian Limitation Act, 1963 for extension of the period of limitation so prescribed u/s 79 of the Act or Rule 53(I) and (2) is misconceived in view of the judgment of the Supreme Court in the case of Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others, . Thus, the Division Bench of the Bombay High Court in the above referred case has also held that the High Court has no power to condone the delay caused in filing application u/s 79 of the Act.

14. In view of the judgment of the Supreme Court in the case of Nityanand v. L. I. C. of India, (supra), we are in agreement with the view expressed by the Division Bench of the Bombay High Court in the case of V. V. Vaishnav. (supra).

15. Therefore, we hold that the Labour Court and for that purpose the Industrial court had no jurisdiction to entertain time barred application. As provisions of Section 5 of the Limitation Act. 1963 were not applicable to an application instituted u/s 79(1) of the Act for deciding the dispute referred to in Sub-clause (i) of Clause (a) of Para A of Sub-section (I) of Section 78 of the Act.

16. In view of our this conclusion, we do not think it necessary to refer to other decision relied on by the learned Senior Advocate Shri V. B. Patel in support of his submission that the provisions of Section 5 of the Limitation Act, 1963 would not apply to an application filed u/s 79(1) of the Act for deciding the dispute referred to u/s 78(1)(A)(a)(i) of the Act.

17. In Shri Raj Chopra's case (supra) Division Bench of the Delhi High Court has held that an application u/s 5 of the Limitation Act to condone the delay in filing application filed u/s 91 of the Punjab Land Revenue Act (17 of 1887) for setting aside the sale, is maintainable by virtue of Section 29(2) of the Limitation Act, as Punjab Land Revenue Act is a special Act. In Mahesh Harilal Khamar Vs. B.N. Narasimhan and Another, , learned single Judge of this Court has held that the delay in filing appeal to the Director of Agricultural Marketing and Rural Finance u/s 27(5) of the Gujarat Agricultural Produce Markets Act (20 of 1964) can be condoned, as provisions of Section 29(2) of the Limitation Act, 1963 are applicable to Gujarat Agricultural Produce Markets Act, which is a special or local law.

18. In Mohan Vasta Vs. State of Gujarat, , Division Bench of this Court has held that the provisions of Clause (a) to proviso to Section 18 of the Land Acquisition Act, 1894 prescribing period of limitation for filing an application for "reference" is a "special Law" within the meaning of Section 29(2) of the Indian Limitation act. 1963 and the provisions of Section 29 of the Limitation Act, 1963 apply to an application for reference u/s 18 of the Land Acquisition Act.

19. In Shaikh H. Hussainbhai's case (supra), Full Bench of this Court has ruled that arbitrator, Labour Court and Industrial Court are Courts for the purpose of Section 10 of the Contempt of Courts Act, 1971 and the High Court can punish the person committing contempt of these authorities.

20. In Mangu Ram Vs. Municipal Corporation of Delhi, . Supreme Court has held that Section 5 of the Limitation Act, 1963 is specifically made applicable by Section 29, Sub-section (2) of the Act and can be availed of for the purpose of extending the period of limitation prescribed by special or local law and provisions of Section 5 of the Limitation act, 1963 are applicable to an application for special leave to appeal filed u/s 417(3) of the Criminal Procedure Code. 1898.

21. In the case of The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma, , Supreme Court has held that Article 137 of Limitation Act, 1963 applies to any petition or application filed under any Act to Civil Court and the petition contemplated by section 16(3) of the Telegraph Act, 1885 to the District Judge is to a Court and therefore, Article 137 of Limitation Act, 1963 applies to such petition.

22. In our opinion; none of the decisions relied on by the learned Counsel for the respondent-workman is applicable to the facts of the present case. On careful reading of the decisions cited by the learned Counsel for the respondent, it

appears that the view expressed by the Supreme Court in the case of Nityanand Joshi, is re-affirmed by the Hon"ble Supreme Court in the case of Kerala State Electricity Board. Trivandrum (supra). The contention that alteration made in the preamble of the Limitation act, 1963 would make provisions of Section 5 of the Limitation Act, 1963 applicable to an application filed u/s 79(1) of the Act, has no substance. As held by the Supreme Court in Nityanand M. Joshi's case, and in the Kerala State Electricity Board's case, alternation in the preamble and omission of the word "Court do not show any intention to make Art. 137 of the Limitation act, 1963 applicable to the proceedings before bodies other than Court such as quasi judicial tribunals and executive bodies. The contention that Nityanand M. Joshi's case should not be followed by this Court because neither the preamble nor Section 29 of the Limitation Act, 1963 are referred to in the said judgment, cannot be accepted. It is well settled that the presumption is that the presumption is that all the relevant aspects relating the case were considered by the Supreme Court and thereafter the decision was rendered.

23. In view of the above discussion, we hold that the provisions of Section 5 of the Limitation Act, 1963 are not applicable to an application filed u/s 79(1) read with Sub-section 3(a) of Section 79 of the Act for deciding the dispute referred to in Sub-clause (i) of Clause (A) of Para A of Sub-section (1) of Section 78 of the Act. In the facts of the present case, according to the respondent-workman, he was forced to submit resignation of January 18, 1983. He had addressed an approach letter on January 30, 1983. Said letter was replied by the petitioner-undertaking vide its letter dated 3-2-1983 and thereafter T. application No. 555 of 1983 u/s 79(1) of the Act was filed on July 16, 1983 i.e., beyond the period of three months prescribed by Section 79(3)(a) of the Act and, therefore, Labour Court and for that purpose Industrial Court had no jurisdiction to entertain the application which was filed beyond the prescribed period of three months. The impugned judgment and order delivered by the Industrial Court is, therefore, liable to set aside and quashed.

24. The contention of Mr. K. K. Shah, that the respondent-workman had filed T. Application for deciding the dispute as to whether change made by the petitioner-undertaking is illegal u/s 78(1)(a)(c) of the Act and, therefore, such an application could have been made within six months of the making of illegal change as required by Section 79(4) of the Act and, therefore, the application was not barred by limitation, has no merits at all. Clause (c) of Para A of Sub-section (1) of Section 78 has reference to a strike lock-out, (closure, stoppage) or any illegal change made under the act. Illegal change contemplated by Clause (c) of the Act has reference to illegal changes as mentioned in Section 46 of the Act. By filing T. Application, the respondent-workman wanted labour Court to decide the dispute regarding propriety or legality of resignation letter dated January 18, 1983, which was accepted by the employer acting or purporting to act under the Standing Orders. Therefore, in our opinion. T. Application filed by the respondent-workman was governed by the provisions of Section 78(1)(a)(i) of the Act and period of limitation for filing such an application was three months

as laid down in Section 79(3)(A) of the Act. The learned counsel for the petitioner has not addressed the court on merits and therefore, we confirm the Court on merits and therefore, we confirm the finding recorded by the Labour Court and the finding recorded by the Labour Court and Industrial Court that the respondent-workman had not voluntarily resigned from service.

25. Learned Senior Advocate appearing for the petitioner - undertaking submitted that in spite of clear decision of the Supreme Court in Nityanand Joshi's case (supra), Industrial Court applied provisions of Section 5 of the Limitation Act, 1963, to the proceedings and condoned delay though there was no application for condonation of delay. According to the learned Counsel, Industrial Court injudiciously and consciously ignored the law laid down by the Supreme Court and clutched at the power by self destructive and arbitrary decision by holding that the Labour Court had power to condone the delay u/s 5 of the Limitation Act and thus, committed contempt of Court and, therefore, appropriate actions should be taken against Industrial Court or in any view of the matter, proper observations should be made in this regard.

26. From the lengthy arguments which were advanced by the learned counsels for parties at the bar and in view of the different judgments rendered by the Supreme Court and other high Courts, in our opinion, this would be at the best a case of wrong interpretation of the provisions of law affecting jurisdiction. It cannot be said that by condoning delay, intention of the Industrial Court was to flout or disobey the decision rendered by the Supreme Court. Therefore, we do not think it proper to accede to the request made by the learned Senior Advocate appearing on behalf of the petitioner-undertaking.

27. Before parting with the case, we may note that a suggestion was made by the Court to the parties to explore possibility of an amicable settlement of disputes between the parties and for that purpose of the midst of the hearing, matter was adjourned. On the adjourned date, the Court was informed by the learned Advocates appearing for the parties that compromise was not possible. However, learned Senior Advocate appearing for the petitioner-undertaking made a statement at the bar that irrespective of the result in the petition, petitioner - undertaking would by an amount of Rs. 40,000/- (Rupees Forty thousand only) to the respondent - workman exgratia. We hope and trust that the statement made at the bar on behalf of the petitioner-undertaking would be honoured and the petitioner-undertaking would make exgratia payment of Rs. 40,000/- (Forty thousand) by way of exgratia payment to the respondent-workman within reasonable time.

28. In the result, petition succeeds. The judgment and order dated June 21, 1990 delivered by the Industrial Court, Ahmedabad in Appeal (IC) No. 13/89 is hereby quashed and set aside. Rule is made absolute. However, in the facts of the case, there shall be no order as to costs. Ad interim relief granted earlier is hereby vacated. Pursuant to the interim order passed by this Court, if any amount is deposited by the petitioner-Mill company with the office of the High

Court, the same shall be refunded to it by the office.