

(2001) 01 KL CK 0086
In the High Court Of Kerala
Case No : W.A. No. 2076 of 2000

Motor Transport Workers Welfare Fund Board	APPELLANT
Vs	
State of Kerala and Others	RESPONDENT

Date of Decision : 30-01-2001

Acts Referred:

Kerala Motor Transport Workers Welfare Fund Board Act, 1985 — Section 8(5)

Citation : (2001) 1 KLJ 396

Hon'ble Judges : Kurian Joseph, J;K.K. Usha, J

Bench : Division Bench

Advocate : K. Balakrishnan, for the Appellant; V.V. Surendran, M.K. Chandramohan Das and K. Sasikumar, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Kurian Joseph, J.—In the absence of a specific statutory provision to condone the delay, can an appellate authority be compelled to entertain an appeal filed beyond the prescribed period? When a right of appeal is provided, has the appellate authority got an inherent power or implied power to condone the delay in filing an appeal? Under the provisions of the Kerala Motor Transport Workers' Welfare Fund Act, 1985 (for short "the Act"), can a time-barred appeal be directed to be entertained treating it as an application raising a doubt? These are the questions posed in this Writ Appeal. The Kerala Motor Transport Workers' Welfare Fund Board (hereinafter referred to as "the Board") is the appellant. The 4th respondent (hereinafter referred to as "the employer") filed the writ petition (O.P. 12982 of 2000) aggrieved by Ext.P5 order passed by the Government. By the said order, the Government rejected Ext. P3 appeal filed by the employer against the final determination order (Ext.P2) fixing the contribution payable to the Kerala Motor Transport Workers' Welfare Fund (for short "the Fund"). It can be seen from Ext. P2 that taking into consideration the objections of the employer to the provisional assessment order dated 27.6.1998 in respect of the year 1997-98, the District Executive Officer modified the said order and fixed the

contribution payable by the employer as Rs. 32,553/-. It is the case of the employer that though the final determination order is stated to have been passed on 31.8.1998, it was not communicated to him and he came to know of it only when recovery steps were initiated against him and immediately he filed Ext. P3 appeal dated 14.1.2000. Since the appeal was filed beyond the period of 60 days fixed u/s 8 (5) of the Act, Government rejected the same by Ext. P5 order. It is stated in Ext. P5 that the final determination order had already been dispatched by the District Executive Officer on 11.9.1998 and the same was returned with the remarks of the Postal authorities as "unclaimed" on 23.9.1998. And hence Government took the stand that since the appeal was not filed within the stipulated time, it was liable to be rejected.

2. The learned Single Judge however was of the view that the Government was not justified in their conduct. According to the learned Single Judge, instead of rejecting the appeal on technical grounds, the appeal should have been considered on merits. And hence Ext. P5 was quashed and the Government was directed to consider afresh Ext. P3 appeal. Aggrieved by the said judgment, the Board has filed the Writ Appeal.

3. Sri K. Balakrishnan, learned counsel appearing for the appellant contended that there is no power reserved on the Government under the Act to condone the delay in filing the appeal. In the absence of such statutory powers specified under the Act, the Government was not competent to entertain the appeal filed beyond the prescribed period and hence the learned Single Judge was not justified in directing the Government to consider the appeal which was admittedly filed beyond time, on merits. The learned counsel brought to our notice the decision reported in Prasad v. State of Kerala (1999 (2) KLT 531). That was a case dealing with the provisions of the Kerala Toddy Workers' Welfare Fund Act, 1969. There was a challenge against the provisions of the said Act and the grievance highlighted was that the provisions were unconstitutional in not having provided for the condonation of delay by the appellate authority. Referring to the said contention, the Bench observed as follows:-

As already noticed, the period of limitation has been provided under this special statute. The special statute does not contain a provision making the provisions of S. 5 of the Limitation Act applicable. Therefore, the question of condonation of delay invoking that provision does not arise at all. In the instant case, the period has already been prescribed under the statute. There is no inherent right of appeal as contended by the appellants.

The Bench in the said case followed an earlier Division Bench decision of this Court in W.A. No. 206 of 1989.

4. The learned counsel also brought to our notice the judgment of this Court in O.P. No. 17768 of 1999 which dealt with the Kerala Motor Transport Workers' Welfare Fund Act wherein a learned Single Judge of this Court had followed the decision referred above.

5. Sri. M.K. Chandramohan Das, learned counsel appearing for the employer contended that since the statute had already provided for an appeal, the said provision has to be treated as an inherent power of appeal and the scope of such inherent power cannot in any way be restricted by technical pleas like limitation.

6. We are unable to accept the said contention. A reading of Section 8(5) of the Act makes the position clear:-

(5) Any person aggrieved by an order under sub-section (1) may, within sixty days from the date of receipt of the order, prefer an appeal to the Government or any other authority as may be specified by the Government in this behalf and the decision of the Government or of such authority on such appeal shall be final.

Thus, it can be seen that it is not an inherent right of appeal that the Government possesses. That right of appeal is a creature of the statute. When the appeal itself is thus the creature of the statute, the same has to be considered according to the provisions of the said statute. The contention that once a right of appeal is provided, the appellate authority has got an implied power to condone the delay in filing the appeal and entertain the appeal is without any basis. The Act does not provide for entertaining an appeal filed beyond 60 days of notice of the final determination order. In the absence of such a provision expressly conferring power on the appellate authority to entertain an appeal on any count after the period of limitation prescribed under the statute, the Appellate Authority is not competent to entertain a time-barred appeal. There is no implied power to the appellate authority. Its powers are only those prescribed under the statute, nothing more and nothing less. It is significant in this context to note that the provisions of the Limitation Act are not made applicable in the instant case,

7. Learned counsel then contended that interpreting the provisions of the Act, a learned Single Judge of this Court has taken the view that even if the issue is not entertained as an appeal, the Government has a duty to consider the case on merits. On an analysis of the Kerala Motor Transport Workers' Welfare Fund Scheme, 1985 (hereinafter referred to as "the Scheme"). T.L. Viswanatha Iyer, J. in *Kunhipokku v. District Executive Officer* (1993 (2) KLT Sh., 4), while dealing with a similar issue of rejection of appeal as time-barred, took the view that the issue is capable of being treated as a dispute so as to come under Clause 83 of the Scheme. Clause 83 reads thus;-

83. Removal of difficulties.- If any difficulty arises in giving effect to the provisions of this scheme and in particular, in any doubt arises as to:-

(i) the number of person employed in the establishment;

(ii) whether the total quantum of benefits to which an employee is entitled has been reduced by the employee:

The Government may by order, make such provisions, or give such directions not inconsistent with the provisions of this scheme as appear to it to be necessary or

expedient for the removal of the doubt or difficulty, and the order of the Government in such cases shall be final.

For one thing, it has to be noticed that in the above case the learned Single Judge was dealing with a dispute which pertained to the number of persons engaged by the employer. As can be seen from Clause 83(i) quoted above, that is a dispute. In case of any dispute arising as to the number of persons employed in an establishment, Government is well within its jurisdiction to issue appropriate orders not inconsistent with the provisions of the Scheme, of course for the removal of doubt. Apparently, in that view of the matter only, the learned Single Judge directed the Government to consider the appeals filed by the petitioners therein on merits. That it was the view taken by the learned Single Judge is discernible from the following observations:-

In all these three Original Petitions, the dispute raised is in relation to the number or pursuase employed by the petitioners. If that be the case, government is entitled under clause 83 to remove the difficulty if any doubt arises about it. Such a question or doubt can be raised either by the authorities of the Welfare Fund Board or by the assesses himself. Government's powers to resolve the doubt and to remove the difficulty are plenary in the absence of any fetter to the exercise of that power in clause 83. Therefore, even if the appeals filed by the petitioners are not liable to be entertained as such, still they can be treated as application raising a "doubt" of the nature specified in clause 83, in which event government can remove the difficulty in exercise of their powers under this clause.

8. It is the contention of the learned counsel for the employer that his appeal Ext. P3 is also liable to be directed to be considered on merits referring to Clause 83 of the Scheme. But it has to be noted that invocation of the said provision in the Scheme can be made only "if any difficulty arises in giving effect to the provisions of this Scheme" and in particular, if any doubt arises as to the number of persons employed in an establishment and on the total quantum of eligible benefits when reduced by the employer. Obviously, the reference is to two aspects:-1) removal of difficulties in giving effect to the provisions of the Scheme; and 2) removal of doubt. In the instant case there is no such doubt. It is a case relating to the quantum of contribution. And clause 83 of the Scheme is liable to be invoked only in case of difficulty in giving effect to the provisions of the Scheme and for removal of doubt on the above mentioned aspects. Here the issue is regarding the power of the Government to entertain an appeal against a final determination order which was filed beyond the prescribed period of 60 days. It is significant to note that there is no provision under the Act for the invocation of plenary powers of the Government for removal of difficulties in giving effect to the provisions of the Act. And hence Kunhipokku's case has to be clearly distinguished. The dictum in the said decision is applicable only in the matter of removal of difficulties and in giving effect to the provisions of the Scheme and removal of doubts with regard to enumerated matters therein.

9. There is yet another reason why the said judgment has to be distinguished. The Scheme is framed in exercise of the powers u/s 3 of the Act which reads as follows:-

3. Motor Transport Workers" Welfare Fund-(1) The Government may, by notification in the Gazette, frame a scheme to be called the Kerala Motor Transport Workers" Welfare Fund Scheme for the establishment of a Fund under this Act for employees and there shall be established, as soon as may be after the framing of the scheme, a Fund in accordance with the provisions of this Act and the scheme".

(2) The Fund shall vest in, and be administered by, the Board.

(3) Subject to the provisions of this Act, the scheme may provide for all or any of the matters specified in the Schedule.

It can be seen from sub-section (3) that the Scheme is to provide for all or any of the matters specified in the Schedule to the Act. Of the 18 enumerated matters, there is no reference to the filing of appeal or entertaining the same beyond the prescribed period. In that view of the matter also, by no stretch of imagination can it be said that an appeal contemplated u/s 8(5) can be treated as a dispute referable to clause 83 of the Scheme, for the resolution of which there is no time-limit.

10. It is not because of any legislative lacunae that the Government is not vested with the power to condone the delay. The legislature has intended to be so. That is why even after 8 years of the judgment in Kunhipokku"s case, where the learned Single Judge observed "having provided an appeal u/s 8, against orders determining the amount due from an employer, it will only be appropriate to expressly provide for condonation of the delay in filing appeals for sufficient cause. Else, a charge of arbitrariness is likely to be raised.....", so far the legislature has not come out with any amendment in the Act. We arc of the clear view that in the absence of any specific statutory provision, the appellate authority-Government is not entitled to entertain any appeal filed u/s 8(5) of the Act beyond the prescribed period of 60 days. There is no inherent right of appeal under the Act and the Government has no power, express or implied, to condone the delay and entertain an appeal. An appeal filed beyond the statutory period is only to be rejected.

In that view of the matter, we set aside the judgment of the learned Single Judge and allow the Writ Appeal.