
(2007) 07 OHC CK 0069
In the Orissa High Court

Basantilata Dash

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-07-2007

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19, 21, 22, 28, 3
Limitation Act, 1963 — Section 10, 11, 12, 13, 14

Citation : (2007) CLT 128 Supp : (2007) 2 OLR 297

Hon'ble Judges : Pradip Mohanty, J; I.M. Quddusi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—In the instant matter, the question for consideration before this Court is as to whether the application for setting aside the order of dismissal of any representation/OA for default is maintainable after the prescribed period of limitation alongwith application for condonation of delay in filing the same.

2. The Central Administrative Tribunal, Cuttack Bench, Cuttack, vide impugned order dated 8.11.2005 passed in two M.As. including the OA of the instant petitioner (O.A. No. 262 of 2001), dismissed the application of the petitioner for restoration which was filed after the prescribed period of limitation alongwith an application for condonation of delay on the ground that the Tribunal has no power to entertain the same as it was filed beyond the time stipulated. The Tribunal has placed reliance on the case of Rajayya Bosi Vs. Union of India (UOI) and Others, . There this Court relying on a judgment of Hon'ble Supreme Court rendered in the case of Director, Government of India Vs. General Secretary, Central Government Small-Scale Industries Organisation Employees' Union and Another, has held that the Tribunal has no power to entertain the review application if it is filed beyond the time stipulated. It was also held therein that the provision of Section 29(2) of the Limitation Act, 1963 cannot be pressed into service to decide an application for restoration filed beyond the period of limitation prescribed under Rule 17(i) of the Central Administrative Tribunals

(Procedure) Rules, 1988.

3. At the very outset, it is necessary to mention here that in the instant matter, the application was moved alongwith the application for condonation of delay and was for restoration of the OA and not for review of the judgment. Before proceeding further, it is necessary to peruse the provision of Section 22(3) of the Administrative Tribunals Act, 1985 (in short The Act, 1985") which is reproduced as under:

22. Procedure and powers of Tribunals:

1. XX XX XX XX 2. xx xx xx xx 3. A Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:

(a) xx xx xx xx (b) xx xx xx xx (c) xx xx xx xx (d) xx xx xx xx (e) xx xx xx xx (f) reviewing its decisions;

(g) dismissing a representation for default or deciding it ex pane;

(h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte;

(i) xx xx xx xx.

4. In the Central Administrative Tribunal (Procedure) Rules, 1987, a provision has been made in respect of the application for review in Rule-17 and Clause (1) of the same is relevant which is quoted as under:

17.Application for review-

1. No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed.

However, no such provision has been made in respect of the restoration of the OA/representation, which has been dismissed for default.

5. In case of Rajayya Bosi (supra), the Division Bench of this Court had considered two points i.e. has the Central Administrative Tribunal jurisdiction to condone the delay if the review application is filed beyond the prescribed period of limitation and what is the extent of review power exercisable by the Central Administrative Tribunal under Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1988.

6. Since Rule-17(i) of the C.A.T. Procedure Rules, 1988 lays down that no application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed, the Division Bench in that case has held that there is no dispute that the review application was filed beyond thirty days which was not maintainable.

Since we are not considering the maintainability of the review application filed beyond the period prescribed, the above law is not applicable to the instant case at all.

7. A reference has been made by the Tribunal to the case of Director, Government of India Vs. General Secretary, Central Government Small-Scale Industries Organisation Employees" Union and Another, . Therefore, it is necessary to consider the applicability of that case law to the instant matter.

In that matter, the Industrial Tribunal had given its award against which a writ petition was filed in the Kerala High Court which was dismissed by the learned Single Judge on the ground that the writ petition was not maintainable in view of Section 28 of the Administrative Tribunals Act. Thereafter, the appellant filed an OA before the Central Administrative Tribunal, Ernakulam Bench. The respondent-workmen also filed another OA before the Central Administrative Tribunal. However, the Tribunal held that it had the jurisdiction to entertain the application against an award made by the Industrial Tribunal. The review petition was filed beyond the prescribed period of limitation before the Tribunal. The Tribunal proceeded with the review petition on the basis that the Tribunal would have been inclined to condone the long delay but since the review petition is devoid of substance it did not feel inclined to do so. It considered the matter on merits to the jurisdiction of the Tribunal to deal with the application u/s 19 of the Act, 1985 and held that the Tribunal had jurisdiction to entertain the application against the award made by the Industrial Tribunal. In the above case, the Hon"ble Supreme Court has held that the view of the Central Administrative Tribunal was not in consonance with law laid down by the apex Court in Ajay D. Panalkar Vs. Management of Pune Telecom Department, wherein it was laid down that the Administrative Tribunal constituted under the Administrative Tribunal Act, 1982 has no jurisdiction to adjudicate upon the finding of the Industrial Tribunal. The apex Court allowed the review application which was filed before the Tribunal and set aside the order of the Central Administrative Tribunal and condoned the delay in filing the review application and the judgment passed by the Central Administrative Tribunal in O.A. Nos. 403 of 1989 and 94 of 1990 was set aside.

8. In view of the above mentioned facts, we have no doubt in our mind that the above mentioned case law of the Hon"ble Supreme Court is not applicable to the instant matter at all. Now the above quoted provisions of Section 22 of the Act, 1985 are liable to be considered by which the Tribunal has been vested with the power of a Civil Court under the CPC while trying a suit in respect of the matters, namely, dismissing a representation for default or deciding it ex parte or setting aside any order of dismissal of any representation for default or any order passed by it ex parte (Clauses (g) & (h)).

9. Therefore, while dismissing the representation/OA for default, the Tribunal exercised the power of Civil Court under the CPC vested in it and, therefore, while considering the application for setting aside the order of dismissal of the OA/representation for default, the same is to be exercised in the like manner.

10. While dismissing the case for default and considering the restoration of the same, the provisions of the CPC would be applicable as the Tribunal has not been conferred any other power to pass orders dismissing a case for default or set aside the order of dismissal of the case for default other than the provisions under the Code of Civil Procedure.

11. In the above regard, the provisions of Rules 8 & 9 of Order 9 of the CPC are liable to be perused which are reproduced as under:

8. Procedure where defendant only appears -

Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

9. Decree against plaintiff by default bars fresh suit-

1. Where a suit is wholly or partly dismissed under Rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with suit.

2. xx xx xx xx.

12. This Court is conscious about the law that the Tribunal shall not to bound by the procedure laid down in the CPC but shall be guided by the principles of natural justice and subject to other provisions of the Act, 1985 and of any Rules made by the Central Government, the Tribunal shall have the power to regulate its own procedure including the fixing of places and time of its inquiry and deciding whether to sit in public or private and in the C.A.T. (Procedure) Rules, 1987, Rule 15 provides as under:

15. Action on application for applicant's default-

1. Where on the date fixed for hearing of the application or on any other date to which such hearing may be adjourned, the applicant does not appear when the application is called for hearing, the Tribunal may, in its discretion, either dismiss the application for default or hear and decide it on merit;

2. Where an application has been dismissed for default and the applicant files an application within thirty days from the date of dismissal and satisfied the Tribunal that there was sufficient cause for his non-appearance when the application was called for hearing, the Tribunal shall make an order setting aside the order dismissing the application and restore the same;

Provided, however, where the case was disposed of on merits the decision shall not be reopened except by way of review.

In view of the above, the provision of Rule 15 would be applicable. However, the provision of Rules 8 & 9 of Order 9 of the CPC would also be applicable to the extent which are not contrary to the provisions of the above quoted Rule-15 of the C.A.T. (Procedure) Rules.

13. Therefore, while exercising the powers as are vested on the Civil Court under the CPC while trying a suit, the Tribunal has to follow the provisions of CPC as quoted above. In the case of the applicability of the provisions of the CPC, naturally the provisions of the Limitation Act would also be applicable. Section 5 of the Limitation Act is reproduced as under:

5. Extension of prescribed period in certain cases-

Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908) may be admitted after the prescribed period, if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

14. Further it is a matter of consideration that the Administrative Tribunals Act is a special Act and it is well settled law that in case any provision is made in a special law, the provision of general law contrary to that would not be applicable and the provisions of the special law would prevail over the general law. However, in the instant case, the Act, 1985 is silent on the question of limitation. No specific provision has been made therein for exercise of the powers by the Tribunal dismissing the case for default or restoring the same to its original number. Therefore, Section 5 of the Limitation Act would be fully applicable while exercising the powers vested in a Civil Court under the CPC in respect of dismissing the representation for default or setting aside the order of dismissal of representation for default.

15. Section 29 of the Limitation Act provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

16. But in the instant case, the period of limitation prescribed in Rule-15 of the C.A.T. (Procedure) Rules is thirty days whereas in Clause 122 of Part-I of 3rd division of schedule of Limitation Act, the period of limitation is the same and therefore, it cannot be said that there is a different period of limitation for restoration of the application dismissed for default of appearance and the same is

quoted as under:

Part I - Application in specified cases

THIRD DIVISION - APPLICATIONS

Suit	Period of Limitation	Time from which period begins to run	Description of
a suit	Thirty Days	The date of dismissal. or appeal or application for review or revision dismissed for default or appearance or for failure to pay costs of service of process or to furnish security for costs.	122. To restore

17. The delay in filing the original application, the period of limitation has been prescribed u/s 21 of the Act, 1985 but in Sub-section 3 thereof, a relaxation has been made to the effect that the Tribunal may admit an application even after the prescribed period of limitation if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period. Sub-section 3 Section 21 of the Act, 1985 is quoted as under:

3. Notwithstanding anything contained in Sub-section (1) or Sub-section (2), an application may be admitted after the period of one year specified in Clause (a) or Clause (b) or Sub-section (1) or, as the case may be, the period of six months specified in Sub-section (2), if the applicant satisfied the Tribunal that he had sufficient cause for not making the application within such period.

18. Therefore, the intention of the legislature to make the above provision was that in case the applicant had sufficient cause for not making the application within the period of limitation, the Tribunal may entertain an application even after the prescribed period of limitation and if such an intention of the legislature was in moving the original application which is not permissible under the CPC while trying a suit, we have no reason to see as to why an application for setting aside the order of dismissal of the case for default cannot be entertained beyond the period of limitation of thirty days if the applicant had sufficient cause for not making the application within the prescribed period. If a relaxation has been given by the legislature in moving the original application/representation, why the same would not be given while moving an application for setting aside dismissal order in default and in that case why the legislature would become so harsh. It is well settled law of the Hon"ble Supreme Court that the interpretation of law should be made in its natural manner.

19. We are, therefore, of the considered opinion that an application for setting aside the order of dismissal of the OA/representation for default after the expiry of the prescribed period of limitation along with an application for condonation of delay cannot be thrown out on the ground that there is no provision for condonation of delay in filing such application and that the application for condonation of delay cannot be entertained.

20. In view of what has been discussed above, the impugned order passed by the Tribunal is liable to be quashed and the matter is liable to be remitted back to the Tribunal for making a decision on the application for setting aside the order dismissing the case in default after disposal of the application for condonation of delay on merits.

Therefore, we allow the writ petition holding that the application for condonation of delay in filing the application for setting aside the order of dismissal is maintainable. Consequently, the impugned order dated 18.11.2005 passed by the Central Administrative Tribunal in O.A. No. 262 of 2001 is quashed and the matter is remitted back to the Tribunal for deciding first the application for condonation of delay in filing the application for setting aside the order of dismissal of the case in default and only thereafter the application for restoration shall be decided.

Pradip Mohanty, J.

21. I agree.