
(2007) 08 BOM CK 0106

In the Bombay High Court

Case No : Appeal No. 27 of 2007 in Writ Petition No. 3019 of 2006

J.L. Morrison India Ltd.

APPELLANT

Vs

Dy. Commissioner of Labour, Appellate Authority under the
Payment of Gratuity Act, 1972, Asst. Commissioner of
Labour, Controlling Authority under the Payment of Gratuity
Act, 1972 and Government of Maharashtra

RESPONDENT

Date of Decision : 10-08-2007

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 34(3)
Civil Procedure Code, 1908 (CPC) — Section 100A
Income Tax Act, 1961 — Section 260A
Limitation Act, 1963 — Section 1, 10, 12, 14, 16
Payment of Gratuity (Central) Rules, 1972 — Rule 18
Payment of Gratuity Act, 1972 — Section 7, 7(4), 7(7), 7B, 8
Penal Code, 1860 (IPC) — Section 193, 196, 228

Citation : (2007) 6 ALLMR 358 : (2007) 5 BomCR 654 : (2007) 109 BOMLR
1731 : (2007) 115 FLR 761 : (2008) 1 LLJ 775 : (2007) 6 MhLj 393

Hon'ble Judges : R.M.S. Khandeparkar, J;D.G. Karnik, J

Bench : Division Bench

Advocate : Sarvasri Harish Pandya and Chakrapani Mishra, instructed by
Khaitan and Co, for the Appellant; K.R. Belosey, Asst. Government Pleader, for
the Respondent

Final Decision : Dismissed

Judgement

R.M.S. Khandeparkar, J.—Heard. Admit. Shri K.R. Belosey waives service on
behalf of the respondents. By consent, heard forthwith.

2. The short point for consideration which arises in the matter is whether the
Appellate Authority under the Payment of Gratuity Act, 1972, hereinafter called
as "the said Act" can entertain the appeal beyond 120 days from the date of
receipt of the order.

3. Some of the workmen of the appellant filed applications before the controlling

authority claiming difference in the amount of gratuity paid and the one claimed as payable to them. The said applications were dismissed by the controlling authority which was sought to be challenged by way of an appeal. The Appellate Authority dismissed the appeal and the workmen approached the High Court in Writ Petition No. 742 of 2002. The High Court set aside the order of the controlling authority and the Appellate Authority and directed the controlling authority to reconsider the matter on merits, allowing the parties to adduce evidence. After hearing the parties, the controlling authority by its order dated 30-12-2004 allowed the applications filed by the workmen and ordered the payment of gratuity amount of Rs. 13,44,099/- along with interest thereon at the rate of 8% per annum. The appellant filed appeal u/s 7(7) of the said Act on 4-11-2005. However, there was delay in filing the appeal and therefore an application for condonation of delay was filed. The application for condonation of delay came to be dismissed and by order dated 12-9-2006. The said order was sought to be challenged by Writ Petition No. 3019 of 2006 which came to be dismissed by the learned single Judge by his order dated 11-12-2006. Hence, the present appeal.

4. The learned single Judge, by the impugned order, has held that the Legislature has prescribed the period of limitation for filing the appeal under the said Act and has also prescribed the extent to which the delay can be condoned and, therefore, the Appellate Authority was justified in declining to condone the delay beyond the total period of 120 days.

5. It is the contention on behalf of the appellant that the power to extend the period of 60 days by a further period of 60 days under the proviso to Sub-section (7) of Section 7 of the said Act does not exclude the power of the Appellate Authority to condone the delay beyond 120 days in filing the appeal. The contention is that though Section 7(7) deals with the period of limitation for filing the appeal as well as the period to which the same can be extended by the Appellate Authority, even then it does not exclude the applicability of the provisions of Section 5 of the Limitation Act, 1963 to such proceedings. The said Act is a special Act. Besides, the Appellate Authority is a Court within the meaning of the said expression under the Limitation Act. And, therefore, considering Section 29(2) of the Limitation Act and in the absence of express or implied exclusion of the applicability of Section 29(2) of the Limitation Act, the same would apply to such appellate proceedings. It is also sought to be contended on behalf of the appellant that the appellate authority under the said Act enjoys almost all the powers of the Civil Court and, therefore, it is a Court for the purpose of applicability of the provisions of law comprised u/s 29(2) of the Limitation Act. It is also sought to be contended that the right to appeal is a vested right and the same cannot be denied by subscribing incorrect interpretation to the statutory provision relating to the limitation for filing the appeal. Reliance is sought to be placed in the decisions in the matter of *Shalimar Rope Works Ltd. Vs. Abdul Hussain H.M. Hasanbhai Rassiwalla and Others*, , *Sushilabai Laxminarayan Mudliyar and others Vs. Nihalchand Waghajibhai Shah*

and others, , Dhrangadhra Taluka Sahakari Kharid Vhechan Sangh Ltd. Vs. Rampratap Hakimchand and Company, Bombay and Others, , State of Tamil Nadu Vs. G.N. Venkataswamy and others etc. etc., , P. Sarathy Vs. State Bank of India, , K. Shamrao and Others Vs. Assistant Charity Commissioner, , Chalisgaon Shri Laxmi Narayan Mills Co. Ltd. Vs. Armitlal Kalidas Kanji, , The Commissioner of Income Tax Vs. Velingkar Brothers, and Yeshwant Sahakari Kamgar Bank Ltd. (Now known as Hotel Maheshwari and Another Vs. Maharashtra Industrial Development Corporation, .

6. On the other hand, it is the contention on behalf of the respondents that Section 7(7) specifically prescribes the period of limitation for filing the appeal as also the maximum limit to which it can be extended and, therefore, the applicability of power of condonation of delay beyond the extended period of 60 days stands impliedly excluded. It is their contention that merely because the said Act is a special Act, in view of the proviso to Section 7(7), it cannot be presumed that the provisions of the Limitation Act can be imported in the said Act by virtue of Section 29(2) of the Limitation Act. Besides, the Appellate Authority under the said Act cannot be said to be a Court. Referring to the decisions in *Hukumdev Narain Yadav Vs. Lalit Narain Mishra*, , *Kamal Kumar Dutta and Anr. v. Ruby General Hospital Ltd. and Ors.* reported in (2006) 7 SCC 613, *The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur*, , *Sakuru Vs. Tanaji*, , *Union of India Vs. M/s Popular Construction Co.*, , *Kamla Devi v. Khushal Kanwar and Anr.* reported in 2007 (2) S c c 412 : (2006) 7 SCC 613, *Metal Box India Ltd. v. B.R. Rangari, Asst. Commissioner of Labour and Ors.* reported in 2006 3 L.L.J. 686, *City College, Calcutta v. State of West Bengal and Ors.* reported in 1986 2 C.L.R. 217, *Special Officer, and Salem Co-operative Primary Land Development Bank, Salem v. Deputy Commissioner of Labour and Anr.* reported in 1998 3 L.L.J. (Supp.) 1168, the learned Advocate appearing for the respondents submitted that the statutory provisions comprised u/s 7 specifically prescribes the period for filing the appeal as also the period to what extent the delay can be condoned and, therefore, the question of applicability of Section 5 of the Limitation Act to such proceedings is clearly ruled out.

7. There can be no quarrel about the proposition that the appeal is a vested right. But, equally it is well-settled law that such a right can be either restricted or limited by statutory provisions or even can be taken away by a subsequent enactment. Clear example thereof is the Section 100A of the Code of Civil Procedure, introduced by the Amendment Act 22 of 2002 with effect from 1-7-2002. {Vide: *Kamal Kumar Dutta (supra)*}. Obviously, therefore, nothing prevents the Legislature from providing fetters on such right to appeal. Pre-condition of deposit of either the entire amount or of the specified percentage of the amount ordered as payable by the lower authority to entertain appeal is an example of such fetters on the right to appeal. In fact, the right to appeal becomes vested right only when the statute confers it and not otherwise. Right to appeal inherits in no one. It is purely a statutory right {Vide: *Kamla Devi (supra)* and *Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers*

and Others, }.

8. The Section 7(7) of the said Act deals with the period of limitation for filing an appeal against the order of determination of the amount of gratuity. It provides that any person aggrieved by an order made u/s 7(4) relating to determination of the amount of gratuity may within 60 days from the receipt of such order prefer an appeal to the Appellate Authority, provided that the Appellate Authority, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of 60 days, extend the said period by further period of 60 days. Therefore, a person aggrieved by any order regarding determination of the amount of gratuity or the claim in that regard in exercise of powers u/s 7(4) by the controlling authority, can file an appeal to the Appellate Authority but such appeal has to be filed within sixty days from the date of such order. The said proviso to Section 7 undoubtedly empowers the Appellate Authority to extend the period by sixty days in case the appellant satisfies the Appellate Authority that the appellant was prevented by sufficient cause from preferring the appeal within the first sixty days. The said proviso therefore undoubtedly speaks of the discretion of the Appellate Authority to extend the period of limitation by additional sixty days in case sufficient cause is shown for not filing the appeal within the prescribed period of first sixty days. Does it mean that on expiry of the extended period of sixty days, the Appellate Authority under the said Act is not empowered to condone the delay beyond the period of 120 days? Does it mean that the applicability of Section 5 of the Limitation Act stands excluded to the appeals under the said Act in view of specific limit prescribed for condonation of delay on expiry of the said period of 120 days? Does the proviso to Section 7(7) of the said Act disclose intention to exclude the applicability of Section 29(2) of the Limitation Act? To find out the answers to these queries, we will have to ascertain whether the said Act is a complete code in itself which does not admit of application of the provisions of Section 5 of the Limitation Act, 1963 to the proceedings of appeal u/s 7 of the said Act. We will have to examine the scheme of the said Act and to ascertain whether the provisions relating to the Limitation Act provided under the said Act exclude therefrom the operation of Section 5 of the Limitation Act.

9. The said Act deals with the subject of gratuity payable to the employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments. The Section 1 of the said Act speaks of its title, its extent of applicability and commencement thereof. It applies to every factory, mine, oilfield, plantation, port, railway company. It also applies to every establishment and shop wherein ten or more persons are employed on any day of preceding 12 months. It came into force with effect from 16-9-1972. The Section 2 defines various expressions used in the said Act including the terms "appropriate Government", "controlling authority", "employer", "employee", "wages" etc. The Section 2A explains the expression "continuous service" used under the said Act. The Section 3 empowers the appropriate Government to appoint controlling authority under the said Act. The obligation and right to the

payment of gratuity under the said Act has been provided u/s 4 thereof. The circumstances under which the liability for payment of gratuity would arise have been described u/s 4 of the said Act. The Section 4A deals with the obligation of the employer regarding compulsory insurance for discharge of the liability of payment of gratuity. The Section 5 deals with the power of the appropriate Government to exempt any establishment, factory, mine, oilfield, plantation, port, railway company or shop from the applicability of the said Act. The Section 6 empowers the employees to appoint their respective nominees to collect the gratuity amount.

10. The method of determination and payment of the amount of gratuity has been provided u/s 7 of the said Act. It also provides for payment of interest to the employee in case of failure to pay the gratuity amount by due date. In terms of Sub-section (2) thereof, as soon as the gratuity becomes payable, the employer shall, whether an application has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined. The Sub-section (3) provides that the employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable. In terms of Sub-section (3A), in case of failure to pay the gratuity if the amount of gratuity payable within the prescribed period, the employer would be liable to pay simple interest as may be notified by the Central Government from time to time as that Government may, by notification specify, except when the delay is due to the fault of the employee and the employer obtained permission in writing from the controlling authority for the delayed payment on that ground.

11. The Sub-section (4) of Section 7 of the said Act, dealing with the method of determination of the liability regarding the payment of gratuity, provides that if there is any dispute to the amount of gratuity payable to an employee under the said 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 and where there is a dispute with regard to any matter in this regard, the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute. The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter 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. The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto. For the purpose of conducting an inquiry under Sub-section (4) of Section 7, the controlling authority has same powers as are vested in a Court, while trying the suit, under the Code of Civil Procedure, 1908 in respect of the matters like enforcing the attendance of any

person or examining him on oath, requiring the discovery and production of documents, receiving evidence on affidavits, and issuing commissions for the examination of witnesses. The Sub-section (5) of Section 7 is very clear in this regard. In terms of Sub-section (6) of Section 7, any inquiry under the said section shall be a judicial proceeding within the meaning of Sections 193 and 228, and for the purpose of Section 196 of the Indian Penal Code.

12. If the person is aggrieved by the determination of dispute regarding the liability or claim pertaining to the gratuity amount or any questions relating thereto, he or she can file appeal. The relevant provision regarding the such appeal is comprised under Sub-section (7) of Section 7 and it reads thus:

(7) Any person aggrieved by an order under Sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days:

The second proviso to this sub-section deals with the requirement of deposit of gratuity amount during the pendency of the appeal.

13. The Section 7A empowers the appropriate Government to appoint inspectors for the purpose of the said Act. Section 7B enlists the powers of the inspectors so appointed. Section 8 authorises the controlling authority to issue certificate for recovery of amount of gratuity due and payable in case of failure on the part of the employer to pay the same in time. Section 9 enumerates the penalties for default in and avoidance of the payment of gratuity amount by the employer. Section 10 specifies the circumstances under which an employer would be entitled for discharge from any liability under the said Act. Section 11 deals with the subject of cognizance of offences under the said Act by the Court. Section 12 ensures protection to the controlling authority or any other person in respect of anything done or intended to be done in good faith under the said Act or the Rules made thereunder. Section 13 exempts the gratuity amount payable under the said Act from being attached in execution of any decree or order of civil, revenue or criminal Court.

14. The Section 14 of the said Act provides that the provisions of the said Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the said Act or in any instrument or contract having effect by virtue of any enactment other than the said Act.

15. The Section 15 empowers the Government to frame rules under the said Act and in exercise of powers thereof, the Government has framed The Payment of

Gratuity (Central) Rules, 1972. The Rule 18 deals with the subject of appeal. The Sub-rule (1) thereof provides that the Memorandum of appeal shall be submitted to the Appellate Authority with a copy thereof to the opposite party and the controlling authority either through delivery in person or under registered post acknowledgement due. The Sub-rule (2) provides that the Memorandum of appeal shall contain the facts of the case, the decision of the controlling authority, the grounds of appeal and the relief sought. The Sub-rule (3) provides that there shall be appended to the Memorandum of appeal a certified copy of the finding of the controlling authority and direction for payment of gratuity.

16. The said Act, therefore, provides for complete mechanism for determination and discharge of liability pertaining to the subject of gratuity. It is a complete code in itself. Precisely, but in its entirety the said Act deals with the process and the proceedings relating to the subject of gratuity payable by the employer to its employees. All the relevant and material provisions of law to determine the said subject covering the aspect of its determination, including the process of adjudication of all disputes relating thereto with finality attached to the decision in respect thereof with all necessary checks by authoritative review of the decision thereunder, it prescribes complete procedure for the proceedings thereunder. Besides, the scheme of the said Act reveals that the liability regarding the payment of gratuity is to be determined in accordance with the method prescribed under the said Act and should be paid as soon as it becomes payable otherwise, the employer incurs further liability of payment of interest as well being subjected to prosecution, besides penalty. The scheme, therefore, clearly indicates the intention of the Legislature to compel the employer to clear the liability regarding the gratuity as soon as it becomes due and payable, failure of which would invite penalty and prosecution for the employer. This obviously would disclose the need for speedy disposal of the matter including those at the appellate stage under the said Act and certainly in time bound framed programme.

17. The Section 29(2) of the Limitation Act, 1963 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. There is no dispute, nor it can be disputed, that the said Act is a special law within the meaning of the said expression under the said provision of the Limitation Act. Under the normal circumstances, the provisions of Section 29(2) and consequently Sections 4 to 24 of the Limitation Act would be applicable to the appellate proceedings under the said Act. However, in view of the provisions of law comprised u/s 29(2) itself, such applicability is subject to three conditions, namely, that firstly the special Act must have provision prescribing limitation for

filing appeal thereunder. Secondly, the period so prescribed should be different from the one prescribed under the Schedule to the Limitation Act , and thirdly, the provisions of law contained in that regard in the special Act should not expressly or by necessary implication exclude the applicability of all or any of the provisions of the sections referred to in Section 29 of the Limitation Act to the proceedings under the special Act. The first two conditions were clearly spelt out by the Apex Court in the matter of Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker, and the third conclusion was explained in Fairgrowth Investments Ltd. Vs. The Custodian, by the Apex Court. While dealing with this contention, it should be noted about that the Apex Court Popular Construction Company's case (supra), had held that the word 29(2) "exclusion" also includes "exclusion by necessary under implication". In the case in hand, we are not concerned about the applicability of all the sections referred to in Section 29(2) of the Limitation Act to the appellate proceedings under the said Act but we are primarily concerned about the applicability of Section 5 of the Limitation Act to such proceedings. Therefore, the controversy in the matter really narrows down to the issue as to whether the provision of law comprised under the proviso to Section 7(7) of the said Act excludes, either expressly or by necessary implication, the applicability of Section 5 of the Limitation Act to the appellate proceedings under the said Act.

18. The Section 5 of the Limitation Act provides that 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. The explanation to the said Section clarifies that 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 the said Section. This provision of law, therefore, is essentially for extension of the period of limitation for filing appeal on sufficient cause being shown in not preferring appeal within the prescribed period of limitation. Albeit, the provision does not lay down any restrictions on such extension of period. It does not restrict the power of the Court as regards the extent to which the period can be extended. In contradiction to this provision of law, the proviso to Section 7(7) of the said Act prescribes restriction on the power of the appellate authority thereunder to extend the period beyond the period of sixty days after the expiry of the initial period of limitation of sixty days prescribed for filing appeal under the said Act. It specifically states that if the appellant satisfies the appellate authority that he was prevented by sufficient cause from preferring the appeal within the prescribed period of sixty days, the period can be extended by further period of sixty days. This clearly discloses an intention of the Legislature to restrict the period of extension upto the limit of sixty days beyond the prescribed period of sixty days for filing an appeal under the said Act. In other words, the total period including the extended period within which appeal can be

preferred under the said Act would be 120 days. This obviously discloses the exclusion of the power to extend the period to limited number of days and the provision for circumscribing the outer limit to 120 days for such extension of period of limitation for filing appeal under the said Act.

19. Undoubtedly, mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5 of the Limitation Act, as has been held in *Mangu Ram Vs. Municipal Corporation of Delhi*, . It is also true that there is no specific provision to the effect that the period cannot be extended beyond 120 days as is otherwise specifically provided u/s 34 of the Arbitration and Conciliation Act, 1996 and which was the subject matter of decision in *State of Goa Vs. Western Builders*, . Under the Arbitration and Conciliation Act, 1996, the Section 34(3) specifically provides that the petition thereunder should be filed within three months from the date of receipt of arbitral award. The proviso thereto which speaks of extension of limitation for another thirty days provides that "Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter." Apparently, the proviso specifically provides that the extension would be by thirty more days and not beyond it. Undoubtedly, there is no such provision in the said Act expressly providing for prohibition for extension beyond the period of 120 days. The question, however, requires to be considered as to whether by "necessary implication" is there any such power prescribed under the said provision of law in the said Act?

20. The point relating to exclusion of the applicability of Section 5 of the Limitation Act to such proceedings by necessary implication will have to be ascertained on comparison of the said provision with the provision regarding limitation under the said Act. Such comparison would reveal that both - the said Section 5 and the said proviso to Sub-section (7) of Section 7 of the said Act - deal with the subject of "extension of period of limitation" for filing appeal. Under both the provisions of law, extension is permissible on satisfaction of the appellate authority about the inability of the appellant to file appeal within the prescribed period of limitation. However, one additional factor which is prescribed under the said proviso to Section 7(7), and which is conspicuously absent in the said Section 5 of the Limitation Act, is the restriction regarding extension of such period of limitation or the period for condonation of delay. This obviously discloses that though both the provisions deal with the same subject i.e., the extension of limitation and the power of the appellate authority to condone the delay, in case of the said proviso under the said Act, it is restricted to a specific period, whereas there is no such restriction u/s 5 of the Limitation Act. This apparently discloses clear intention of the Legislature to restrict the power of the appellate authority under the said Act regarding extension of the period of limitation for filing appeal. Such an inference is inevitable in the face of the scheme of the said Act which clearly discloses that the said Act to be a complete

Code in itself and though it is not said in so many words like in the case of the Arbitration and Conciliation Act, 1996 that the period cannot be extended beyond the specified period for extension, yet conclusion in that regard has to be drawn in favour of exclusion of applicability of Section 5 of the Limitation Act to the proceedings under the said Act by necessary implication.

21. Considering the phraseology of Section 29(2) of the Limitation Act, undoubtedly, there is presumption about its applicability to special Acts in case of such special Act being silent about its exclusion. But the presumption would stand rebutted once the provision relating to limitation and restriction on power of extension thereof being specifically provided under a special statute. Merely because a special statute is silent on the subject, that by itself would not lead to a presumption about exclusion of Section 29(2) or for that matter Section 5 of the Limitation Act. Nevertheless, when the phraseology of the relevant provision in the special statute inevitably indicates the intention of the Legislature to exclude by necessary implication the applicability of the provisions of law contained u/s 5 of the Limitation Act, it would amount to making violence to the statutory provision to construe it to the contrary. To read the concept of unlimited extension of period of limitation by filing appeal under the said Act in the said proviso to Section 7(7) of the said Act would virtually amount to supplement the said proviso by Section 5 of the Limitation Act which is clearly impermissible.

22. The Apex Court in *Hukumdev Narain Yadav's case* (supra), while dealing with the point regarding the applicability of Section 29(2) of the Limitation Act, 1963 to the proceedings under the Representation of the People Act, 1951, rejecting the contention that the words "expressly excluded in Section 29(2) would mean that there must be an express reference made in the special Act to the specific provision of the Limitation Act of which the operation is to be excluded" held that:

If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the provisions of Section 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation.

On an examination of the relevant provisions of the Representation of the People Act it was ruled that the provisions of the Limitation Act are necessarily excluded, and therefore the benefits conferred therein cannot be called in aid to supplement the provisions of the said statute. The ruling was also to the effect that the applicability of the provisions of the Limitation Act to the proceedings under the special Act has to be judged not from the terms of the Limitation Act but by provision of the special Act relating to the subject matter under consideration and to ascertain whether it is a complete Code in itself which does

not admit of the application of the provisions of the Limitation Act mentioned in Section 29(2) thereof.

23. In the Commissioner of Sales Tax (supra), the Apex Court referring to the provisions of the U.P. Sales Tax Act, 1948, held that the scheme and the language used therein unmistakably shows that the Legislature had deliberately excluded the application of the principles underlying Section 5 of the Limitation Act except and to the extent and in the transacted form introduced in the Sub-section (3-B) of Section 10 of the said Sales Tax Act. The Section 10 thereof ensures speedy and final determination of the fiscal matters within reasonably certain time schedule, and therefore it was ruled that:

12. If the legislature wilfully omits to incorporate something of an analogous law in a subsequent statute, or even if there is a *casus omissus* in a statute, the language of which is otherwise plain and unambiguous, the Court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation by analogy or implication, something what it thinks to be a general principle of justice and equity. "To do so" -(at p.65 in Prem Nath L. Ganesh Dass Vs. Prem Nath L. Ram Nath and Others, . Per Tek Chand J.) "would be entrenching upon the preserves of Legislature", the primary function of a court of law being *jus dicere* and not *jus dare*.

24. In Sakuru's case (supra), the Apex Court while dealing with the question as to whether the provisions of Section 5 of the Limitation Act, 1963 can be invoked for condoning the delay in filing appeal under the Andhra Pradesh (Telengana Area) Tenancy and Agricultural Lands Act, 1950, after taking note of Section 93 of the said A.P. Act which provided that "Every appeal and every application for revision under this Act shall be filed within sixty days from the date of the order against which the appeal or application is filed and the provisions of the Indian Limitation Act, 1908 shall apply for the purpose of the computation of the said period", held that Section 5 is not a provision dealing with "computation of the period of limitation". It is only after the process of computation is completed and it is found that an appeal or application has been filed after the expiry of the prescribed period that the question of extension of the period u/s 5 can arise. Considering that the appellate authority under that Act was the Collector and not the Court, it was held that the Limitation Act has no applicability to the proceedings before the Collector.

25. It is also to be remembered that the fixation of periods of limitation may tend to be to some extent arbitrary, and may result in hardship, but in construing such provisions equitable considerations are out of place. {Vide: AIR 1932 165 (Privy Council) .

26. In Metal Box India Limited (supra) the learned single Judge of this Court dealing with the scope 7 of the said Act, taking clue from the decision of the Apex Court in Popular Construction Co.'s case (supra), held that it is now well settled that whenever a special statute prescribes a limited period of condonation

then it is not open to apply the provision of Section 5 of the Limitation Act. Limitation Act also applies to the special statute but by virtue of specific provision for condonation of delay only upto 60 days, by all necessary implication, the provision of Section 5 of the Limitation Act has been excluded by the legislature while enacting proviso of Section 7(7) of the Payment of Gratuity Act, 1972.

27. In *City College, Calcutta* (supra), the Calcutta High Court by merely holding that the Appellate Authority under the said Act is not a Court and without considering the applicability of Section 29 of the Limitation Act to the appellate proceedings under the said Act held that the Appellate Authority under the said Act has no power to condone the delay beyond 120 days.

28. In *Special Officer, and Salem Co-operative Primary Land Development Bank, Salem* (supra), the learned single Judge of the Madras High Court relying upon the decision of the Apex Court in *The Commissioner of Sales Tax, Uttar Pradesh, Lucknow* (supra), held that "When the time limit is prescribed and also a power to condone the delay upto a limit is also granted, there is no scope for having recourse to the Limitation Act, especially in the absence of any provision in the enactment concerned."

29. In *State of Goa Vs. Western Builders*, , the Apex Court referring to the undisputed proposition of law that if the specified period of limitation has been provided for making application for condonation of delay or for any other purpose, the period of limitation prescribed under the special law would prevail and to that extent the provisions of the Limitation Act, 1963 would stand excluded and that whenever two enactments are overlapping each other on the same subject, the Court shall be cautious in interpreting the provisions and it should not exceed the limits provided by the statute.

30. As regards the decision in *Yeshwant Sahakari Kamgar Bank Limited's* case (supra) is concerned, it was a matter in relation to the applicability of Section 14 of the Limitation Act to the appellate proceedings under the *Employees' Provident Fund and Miscellaneous Provisions Act, 1952* to which the provisions of the CPC apply. The applicability of the provision of Section 14 of the Limitation Act depends upon totally different criteria in comparison with the issue relating to the applicability of Section 5 of the Limitation Act. Even in case of the proceedings u/s 34 of the *Arbitration and Conciliation Act, 1996*, the Apex Court in *Western Builders'* case (supra) had ruled that inspite of Section 34 thereof, the provision of Section 14 of the Limitation Act would apply to the proceedings under the *Arbitration and Conciliation Act, 1996* and the same view was taken by the Full Bench of this Court in *Velingkar Brothers'* case (supra). The decision *Yeshwant Sahakari Kamgar Bank Limited's* case, therefore, is of no help to the appellant in the case in hand.

31. Once we hold that the provision of Section 5 considering the scheme and the statutory provisions in the said Act would not apply to the appellate proceedings under the said Act, question of considering whether the Appellate Authority

under the said Act is a Civil Court or even a Court for the purpose of applicability of the provision of the Limitation Act does not arise at all.

32. In *Dhrangadhra Taluka Sahakari Kharid Vhechan Sangh's* (supra), it was held that the proceedings before the Registrar's nominee under the Gujarat Co-operative Societies Act, 1961 are civil proceedings and are before the Court. In *G.N. Venkataswamy's* case (supra), it was held that the Collector for T.N. Revenue Recovery Act, 1864 is a Revenue Court within the meaning of Entry 11-A of the State List in the Constitution of India. In *P. Sarathy's* case (supra), it was ruled by the Apex Court that the Appellate Authority u/s 41 of the T.N. Shops and Establishment Act, 1947 is not a Civil Court within the meaning of the CPC but it is a Court for the purpose of Section 14 of the Limitation Act. In *K. Shamrao's* case (supra), it was held that considering the scheme of the Bombay Public Trust Act, 1950, the Charity Commissioner thereunder has almost all the powers of an ordinary Civil Court to decide the matters with definitive judgment with finality attached thereto and, therefore, is a Court for the purpose of Contempt of Courts Act, 1971. In *Chalisgaon Shri Laxmi Narayan Mills'* case (supra), it was held by this Court that the proceedings before the Joint Liquidator are in the nature of civil proceedings held before a Court of first instance within the meaning of those words in Section 14 of the Limitation Act. In *Mukri Gopalan's* case (supra), it was held that the Appellate Authority under the Kerala Rent Control Act need not be a full-fledged Civil Court constituted under the CPC in order to be entitled to condone the delay u/s 5 of the Limitation Act. All these decisions are on the point of applicability of the provisions of Limitation Act only because the authorities thereunder are Courts. For the reasons stated above, the decisions are of no help in the case in hand.

33. In *Velingkar Brothers'* case, it was a matter under the Income Tax Act, 1961 wherein the provision of law is totally different from the one comprised u/s 7(7) of the said Act. The provision relating to limitation u/s 260A of the Income Tax Act, 1961 reads thus:

(2) The Chief Commissioner or the Commissioner or an assessee aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be (a) filed within one hundred and twenty days from the date on which the order appealed against is received by the assessee or the Chief Commissioner or Commissioner;

The provision does not prescribe any restriction on the power of extension nor even prescribe the period upto which the delay can be condoned.

34. For the reasons stated above, therefore, we find no substance in the grievance sought to be made on behalf of the appellant. The point for consideration has to be answered in the negative, that is to say, the Appellate Authority under the said Act cannot entertain appeal beyond 120 days from the date of receipt of the order. Hence, there is no case for interference in the impugned order. The appeal fails and is hereby dismissed with costs.