

(2011) 04 SHI CK 0401

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 4266 of 2010

Employees Provident Fund Organization

APPELLANT

Vs

Himachal Pradesh State Forest Corporation and Another

RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35
Civil Procedure Code, 1908 (CPC) — Section 100
Contract Act, 1872 — Section 25, 26, 29
Easements Act, 1882 — Section 2
Electricity Act, 2003 — Section 111, 111(2), 125
Employees Provident Fund Appellate Tribunal (Procedure) Rules, 1997 — Rule 7
Limitation Act, 1963 — Section 10, 11, 12, 13, 14

Citation : (2011) 3 ShimLC 353

Hon'ble Judges : Kurian Joseph, C.J;V.K. Ahuja, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Kurian Joseph, C.J.—Section 5 of the Limitation Act, 1963 provides for extension of the prescribed period of limitation, if sufficient cause is shown to the satisfaction of the Court or Tribunal. In case any statute has prescribed a specified period of extension, can the Court or Tribunal further extend the time limit where it is satisfied about the cause for delay? The object of law of limitation is to prevent disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by party's own inaction, negligence or laches, (see the decision of the Supreme Court in *Rajender Singh and others v. Santa Singh and others*, reported in *Rajender Singh and Others Vs. Santa Singh and Others*, The law is not meant to destroy the rights of the parties. It is founded on public policy fixing a life span for the legal remedy for the general welfare. *N. Balakrishnan Vs. M. Krishnamurthy*, Section 3 of the Act provides that every suit instituted, appeal preferred and application made after the period prescribed in the Schedule to the Act, shall be dismissed, even if a defence in that regard has not been set up.

However, Sections 4 to 24 provide for certain exceptions. We are concerned mainly with the power of the Court or Tribunal to extend the period of limitation and that is dealt with u/s 5 of the Limitation Act, which reads as follows:

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, 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.

Explanation.--The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this Section.

2. Section 29 is the Savings clause, which reads as follows:

29. Savings.--(1) Nothing in this Act shall affect Section 25 of the Indian Contract Act, 1872.

(2) 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 Section 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law.

(3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

(4) Sections 25 and 26 and the definition of "easement" in Section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882, may for the time being extend.

3. Thus, where any special law or local law prescribes a period of limitation different from the period prescribed in the Schedule to the Act, the period thus prescribed in the special law shall be the period of limitation as far as the suit, appeal or application as provided under that special law. In such a situation, the provisions contained in Sections 4 to 24 would apply only insofar as and to the extent to which they are not expressly excluded by such special law. In other words, in case there is any such special exclusion or restriction regarding the exercise of power u/s 5 of the Limitation Act, Section 5 will have to be applied as either excluded or restricted under the special law and not as provided under the Limitation Act, 1963. In case a particular period has been prescribed in the special law even for extension of limitation, the prayer for extension can be accepted only to that extent as provided under the statute and not beyond. The Supreme Court has considered this aspect of the matter in *Singh Enterprises Vs.*

Commissioner of Central Excise, Jamshedpur and Others, , while interpreting Section 35 of the Central Excise Act, 1944, wherein at paragraph 8, it has been held as follows:

8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Limitation Act, 1963 (in short "the Limitation Act") can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days" time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days" period.

4. In a recent decision in Chhattisgarh State Electricity Board Vs. Central Electricity Regulatory Commission and Others, 3, the Supreme Court has again considered the matter in the context of interpretation of Section 125 of the Electricity Act, 2003. The said provision prescribes a period of limitation of 60 days to file an appeal, if aggrieved by the decision or order of the Appellate Tribunal. Proviso to Section 125 has further prescribed that the Supreme Court may if it is satisfied that appellant was prevented by sufficient cause for filing the appeal within the said period, extend the period for a further period not exceeding 60 days. The provision is extracted below:

125. Appeal to Supreme Court.--Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the Supreme Court, within sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (5 of 1908):

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

5. It has been held that by the Savings clause u/s 29(2) of the Limitation Act, the special legislation has provided for a period of limitation and to that extent Section 5 will have to be understood in the way it has been prescribed in the special statute and hence the Supreme Court cannot extend the period beyond further period of 60 days, provided in the proviso to Section 125 of the Act. To quote from paragraphs 25 to 27:

25. Section 125 lays down that any person aggrieved by any decision or order of the Tribunal can file an appeal to this Court within 60 days from the date of communication of the decision or order of the Tribunal. Proviso to Section 125 empowers this Court to entertain an appeal filed within a further period of 60 days if it is satisfied that there was sufficient cause for not filing appeal within the initial period of 60 days. This shows that the period of limitation prescribed for filing appeal under Sections 111(2) and 125 is substantially different from the period prescribed under the Limitation Act for filing suits, etc. The use of the expression "within a further period of not exceeding 60 days" in the proviso to Section 125 makes it clear that the outer limit for filing an appeal is 120 days. There is no provision in the Act under which this Court can entertain an appeal filed against the decision or order of the Tribunal after more than 120 days.

26. The object underlying establishment of a special adjudicatory forum i.e. the Tribunal to deal with the grievance of any person who may be aggrieved by an order of an adjudicating officer or by an appropriate Commission with a provision for further appeal to this Court and prescription of special limitation for filing appeals under Sections 111 and 125 is to ensure that disputes emanating from the operation and implementation of different provisions of the Electricity Act are expeditiously decided by an expert body and no Court, except this Court, may entertain challenge to the decision or order of the Tribunal. The exclusion of the jurisdiction of the Civil Courts (Section 145) qua an order made by an adjudicating officer is also a pointer in that direction.

27. It is thus evident that the Electricity Act is a special legislation within the meaning of Section 29(2) of the Limitation Act, which lays down that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the one prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and provisions contained in Sections 4 to 24 (inclusive) shall apply for the purpose of determining any period of limitation prescribed for any suit, appeal or application unless they are not expressly excluded by the special or local law.

6. Thus, the law is well settled that when a special law provides for a particular period of extension of limitation, it has to be applied only to the extent as provided under the special statute. In such situations, Section 5 of the Limitation Act cannot be applied for further extension.

7. Having analyzed the legal principle as above, we may now refer to the facts in

the instant case. The Employees Provident Fund Organization has challenged the order passed by The Employees Provident Fund Appellate Tribunal, New Delhi (Annexure P-D). The Organization among other defences, contended before the Tribunal by way of preliminary objection that the appeal being filed beyond 120 days from the date of issuance of the order was not maintainable in view of the bar under Rule 7 of the Employees Provident Fund Appellate Tribunal Procedural Rules, 1997, which reads as follows:

(1) Every appeal filed with the Registrar shall be accompanied by a fees of Rs. 500/- to be remitted in the form of Cross Demand Draft on a Nationalized Bank in favour of the Registrar, Tribunal and payable in the main Branch of that Bank at that station where seat of the said Tribunal situated.

(2) any person aggrieved by a notification issued by the Central Government or any order passed by the Central Government or any other authority, under the Act, may within 60 days from the date of issuance of the notification/order prefer the appeal to the Tribunal:

Provided that the Tribunal may if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days:

Though a specific defence as stated above regarding the limitation was taken, the Tribunal has not even referred to that contention and proceeded to consider the appeal on merits and allowed the same. The stand taken by the respondents in the reply is that the appeal had originally been filed in time. However, the office of the appellate authority was shifted from Nehru Palace Delhi to Laxmi Nagar. The said file was misplaced and the same was thereafter reconstructed. There appears to be some force in the contention since there is no reference regarding the limitation, in the impugned order. Be that as it may. Having gone through the records, we do not deem it proper to set aside the order and remit the matter only on that count since no fruitful purpose would be served in the process. The very same issue was subject matter of order passed by the District Consumer Redressal Forum, Mandi. The decision was against the petitioner. The matter was pursued in appeal before the State Commission. The petitioner lost there and lost before the National Commission also. The findings of those authorities having become final, the same cannot be collaterally attacked in another proceedings. Even on that simple ground the impugned order before the Appellate Tribunal was otherwise liable to be interfered with, be in that proceedings or in appropriate other proceedings. Apparently, the epicenter appears to be an inadvertent mistake that happened in the office of the petitioner by disbursing certain payments to one Hans Raj. There were two Hans Raj. One is son of Radhey Lal and the other is son of Brestu Ram. It should have been disbursed to Hans Raj son of Brestu Ram but by mistake the amount was disbursed to Hans Raj son of Radhey Lal. The respondents cannot be made responsible for such mistake that occurred in the office of the petitioner. That is all what has been held in the impugned order. Hence and thus, the ends of

justice do require that there shall be no interference with the impugned order. Therefore, re-stating the principle of law regarding the application of Section 5 of the Limitation Act before the Appellate Tribunal, the Writ Petition is dismissed, so also the pending application(s), if any.