

(1989) 03 PAT CK 0013

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 4635 of 1987

Jaimangal Ltd. Avantee Hotel and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 08-03-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity Act, 1910 — Section 36(2), 37
Electricity Rules, 1956 — Rule 6(3)
Limitation Act, 1963 — Section 10, 11, 12, 13, 16

Citation : AIR 1989 Patna 190 : (1989) 37 BLJR 470 : (1989) PLJR 1195

Hon'ble Judges : Uday Sinha, J;B.P. Singh, J

Bench : Division Bench

Advocate : S.K. Sinha and K.K. Sinha, Shreenath Singh and P.C. Das, for the Appellant; J.N.P. Sinha, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

B.P. Singh, J.—In this writ petition the petitioners have prayed for issuance of an appropriate writ, order or direction quashing the order dt/- 19-9-1987 (Annexure-1) passed by the Advisory Board, respondent No. 2, allowing the application for condonation of delay filed by the Patna Electricity Supply Undertaking, respondent No. 7 and condoning the delay of three and half months in filing an appeal against the order of the Electrical Inspector passed u/s 36(2) of the Electricity Act read with Rule 6(3) of the Electricity Rules. The main ground on which the order of the Advisory Board has been assailed is that the Board had no jurisdiction to condone the delay in the absence of any statutory provision conferring such a power. According to the petitioners, the provisions of the Limitation Act, particularly, Section 5 thereof, also do not apply to the instant proceeding since the Advisory Board is not a "court."

2. The facts of the case are not in dispute. Petitioner No. 1 owns and runs a hotel and is a body corporate registered under the Companies Act. Petitioner No. 2 is the Managing Director of petitioner No. 1 Patna Electric Supply Undertaking,

respondent No. 7 herein is a unit of the Bihar State Electricity Board and a licensee under the Electricity Act (hereinafter referred to as the Act). Patna Electric Supply Undertaking (hereinafter referred to as PESU) started Supply of electrical energy to petitioner No. 1 from 11-2-1982. The supply of electrical energy began when the hotel building of petitioner No. 1 was under construction. The Patna Electric Supply Undertaking fixed its own meter for measuring the quantity of electricity supplied to petitioner No. 1. The hotel started functioning in Aug. 1983 and electricity charges were being paid regularly according to the consumption recorded in the electrical meter. On 7-4-1986, the petitioners received electric bill for the months of Feb. and March 1986 for an amount of Rs. 37.60 p. only. Since the amount claimed in the bill was very low, the petitioners immediately by letter dt/- 11-4-1986 informed the Electrical Executive Engineer, Central Division, PESU bringing this fact to his notice and requesting him for getting the meter checked up since it was recording a low reading. Thereafter, on 30th June, 1986 PESU sent a bill to the petitioners for a sum of Rs. 1,49,078.74p. for the period Feb. 1985 to June, 1986 i.e. for seventeen months. According to the petitioners, such a huge demand was highly arbitrary and illegal since there was no allegation of any tampering with the meter. Moreover, such a bill could not be raised by PESU arbitrarily and in view of the meter being defective, the matter had necessarily to be referred to the Electrical Inspector u/s 26(6) of the Act. The petitioners disputed the amount claimed in the bill and the dispute was ultimately decided by the Electrical Inspector by his order dt/- 29-11-1986 in exercise of jurisdiction u/s 26(6) of the Act. The Electrical Inspector found that the meter was properly recording the consumption up to 14th Feb. 1986 and consequently the petitioners were not liable to pay any amount prior to 14-2-1986. For the subsequent period, the Electrical Inspector having regard to the consumption of electrical energy in the past six months calculated that the average consumption of the petitioners was Rs. 7,424,67p. per month. He, therefore, directed the petitioners to deposit the charges for electrical energy consumed at the rate of Rs. 7,424.67p. per month till the meter was duly checked. The PESU was restrained from realising the amount contained in the bill dt/- 30th June, 1986 amounting to Rs. 1,49,078.74p.

3. u/s 36(2) of the Act, there is a provision for appeal from the order of the Electrical Inspector to the State Government or to the Advisory Board if the Government by general or special order so directs. The Government of Bihar has issued a notification on 23-5-1984 constituting an Advisory Board. Under Rule 6(3) of the Electricity Rules, such an appeal has to be preferred within three months from the date of the order of the Electrical Inspector. It is not in dispute that neither under the Act nor under the Rules is there any specific provision conferring upon the State Government or the Advisory Board the power to extend time or to condone delay in preferring an appeal under Rule 6(3) of the Rules.

4. The Order of the Electrical Inspector was served upon the Central Division of Pesu on 2-12-1986. On 16-6-1987, an appeal was preferred by PESU which was

addressed to the Minister, Department of Energy. Admittedly if the date of service of the order is taken to be the starting point for computation of the period of limitation, the appeal presented on 16-6-1987 was barred by limitation as it was delayed by three months and thirteen days. The memo of appeal was sent to the Advisory Board, the appellate authority, on 25-7-1987. The memo of appeal no doubt was accompanied by an application u/s 5 of the Limitation Act. The application for condonation of delay is a very brief application consisting of five paragraphs, but only para 4 deals with the reason for the delay in filing the appeal. Paragraph 4 of the application reads as under :

"That the above appeal could not be filed within time since the matter was under consideration and examination for considerable period of time involving various facts and figures before the various authorities of the appellant Involving a huge amount of money i.e. Rs. 1.50 Lacs approximately."

5. By an order dt/- 19-9-1987, the Advisory Board was pleased to condone the delay in filing the appeal. The relevant part of the order is quoted below :

"After a careful consideration of the arguments put forward by the learned lawyers on behalf of the parties as well as learned counsel on behalf of the State the Advisory Board allows the petition filed on behalf of the appellant for condonation of delay in filing appeal."

6. The grievance of the petitioners is that though they had objected to the condonation of delay and apart from oral argument had placed their objections in writing the Advisory Board condoned the delay without recording its reasons dealing with the objections raised by the petitioners to the condonation of delay on the ground that the Advisory Board had no jurisdiction to condone the delay and in any event, no sufficient cause has been shown for condonation of delay.

7. Mr. Shreenath Singh, learned counsel appearing on behalf of the petitioners has urged before us four submissions. He firstly submitted that the appellate authority, namely, the Advisory Board acting under Sections 35 and 36(2) of the Act was not a "court" so as to have the power and jurisdiction to entertain an appeal filed beyond time limited by law by condoning the delay (under Section 5 of the Limitation Act) when the statute did not confer any such power or jurisdiction. His second submission was that in any case the jurisdiction u/s 5 of the Limitation Act cannot be exercised in the absence in the application u/s 5 of any fact explaining the delay. He thirdly submitted that it was not a valid exercise of power/jurisdiction to condone the delay on the ground of sufficient cause, even if the order discloses no fact or any cause for the delay, and no reason whatsoever for accepting them as true in face of the plea having been controverted by the other side. His last submission was that the appeal Itself was not competent and could not be dealt with by the appellate authority since the purported appeal was filed before an Incompetent authority, namely, the minister. Learned counsel appearing on behalf of respondents Nos. 7 and 8 submitted that the provisions of Section 5 of the Limitation Act apply to an

appeal preferred u/s 36(2) of the Act read with Rule 6(3) of the Electricity Rules. It was also submitted that the appellate authority having exercised lawful jurisdiction in condoning the delay, this Court in exercise of its writ jurisdiction ought not to interfere with such an order. It was not necessary-for the appellate authority, in every case to record its reasons for condoning the delay. Learned Government Advocate appearing on behalf of the Electrical Inspector, Respondent No. 6 supported the legal submission urged on behalf of the petitioners that the Limitation Act did not apply to the instant case, and in the absence of any statutory provisions, the appellate authority namely, the Advisory Board, had no jurisdiction to condone the delay.

8, I shall first deal with the second and third submissions urged on behalf of the petitioners. Learned counsel for the petitioners has relied upon the judgment reported in *Sitaram Ramcharan etc. Vs. M.N. Nagarshana and Others*, , *Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd.*, , *Mostt. Sundari and Another Vs. Sakal Sahni and Others*, and *State of Bihar Vs. Dhajadhari Rai*, . There is no doubt that where law prescribes the period during which an appeal should be filed, the appellant must prefer his appeal within that period. If the appeal is not preferred within the period prescribed by law, and the appellate authority has jurisdiction to condone such delay, the appellant must state factsdisclosing the reasons why he was prevented from preferring the appeal within the period of limitation prescribed by law. The facts stated by him as to the reasons for the delay in filing the appeal must constitute sufficient cause which is a condition precedent to the exercise of judicial discretion to condone the delay. If the appellate court is satisfied that there was sufficient cause preventing the appellant from preferring the appeal within the period of limitation prescribed by law such delay may be condoned by the appellate authority in the exercise of its discretionary jurisdiction having regard to all the facts the court may regard as relevant. In condoning such delay, the appellate authority must hear the respondent in the appeal since non-filing of an appeal within the period of limitation has the effect of vesting a right in the respondent which should not be light heartedly disturbed. Normally, it is expected that where there is inordinate delay, or the matter regarding condonation of delay is strongly contested, some brief reasons ought to be recorded by the authority condoning the delay, and it must prima facie appear from the order that the appellate authority was satisfied that there was sufficient cause preventing the appellant from preferring the appeal within the period prescribed by law. It has been observed in judicial pronouncements that the party seeking condonation of delay must explain each day's delay. Such observations only emphasize the fact that condonation of delay is not a matter of right, but can be allowed only if the court is satisfied about the existence of sufficient cause for not preferring the appeal within the time prescribed by law. At the same time, power to condone the delay is a power that enables the courts to do substantial justice to parties by disposing of the matters on merits. As observed by the Supreme Court in *Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others*, the expression

sufficient cause employed by the legislature is adequately elastic to enable the courts to apply the law in a manner which subserves the ends of justice that being the life purpose for the existence of the institution of courts. A liberal approach in such a matter is justified. It is neither possible nor desirable to elucidate the matter further, and it must be left to the judicial discretion of the courts or authorities to exercise the discretion in the manner it best subserves the cause of justice.

9. The question as to whether the authority condoning the delay must record its reasons for doing so, must also depend on the facts and circumstances of the case. In cases where the delay is only of a few days, say three or four days, having regard to the liberal approach in the matter of condonation of delay, the appellate authority may not consider it necessary to record reasons. However, in cases of inordinate delay, particularly, when the matter regarding condonation of delay is strongly contested, it is expected that in exercise of judicial discretion, the appellate authority even if briefly, must record its reasons. However, I am of the view that even if reasons are not recorded by the appellate authority, for condoning the delay, in exercise of writ jurisdiction such an order will not be quashed on that ground alone if it appears from the materials on record that there was good reason for condoning the delay. Considerations of justice impel courts to be slow in upholding technical or procedural objections which have the effect of preventing an adjudication on merit. In the instant case, I am of the considered view that if the appellate authority had jurisdiction to condone the delay, in exercise of our discretion in writ jurisdiction, the order condoning the delay ought not to be quashed, when that discretion has been exercised in favour of the respondent No. 7 by the appellate authority, even though the application filed by it for condoning the delay leaves much to be desired.

10. This takes me to the consideration of the main question urged on behalf of the petitioners, namely that the Advisory Board not being a court had no jurisdiction to condone the delay in the absence of any statutory provision in the Act empowering the appellate authority to condone the delay in filing the appeal. It was contended that Section 5 of the Limitation Act did not help respondent No. 7 since that provision applied only to a case where an appeal was preferred before a court. Learned counsel for the petitioners placed reliance upon the judgment of the Supreme Court reported in *Sakuru Vs. Tanaji*, : *Sakuru Vs. Tanaji*, . In that case the question which arose for decision before the Supreme Court was whether the provision of Section 5 of the Limitation Act, 1963 could be invoked for condoning the delay in filing an appeal before the Collector u/s 90 of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950. The Court answered the question in the negative and observed : (at p. 1280 of AIR)

"After hearing both sides we have unhesitatingly come to the conclusion that there is no substance in this appeal and that the view taken by the Division Bench in *Venkaiah Case* is perfectly correct and sound. It is well settled by the

decisions of this court in Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others, and Smt. Sushila Devi Vs. Ramanandan Prasad and Others, that the provisions of the Limitation Act, 1963 apply only to proceedings in courts and not to appeals or applications before bodies other than courts such as quasi-judicial tribunals or executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on courts under the Code of Civil or Criminal Procedure. The Collector before whom the appeal was preferred by the appellant herein u/s 90 of the Act not being a court, the Limitation Act, as such, had no applicability to the proceedings before him. But even in such a situation the relevant special statute may contain an express provision conferring on the appellate authority, such as the Collector, the power to extend the prescribed period of limitation on sufficient cause being shown by laying down that the provisions of Section 5 of the Limitation Act shall be applicable to such proceedings. Hence it becomes necessary to examine whether the Act contain any such provision entitling the Collector to invoke the provisions of Section 5 of the Limitation Act for condonation of the delay in the filing of the appeal."

11. In view of the authoritative pronouncement by the Supreme Court which is binding upon this Court, it must be held that the question is not *res integra* and the submission urged on behalf of the petitioners must prevail. However, in fairness to the learned counsel appearing on behalf of the respondent No. 7, I must deal with the submission urged by him.

12. It was contended on behalf of respondent No. 7 that the principles, if not the provisions, of Sections 4 to 28 of the Limitation Act must apply to the proceeding before the Advisory Board in the instant case. Reliance was placed on the judgment of the Supreme Court reported in *Raj Kumar Dey and Others Vs. Tarapada Dey and Others*, . It was held by the Supreme Court that where the arbitrators were prevented from submitting the award for registration on account of an order of injunction passed by a court, there was sufficient reason for them for not presenting the award for its registration within the period of limitation prescribed by law. The case had its own special facts and by applying the principles that law does not compel a man to do that which he cannot possibly perform and an act of the court shall prejudice no man, the court held that the period during which the arbitrators were prevented from presenting the award for registration should be excluded in view of the principles laid down in Section 15 of the Limitation Act, 1963, The question about the applicability of Section 5 of the Limitation Act was not even urged before the Supreme Court, and therefore, the Court was not called upon to decide that question. Moreover, the peculiar facts as they existed in that case do not exist in the instant case and those principles are therefore not applicable. The judgment, therefore, renders no assistance to respondent No. 7. He then referred to the judgment of the Supreme Court reported in *The Director of Inspection of Income Tax (Investigation), New Delhi and Another Vs. Pooran Mal and Sons and Another*, .

In view, even this decision is of no help to respondent No. 7. In this case, the Initial order passed by the Income Tax Officer was passed within the period of time fixed u/s 132(5) of the Income Tax Act, 1961. The matter ultimately came up to the High Court in a writ proceeding and pursuant to the order of the High Court, the Income Tax Officer passed another order. That order was challenged on the ground that it had not been passed within the statutory period prescribed u/s 132(5) of the Act. The court held that the contention must be rejected because once an order had been made within 90 days, the aggrieved person had the right to approach the notified authority, u/s 132(11) and the notified authority had power to direct the Income Tax Officer to pass a fresh order. It could not be said that what the notified authority could direct u/s 132 of the Act could not be done by a court which exercised its powers, under Article 226 of the Constitution such an order passed in obedience to the order of the High Court, was not required to be passed within 90 days. Moreover, it was held that the period of limitation was intended for the benefit of the person whose property had been seized. It was open to him to waive it. Since it was found that the Income Tax Officer passed such an order in pursuance of an agreement between the parties which had obtained the imprimatur of the court, it was not open to such a party to raise the plea of limitation. In my view this judgment also does not help respondent No. 7. Reliance was then placed upon the judgment of the Delhi High Court reported in *Raj Chopra Vs. Shanno Devi and Others*, . In that case a question arose as to whether the provisions of Section 5 of the Limitation Act, 1963 applied to an application u/s 91 of the Punjab Land Act for setting aside the auction sale. The Delhi High Court held that Section 5 of the Limitation Act, 1963 applied to such a case and in any event the Lt. Governor of Delhi had inherent power to entertain an application for condoning the delay in making an application u/s 91 of the Act, if there were good reasons for it. The judgment of the Supreme Court in *Sakuru Vs. Tanaji*, was not available when the Delhi High Court rendered its judgment. In fact, their Lordships observed "we feel that the argument based on the contention that the application under a special law must necessarily be to a court before the provisions of Limitation Act are attracted is not borne out by any precedent or principles of law." The learned Judges did not agree with the majority opinion of the Kerala High Court in the case reported in *Jokkim Fernandez Vs. Amina Kunhi Umma*, , taking the view that Section 5 of the Limitation Act, 1963 was not attracted to a case where the appellate authority was not a court. Learned Judges were of the view that the decision of the Kerala High Court was influenced by a decision reported in *Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc.*, which had been overruled by the Supreme Court In the case reported in *The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma*, I may only observe that the judgment of the Supreme Court in *Town Municipal Council, Athani* was dissented from in the case of *Kerala, State Electricity Board*, but on a different question and not on the question of applicability of Section 5 of the Limitation Act, 1963. Moreover, in *Sakuru's* case, Supreme Court relied upon the decision in *Town Municipal Council, Athani* (supra). Having regard to the subsequent decision of

the Supreme Court in Sakuru's case which is binding upon this court, no relief can be granted to respondent No. 7 on the basis of the law as laid down by the Delhi High Court in this judgment.

13. It was then contended that it has been held that an Assistant Registrar exercising powers u/s 48 of the Bihar and Orissa Co-operative Societies Act is a court within the meaning of the Contempt of Courts Act (Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another,). It was faintly submitted that the State Government or the Advisory Board exercising appellate powers acted as a court. It is not possible to accept the submission, having regard to the observations of the Supreme Court in Sakuru's case. In fact neither the Electrical Inspector nor the appellate authority namely the Advisory Board, have even the trappings of a court. The only question that the electrical Inspector can decide is as to the consumption of electrical energy by a consumer during the period the meter did not record correctly such consumption. The correctness of such an order can be gone into by the appellate authority. Even applying the tests laid down by the Supreme Court in the case of Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another, , it cannot be held, having regard to the nature of jurisdiction exercised under the Act, that the State Government or the Advisory Board is a court. Undoubtedly, it is not a court within the meaning of the Civil P.C. or the Criminal P.C.

14. In view of the authoritative pronouncement of law by the Supreme Court in Sakuru Vs. Tanaji, , it must be held that the provisions of Sections 4 to 24 of the Limitation Act 1963 apply only to a case where the special or local law prescribed for any suit, appeal or application a period of limitation different from the period prescribed by the schedule of the Limitation Act for preferring such a suit, appeal or application before a court exercising civil or criminal jurisdiction. Where the special or local law prescribes the period of limitation for any suit appeal or application different from the period prescribed under the Limitation Act, the provisions contained in Sections 4 to 24 shall not apply unless such suit, appeal or application is to be presented before a court. Under the Act, the appeal is to be preferred before the State Government or the Advisory Board, if constituted. Neither the State Government nor the Advisory Board can be said to be a court. Neither the Act nor the rules make the provisions of the Limitation Act applicable nor do they vest power in the appellate authority to condone the delay in preferring an appeal. Hence, the appellate authority has no power or jurisdiction to condone the delay in filing an appeal before it. The order of the Advisory Board, the appellate authority dt/- 19-9-1987 (Annexure 1) condoning the delay is therefore without jurisdiction and is hereby quashed.

15. In view of my finding that the order is without jurisdiction, I do not consider it necessary to deal with the last submission urged on behalf of the petitioners that the appeal itself was incompetent as was presented before an authority having no jurisdiction in the matter.

16. This writ application is allowed. There shall be no order as to costs.

Uday Sinha, J.

17. I agree.