(2015) 01 GUJ CK 0041

In the Gujarat High Court

Case No : S.C.A. No. 1106 of 2015

Kelavani Trust Vadodara — APPELLANT

Vs

Bharatiben D. Shah and Others — RESPONDENT

Date of Decision : 22-01-2015

Acts Referred:

Electricity Act, 2003 — Section 111, 125, 145
Land Acquisition Act, 1894 — Section 11, 18, 18(1), 18(2), 29
Limitation Act, 1963 — Section 10, 11, 12, 13, 14
Payment of Gratuity Act, 1972 — Section 14, 7, 7(7)

Citation : (2015) 145 FLR 502 : (2015) 1 LLJ 679 : (2015) 3 LLN 690

Hon'ble Judges : N.V. Anjaria, J.

Bench : Single Bench

Advocate : Vibhuti Nanavati, for the Appellant

Final Decision : Dismissed

Judgement

N.V. Anjaria, J.—Heard learned advocate Mr. Vibhuti Nanavati for the petitioner. Petitioner Trust-the employer has filed the present petition, and has prayed as under.

"Your Lordships may be pleased to call for the R and P of the case and after perusing the same, be pleased to allow this Special Civil Application and pass appropriate order, writ of mandamus or writ of certiorari or direction quashing and setting aside order dated 05.10.2013 (Annexure-B) rendered by Respondent No. 26 herein in Case No. 74 to 91 of 2013, 93 to 96 of 2013, 99 of 2013, 119 of 2013 and 131 of 2013 and further be pleased to quash and set aside order dated 9.7.2014 rendered in Appeal No. 19827 to 19851 of 2014 rejecting the delay application by Respondent No. 27 authority (Annexure-A) declaring the same as illegal, unjust, arbitrary and contrary to the facts and material on record as well as provisions of Payment of Gratuity Act, 1972." 2. The basic facts may be noted at the outset. The employees-25 in number, being respondent Nos. 1 to 25 herein filed Applications before the Controlling Authority of Payment of Gratuity

Act, 1972 being Application Nos. 74 of 2013 to 91 of 2013, 93 of 2013 to 96 of 2013, 99 of 2013, 119 of 2013 and 131 of 2013. The Controlling Authority by its common order dated 05.10.2013 awarded the gratuity to the applicants-employees directing to pay the differential amount with 10% simple interest.

2.1. The workmen concerned had put in 25 to 30 years of service and on the basis of which, the amount of gratuity payable was determined. The controlling authority directed to pay the amount remaining to be paid to the respective workman. The details of amount already paid by the employer, the differential amount ordered by the controlling authority are not set out so as not to burden the order.

2.2. The aforesaid order dated 05.10.2013 came to be subjected to Appeal by the employer before the Appellate Authority under the Payment of Gratuity Act, 1972. The Appellate Authority dismissed all the Appeals on the ground that they were filed beyond 120 days which is the total period provided as special limitation under Section 7(7) of the Payment of Gratuity Act, 1972 for the purpose of preferring Appeal before the Appellate Authority.

3. Under sub-section (4) of Section 7 of the Act, an application for gratuity lies. Sub-section (7) provides for appeal against the order of the Controlling Authority. The said provision reads as under:

"(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, may, 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.

Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under sub-section (4), or deposits with the appellate authority such amount."

3.1. Reading of the aforesaid provision makes it clear that the period provided to prefer appeal before the appropriate government or such other appellate authority which may be specified, against the order of the controlling authority, is 60 days from the date of receipt of the order of controlling authority. The First Proviso permits preferring of appeal within further 60 days provided sufficient cause for not preferring the appeal within first 60 days is shown. The Second Proviso imposes a precondition of depositing the gratuity amount for admission of appeal by an employer. In other words, maximum period made available by the legislature is total 120 days for preferring the appeal against controlling authority''s order. It would not be gainsaid that this provision is in nature of special period of limitation. Thus the statute does not confer powers to entertain the appeal after 120 days. The power to condon the delay is available within the sixty days contemplated in the First Proviso for which sufficient cause has to be shown so as to explain delay beyond sixty days.

3.2. Undisputedly, in the instant case order of the Controlling Authority is dated 05.10.2013. The period of limitation available was 60 days to challenge the said order by way of Appeal, and further 60 days upon showing sufficient cause, making total period of 120 days. It appears that the petitioner filed Appeals along with delay condonation application on 02.06.2014, as is evident from the Memorandum of Appeal and Application annexed at Annexure-B and Annexure-C respectively in the compilation of this petition. Thus the Appeal was indisputably sought to be filed much after expiry of period of 120 days contemplated in sub-section (7) of Section 7 of the Act.

4. The question whether the appeal before the appellate authority under the Payment of Gratuity Act beyond the total period of 120 days contemplated under section 7(7) of the Act could be maintained and whether period beyond 120 days is condonable, was considered in Sharda Education Trust v. Appellate Authority being S.C.A. No. 639 of 2014 decided on 27th January, 2014 by this court.

4.1. In the aforesaid decision the position of law was discussed and delineated as under.

"5.2. The authorities appointed under the Payment of Gratuity Act, 1972 are not judicial officers. Nor these authorities have the trappings of the court. They cannot be treated as courts. The provisions of the Limitation Act do not apply to the proceedings before these authorities. In Van and Co.; Sole Proprietary concern, through its sole proprietor Ms. Ketty Hosang Vandrawala v. Babubhai Lallubhai 1981 GLH 5ENDLAWFINDER , it was observed,

"In Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., , it has been held by the Supreme Court that the Limitation Act applies to ''Courts'' and not to bodies other than Courts such as quasi-judicial tribunals or executive authorities. It has also been observed in that, decision that an Industrial Tribunal or a Labour Court dealing with applications or references under the Industrial Disputes Act, 1947 is not a Court for the purpose of Limitation Act, because it is not governed either by the Code of Civil Procedure or the Code of Criminal Procedure. For these two reasons, we are of the opinion that the provisions of Sec. 5 of the Limitation Act, 1963, do not apply to the instant case." (Para 5)

5.3. The court held that the appellate authority has no jurisdiction to entertain the appeal after expiry of 120 days from the date of order of the controlling authority. Taking note of Sec. 14 of the Gratuity Act, which expressly excludes application of any other law which is in consistent with the Act, the Division Bench held that Sec. 29(2) of the Limitation Act, 1963 has no application, it was observed and held,

"The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act." (Para 4)

5.3.1. It was stated,

"We find that there is inconsistency between Sec. 5 of the Limitation Act, 1963, and sub sec. (7) of Sec. 7 of the payment of Gratuity Act, 1972. Whereas Sec. 5 enables a Court to entertain an appeal at any time after the expiry of the period of limitation prescribed for it, if there is a sufficient cause, sub-sec. (7) of Sec- 7 enables the Appellate Authority to entertain appeal only within sixty days after the expiry of the period of limitation prescribed for it under the said sub-section. In view of the fact that the proviso to sub-sec. (7) of Sec. 7 of the Payment of Gratuity Act, 1972, is inconsistent with the provisions of Sec. 5 of the Limitation Act, 1963, and since Sec. 14 of the Payment of Gratuity Act, 1972, gives overriding effect to the provisions of that Act over all other Acts, within I the meaning of sub-sec. (2) of Sec. 29, application of the provisions of Sec. 5 of the Limitation Act, 1963 is excluded by Sec. 14." (Para 4)

5.1. The question whether the appeal can be maintained after 120 days, is no longer res Integra in view of decision of this court in Van and Co. (supra). Again in Western Coalfields Ltd. Vs. Controlling Authority and Others, the Madhya Pradesh High Court has taken similar view,

"On a plain reading of the aforesaid provision it becomes luminously clear that the appellate authority has jurisdiction to condone the delay beyond the period of sixty days if sufficient cause is shown, by extending the said period by a further period of sixty days. It is to be borne in mind that the Payment of Gratuity Act is a special statute and there is provision for condonation of delay. Once the limitation period has been provided and there is further provision conferring the power on authority to condone the delay of 60 days beyond the specified period if sufficient cause is shown, the authority cannot travel beyond it. It is well settled in law that in absence of conferment of jurisdiction to condone delay the statutory authority which is a quasi judicial authority cannot condone delay or extend the period of limitation." (Para 5)

5.5. The Madhya Pradesh High Court relied on Supreme Court decision in Officer on Officer on Special Duty (Land Acquisition) and Another Vs. Shah Manilal Chandulal and Others, wherein the Apex Court while considering whether the Land Acquisition Officer under the Land Acquisition Act is Court or not and can condone the delay under Section. 18 of said Act, has held as under:

"It is to remember that the Land Acquisition (Amendment) Act (68 of 1984) was enacted prescribing the limitation to exercise the power under Sections 4, 6 and 11 and also excluded the time occupied due to stay granted by the Courts.

Taking cognizance of the limitation prescribed in proviso to sub-section (2) of Section 18 the provisions of the Limitation Act were not expressly extended. Though Section 29(2) of the Limitation Act is available, and the limitation in proviso to sub-section (2) of Section 18 may be treated to be special law, in the absence of such an application by Land Acquisition (Amendment) Act (68 of 1984), the Act specifically maintains distinction between the Collector and the Court and the Collector/LAO performs only statutory duties under the Act, including one while making reference under Section 18. It is difficult to construe that the Collector/LAO while making reference under Section 18, as statutory authority still acts as a Court for the purpose of Section 5 of the Limitation Act." (Para 17)

"Though hard it may be, in view of the specific limitation provided under proviso to Section 18(2) of the Act, we are of the consider view that sub-section (2) of Section 29 cannot be applied to the proviso to sub-section (2) of Section 18. The Collector/LAO, therefore is not a Court when he acts as a statutory authority under Section 18(1). Therefore, Section 5 of the Limitation Act cannot be applied for extension of the period of limitation prescribed under proviso to sub-section (2) of Section 18......"(Para 18)

5.6. Hon''ble the Supreme Court in Chhattisgarh State Electricity Board Vs. Central Electricity Regulatory Commission and Others, , considered similar provision under Sec. 125, proviso under Electricity Act, 2003, providing period of limitation for appeal to the Supreme Court against order of Appellate Tribunal for Electricity. Section 125 provided for normal period of be days which under the proviso to Sec. 125, was extendable for further 60 days, as is the provision under sec. 7(7) of Gratuity Act also. It was held that delay in filing appeal beyond 120 days cannot be condoned by the Supreme Court. The apex court stated, "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." (Para 25)

5.6.1. The object underlying was highlighted thus:

"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." (Para 26)

5.6.2. The Court proceeded to state,

"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." (Para 27)

5.6.3. What is finally held in Chhattisgarh SEB (supra) is equally and fully applicable to interpretation of sec. 7(7) of the Gratuity Act.

"In view of the above discussion, we hold that Section 5 of the Limitation Act cannot be invoked by this Court for entertaining an appeal filed against the decision or order of the Tribunal beyond the period of 120 days specified in Section 125 of the Electricity Act and its proviso. Any interpretation of Section 125 of the Electricity Act which may attract the applicability of Section 5 of the Limitation Act read with Section 29(2) thereof will defeat the object of the legislation, namely, to provide special limitation for filing an appeal against the decision or order of the Tribunal and proviso to Section 125 will become nugatory." (Para 32)

5. In the aforesaid judgment, it was finally I held,

"6.3. As specific period of limitation is provided with prescription of outer limit there under Section 7(7) of the Payment of Gratuity Act, which is a special statute, the same would prevail and reign. The writ jurisdiction cannot be exercised to grant any relief to the petitioner when the appeal before the Appellate Authority was beyond the maximum period of limitation statutorily fixed, as entertaining the petition and granting any relief would amount to breaching and circumventing the statutory provision." The above decision squarely applies here. The Appeals sought to be preferred after expiry of maximum period of 120 days available under the statute were not competent. The petition is liable to be dismissed. The same is accordingly dismissed.

