

(2019) 07 CHH CK 0077

In the Chhattisgarh High Court

Case No : WA No. 311, 312, 314, 315, 317, 318, 320, 322, 323, 324, 325, 326, 327, 328 Of 2019

Cement Corporation Of India Ltd.

APPELLANT

Vs

Kali Ram Dheemar And Ors

RESPONDENT

Date of Decision : 12-07-2019

Acts Referred:

Payment Of Gratuity Act, 1972 — Section 7(4), 7(4)(a), 7(7)
Central Excise Act, 1944 — Section 35
Electricity Act 2003 — Section 125
Constitution Of India, 1950 — Article 142, 226

Citation : (2019) 07 CHH CK 0077

Hon'ble Judges : P.R. Ramachandra Menon, CJ; Parth Prateem Sahu, J

Bench : Division Bench

Advocate : Pankaj Singh

Final Decision : Dismissed

Judgement

PR Ramachandra Menon, CJ

1. Heard.

2. These appeals have been preferred by a Public Sector Company belonging to the Central Government, virtually being aggrieved of the interference declined by the learned Single Judge in respect of the challenge against the verdict passed by the Controlling Authority under the wa 311 of 2019 & connected matters Payment of Gratuity Act, 1972 (for short, '1972 Act') and the dismissal of the statutory appeal preferred on the ground of delay. All the appeals have been preferred after the stipulated time and hence the delay is sought to be condoned by filing separate applications.

3. We heard Shri Pankaj Singh, learned counsel appearing for the appellant at length.

4. The factual matrix shows that the appellant-Company was having various

units at different places, engaged in the manufacturing of cement and such other products. It is stated that in the unit at Mandhar, district Raipur (CG), several employees were engaged through different contractors and they were working accordingly from 1978 onwards. The role of the appellant-Company was only to effect the payment of their wages, as and when bills were raised by the contractors in this regard. There was no grievance from any corner. While so, because of various adverse circumstances, the appellant-Company had to close down its unit at Mandhar. The production had come to a stand still way back in the year 1996. The procedural formalities for closing the unit were completed in terms of the Industrial Disputes Act and the unit was closed down in the year 2008. As a matter of fact, all the employees had left the field way back in the year 2004 itself and there was no need, necessity or occasion for the appellant to engage anybody directly or indirectly through contractors.

5. It is contented that, about 12 years after the cessation of the operation, some persons styled as employees of the appellant-Company wa 311 of 2019 & connected matters (who were engaged through the contractors) put forth claims for payment of gratuity in terms of the 1972 Act, by approaching the Controlling Authority. On receipt of the notice issued by the Controlling Authority, the appellant appeared and filed detailed statement of objections, mainly contending that the claimants were never the employees of the appellant- Company; that they were engaged by the contractors and hence, were employees of the contractors; that they were not having the minimum prescribed continuous service of five years under the appellant-Company and further that no liability was to be enshouldered by the appellant herein. After considering the rival pleadings, enquiry was finalised by the controlling authority and based on the available materials brought on record, a finding was rendered to the effect that the claimants were entitled to get gratuity to the extent as mentioned therein, which was directed to be paid with simple interest @ 10% per annum from 2004 onwards, by the appellant herein.

6. The learned counsel for the appellant submits that verdict passed by the Controlling Authority is not correct or sustainable either on facts or in law and hence, the same was sought to be challenged by filing statutory appeals. But it so happened that there occurred some delay in filing the appeals as some records in the Corporate/Head Office in New Delhi had to be traced out and verified. By the time the appeals could be filed, there occurred short delay of few days, which was sought to be condoned by filing an application. However, to the shock and surprise of the appellant- Company, the Appellate Authority, who virtually condoned the delay of nearly 12 years on the part of the workers/ claimants, turned Nelson's eye wa 311 of 2019 & connected matters to the appellant and dismissed the applications as belated, it being beyond the stipulated period (of 60 + 60 days). This made the appellant to challenge the proceedings pursued by the Controlling Authority and the Appellate Authority by filing Writ Petitions before this Court.

7. The matters were heard elaborately by a learned Single Judge. The finding rendered by the Appellate Authority to the effect that the appeals were not maintainable, as barred by limitation, was upheld and the Writ Petitions were dismissed, which forms the subject matter of challenge in these appeals.

8. The learned counsel for the appellant submits that the course pursued by the learned Single Judge is not correct or proper. It is stated that there is no dispute with regard to the limited power of the Appellate authority to condone the delay. As per the mandate under Section 7(7) of the 1972 Act, the party who is aggrieved of the order passed by the Controlling Authority has to prefer appeal within 60 days. The statute also provides for condonation of delay, by a maximum extent of 60 days. In other words, once satisfactory explanation is offered, the maximum leniency which can be aspired by an aggrieved party is only for a total period of 60+60 i.e. 120 days. Admittedly, the appeals were preferred after expiry of the maximum extent as above. But according to the appellant, the short excess of delay involved was liable to be condoned, in exercise of the power vested upon this Court under Article 226 of the Constitution of India. It is stated that the attempt of the appellant was only to challenge the order passed by the controlling authority and not because wa 311 of 2019 & connected matters the grievance against the order passed by the Appellate Authority with reference to the statutory mandate as to the delay condoning power.

9. Learned counsel submits that the verdict passed by the Controlling Authority is in total violation of the relevant Act/Rule/procedure and hence it was quite open for this Court to have invoked the power under Article 226 of Constitution of India, to set things right. In support of the said proposition, the learned counsel placed reliance on the verdict passed by the Karnataka High Court at Bengaluru in the matter of Practice Strategic Communications, India Private Limited Vs The Commissioner of Service Tax, Bangalore reported in ILR 2016 Karnataka 4493 and a full Bench decision of the High Court of Gujarat, at Ahmedabad, in the matter of Panoli Intermediate (India) Pvt Ltd Vs Union of India and others reported in AIR 2015 GUJ 97. In view of the emphasis given on the verdict passed by the full Bench of the Gujrat High Court (supra), we find it appropriate to extract the points considered in Para-1, and the finding rendered by the Bench in paras- 31 and 32 of the said verdict as reproduced below:

"1. The Division Bench of this Court has formulated the following questions and has referred the matter to the Larger Bench:

(1) Whether the period of limitation provided of 60 days, for filing an appeal under Section 35 of the Central Excise Act, 1944, could be extended only up to 30 days as provided by the proviso or the delay beyond the period of 90 days could also be condoned in filing an appeal?

(2) Where a statutory remedy or appeal is provided under Section 35 of the Central Excise Act, 1944 and the delay cannot be condoned under Section 35

beyond the period of wa 311 of 2019 & connected matters 90 days, then whether Writ Petition under Article 226 of the Constitution of India would lie for the purpose of condoning the delay in filing the appeal?

(3) When if the statutory remedy or appeal under Section 35 is barred by the law of limitation whether in a Writ Petition under Article 226 of the Constitution of India, the order passed by the original adjudicating authority could be challenged on merits?"

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"31. We may now proceed to answer the question:

(1) Question No.1 is answered in negative by observing that the limitation provided under Section 35 of the Act cannot be condoned in filing the appeal beyond the period of 30 days as provided by the proviso nor the appeal can be filed beyond the period of 90 days.

(2) The second question is answered in negative to the extent that the petition under Article 226 of the Constitution would not lie for the purpose of condonation of delay in filing the appeal.

(3) On the third question, the answer is in affirmative, but with the clarification that :

A) The petition under Article 226 of the Constitution can be preferred for challenging the order passed by the original adjudicating authority in following circumstances that, A.1) The authority has passed the order without jurisdiction and by assuming jurisdiction which there exist none, or A.2) Has exercised the power in excess of the jurisdiction and by overstepping or crossing the limits of jurisdiction, or A.3) Has acted in flagrant disregard to law or rules or procedure or acted in violation of principles of natural justice where no procedure is specified.

B) Resultantly, there is failure of justice or it has resulted into gross injustice.

We may also sum up by saying that the power is there even in aforesaid circumstances, but the exercise is discretionary which will be governed solely by the dictates of the judicial conscience enriched by judicial experience and practical wisdom of the Judge.

32. All the three questions are answered accordingly."

10. According to the learned counsel for the appellant, Question-3 under para-1 alone is relevant and applicable as far as the appellant is concerned and the same stands answered at Answer-3 in para-31. It is asserted that, notwithstanding the fact that the remedy of appeal is barred by the law of

limitation, the matter could be examined by the writ court, in exercise of the power under Article-226 of the Constitution of India, if the order under challenge has been passed in flagrant violation of law or rules or procedure or acted in violation of principles of natural justice, where no procedure is specified. Coming to the circumstances involving the violation as referred by the full Bench of Gujarat High court, on asking the learned counsel appearing for the appellant to substantiate the violation of law, rules or procedure, if any, the learned counsel submits that provisions of Section 7(4) of the 1972 Act are violated. We find it appropriate to extract the said provision as given below:

"(4) (a) If there is any dispute to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

(b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.

(c) The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.

(d) The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

(e) As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit--

(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the nominee or, as the case may be, the guardian of such nominee or heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity."

11. Going by Section 7(4)(a) of the 1972 Act, it only deals with the coercive action to be pursued when there is a dispute with regard to the amount of gratuity payable and the course open to the employer to have the admitted amount to be deposited. Clause (b) says as to the course open to the employer or employee or any other person raising the dispute with regard to payment of gratuity, to make an application to the Controlling Authority for deciding the dispute. Clause (c) deals with the course of enquiry to be done, giving a reasonable opportunity of being heard and if some amount is found as payable to the employee, the power to direct the employer to deposit the said amount. The

Clause (d) deals with the power of the controlling authority to direct payment of the amount deposited to the requisite extent to the employee and the excessive, if any, to be returned to the employer. Clause (e) deals with the course of action to be pursued after having the deposit under Clause (a).

12. Despite our best efforts by reading the above provisions repeatedly and inspite of our request to clarify in what manner the alleged violation has been resulted, the so called violation of the Act / Rules / procedure is not clarified or substantiated from the part of the appellant. This being the position, the reliance sought to be placed on the verdict passed by the full Bench of Gujarat High Court, pointing out the circumstances under which the power under Article 226 could be invoked, is quite out of context.

13. With regard to the scope of interference, where a special statute deals with the period of limitation, the matter had come up for consideration before the Apex Court as well. It has been held by the Apex Court that, under such circumstance, the particular statute will govern the wa 311 of 2019 & connected matters field as a special statute and as such, the Limitation Act cannot have any application at all. This is the crux of the decision in the matter of Oil and Natural Gas Corporation Limited Vs Gujarat Energy Transmission Corporation Limited and others reported in 2017 (5) SCC 42. It was a case where a statutory appeal was preferred before the Apex Court in terms of Section 125 of the Electricity Act 2003; as per which the appeal had to be preferred within the specified time before the Supreme Court, with power for the Court to condone the delay to a specified extent and never beyond. Admittedly, the appeal was filed beyond time and the Supreme Court considered whether the said delay could be condoned under any circumstance. After detailed deliberation, a clear finding was rendered to the effect that, when the special statute stipulates the manner in which the matter has to be dealt with, it cannot be widened by the Supreme Court even by invoking the power under Article 142 of the Constitution of India. In other words, when there is no power vested even with the Supreme Court in exercise of Article 142 with regard to deal with the merits involved, including the adequacy of evidence, or otherwise, it remains a forbidden field as far as this Court is concerned, even in exercise of the power under Article 226 of the Constitution of India, unless it was rendered per incurium or on fraud.

14. We are of the view that, this Court, in view of the law made clear by the Supreme Court in specific terms, is not in a position to accept the proposition mooted by the learned counsel for the appellants and interfere on merit.

15. In the said circumstance, we decline interference and dismiss all these appeals and the petitions seeking to condone the delay.