

(2001) 04 AP CK 0163

In the Andhra Pradesh High Court

Case No : Appeal Against Order No. 2028 of 1992

M/s. Brooke Bond India Ltd.

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 27-04-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Commissions of Inquiry Act, 1952 — Section 4, 5(5)
Limitation Act, 1963 — Section 10, 11, 12, 13, 14
Penal Code, 1860 (IPC) — Section 193, 210, 219, 228
Railway Claims Tribunal Act, 1987 — Section 13, 17, 17(1)(a), 17(2), 18(3)

Citation : AIR 2001 AP 526

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

Bench : Single Bench

Advocate : Deepak Bhattacharjei, for the Appellant; T. Ramakrishna Rao, S.C. for Railway, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Ramana, J.—This appeal is filed by the Applicant in O.A. No. 8 of 1990 before the Railway Claims Tribunal, Secunderabad Bench, aggrieved by the order dated 21-9-1992 passed therein.

2. The question involved in this appeal is whether the provisions of the Limitation Act will apply to the Railway Claims Tribunal or not.

3. The appellant filed O.A. No. 8/1990 before the Railway Claims Tribunal, Secunderabad Bench (hereinafter referred to as the "R.C.T.") for compensation for shortage and damage alleged to have been suffered by a consignment of tea carried by the Railways from New Gauhati in N.E.F. Railway to Bhongir in South Central Railway. On 23-3-1986 the appellant booked the consignment of goods (tea packets) at Gauhati Railway Station under Railway Receipt No. A-178310 to be delivered at Bhongir in Andhra Pradesh. At the time of delivery of goods at Bhongir Railway Station, it was found that some of the tea packets were in

damaged condition and there was also a shortage of 15 Kgs of tea packets. The Station Master of Bhongir Railway Station issued a certificate of shortage and damage. The applicant thereafter preferred a claim for compensation with the 2nd respondent. General Manager, N.F. Railway at Gauhati and the General Manager, South Central Railway at Secunderabad under S. 78-B of the Indian Railways Act. As both the Railway administrations repudiated the claim of the applicant on 28-4-1987 the appellant issued a notice under S. 80, CPC to the respondents. On 16-9-1988, the General Manager of South Central Railway, Secunderabad, sent a letter to the appellant accepting the claim of the appellant for compensation to an extent of Rs. 26,844/- on equitable basis. The appellant did not agree for the offer made as above and wrote back to the General Manager of South Central Railway stating that the sum offered was not acceptable and that the Railways should pay the amount as claimed by it taking into consideration the extent of damage suffered by the consignment and also the cause for the damage. As the claim was not settled by the Railways despite further correspondence, the applicant filed the O.A. before the R.C.T. for recovery of Rs. 60,364/- from the respondents towards the cost of the tea damaged and short-delivered and other incidental charges.

4. Before the R.C.T., the respondents filed counter resisting the claim of the applicant on various grounds and inter alia contended that the claim is barred by limitation.

5. Based on the pleadings, the R.C.T. framed the following issues for consideration:

(i) Whether the subject consignment suffered shortage and damage while in transit and in the custody of the Railways, and if so, whether the Respondents are responsible for the same?

(ii) Whether the shortage and damage alleged to have been suffered by the consignment was on account of non-compliance of the prescribed packing conditions by the consignor?

(iii) Whether the Application is barred by limitation?

(iv) What relief?

6. The O.A. was heard by the Secunderabad Bench of the R.C.T. comprising Member Technical and Member Judicial. On 16-4-1992, the Members of the Bench differed in their opinion regarding the question whether the claim is barred by limitation or not, and delivered two separate orders in the O.A. The Judicial Member of the Bench held that the claim is not barred by limitation and allowed the O.A. as against respondents 1 and 2 and dismissed the same as against respondent No. 3. However, the Technical Member took the view that the claim is barred by limitation. In view of the divergent views taken by the two Members of the Bench, the matter was referred to third Member (Judicial Member of the Nagpur Bench of the R.C.T.) for opinion. By his order dated 18-9-1992, the third

Member concurred with the Technical Member of the Bench which heard the matter, i.e. that the claim of the applicant is barred by limitation. Ultimately, on 21-9-1992, as per the majority opinion the Bench of the RCT dismissed the O.A. on the ground that the claim is barred by limitation. Aggrieved by the said order, the present appeal is filed by the applicant in the O.A.

7. The main contention of the appellant is that as per the provisions of Section 17(1)(a) of the Railway Claims Tribunals Act, the application for compensation should be made within a period of three years from the date of entrustment of consignment of goods to the Railway administration for carriage in the Railways and, therefore, the claim must be made within a period of three years from the date of booking the consignment. In this category of cases, if there is no correspondence after booking, the claim should be preferred within a period of three years. In the second category to which, according to the appellant, the present claim belongs, i.e., when the Railway administration acknowledges the claim of the applicant/claimant and agreed for part-payment, the limitation will start running from the date of such acknowledgment. According to appellant's counsel, the claim in this case falls under the second category mentioned above and, therefore, not barred by limitation. According to appellant's counsel, in this case on 16-9-1988, the South Central Railway administration agreed for part payment of the claim to the appellant and offered, on the ground of their negligence, an amount of Rs. 26,844/- and so the limitation for the purpose of filing the application will start running not from the date of booking consignment and it starts only from the date of acknowledgment, i.e. 16-9-1988. Appellant's counsel further contends that since there is no provision in the Railway Claims Tribunals Act to consider the second category of cases to which the appellant belongs, the provisions of S. 29(2) of the Limitation Act are applicable. He submits that the R.C.T. (Railway Claims Tribunal) is a "civil Court" and the provisions of the Limitation Act will apply to the proceedings before the R.C.T.

8. Appellant's counsel, relying on the decision in Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker, contended that there is no exclusion of applicability of the Limitation Act to the Railway Claims Tribunal Act and so S. 18 of the Limitation Act has to be read into the provisions of the Railway Claims Tribunals Act.

9. Relying on the decision of a Division Bench of the Delhi High Court, in Raj Chopra Vs. Shanno Devi and Others, appellant's counsel contended that the date of acknowledgment/letter is the starting point for cause of action and the limitation starts from that date.

10. Counsel for appellant contended, relying on the judgment in Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker, that the question whether an authority is a "Court" or not has to be considered and decided basing on the power exercised by such authority, According to him, a reading of the provisions of the Railway Claims Tribunals Act would indicate that the R.C.T is a "Civil Court", He invited attention of this Court to the provisions of S. 18(3) of the Railway Claims

Tribunals Act wherein it is mentioned that "the Claims Tribunal shall, for the purpose of discharging the functions under this Act, have the same powers as are vested in the civil Court under the CPC 1908".

11. According to the counsel for appellant, as per the provisions of Section 25 of the RCT Act, all proceedings before the RCT shall be deemed to be "judicial proceedings" as contemplated under Ss. 193, 219 and 228, IPC. He contends that a conjoint reading of the above provisions of law, in the light of the test laid by the Supreme Court in Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker, would clearly indicate that the RCT is a "Civil Court" and the provisions of the Limitation Act will apply to the proceeding before the RCT.

According to the learned counsel for appellant, when once the provisions of the Limitation Act are held to be applicable to the proceedings before R.C.T. then as per S. 18 of the Limitation Act the acknowledgment made by the Railways, i.e. the letter written by the Railways agreeing for part payment on 16-9-1998 is an "acknowledgment" within the meaning of S. 18 of the Limitation Act, and therefore, a fresh period of limitation shall be computed from the time when the said acknowledgment was signed. If this was considered, according to the Counsel for appellant, the claim of the appellant will be within time. He, finally, contends that the majority view of the RCT that the claim is barred by limitation is not correct.

12. On behalf of respondents-Railways Senior Counsel Sri Ramakrishna Rao appeared and contended that the Railway Claims Tribunal Act is a self-contained enactment and according to the provisions of S. 17 of the said Act, there is a clear period of limitation prescribed, and the claim in the present case is clearly barred by limitation. Section 17 of the Act reads:

17. Limitation: (1) The Claims Tribunal shall not admit an application for any claim-

(a) under sub-clause (i) of clause (a) of sub-section (1) of Section 13 unless the application is made within three years from the date on which the goods in question were entrusted to the railway administration for carriage by railway,

(b) under sub-clause (ii) of clause (a) of sub-section (1) of S. 13 unless the application is made within one year of occurrence of the accident.

(c) under clause (b) of sub-section (1) of S. 13 unless the application is made within three years from the date on which the fare or freight is paid to the railway administration:

Provided that no application for any claim referred to in sub-clause (i) of clause (a) of sub-section (1) of S. 13 shall be preferred to the Claims Tribunal until the expiration of three months next after the date on which the intimation of the claim has been preferred u/s 78-B of Railways Act.

(2) Notwithstanding anything contained in sub-section (1), an application may be

entertained after the period specified in subsection (1) if the applicant satisfies the Claims Tribunal that he had sufficient cause for not making the application within such period.

13. Elaborating his argument, learned counsel for the respondent submits that sub-section (2) of S. 17 of the Railway Claims Tribunal Act provides that in case when the RCT can entertain the claims barred by limitation also by condoning the delay. If at all the appellant has any reason to believe that there is sufficient cause to condone delay in ought to have approached the RCT under S. 17(2) of the Railway Claims Tribunal Act, Counsel for respondent therefore contends that as the appellant has not approached the RCT as per Section 17(2) of the said Act, the argument of appellant's counsel that Limitation Act applies to the RCT is liable to be rejected.

14. Counsel for respondents submits that the RCT is not a "Civil Court" and in support of this contention he relied on the decision of the Supreme Court in Birla Cement Works Vs. G.M., Western Railways, and another,

15. In Birla Cement Works Vs. G.M., Western Railways, and another, the Hon'ble Supreme Court while considering the provisions of the Limitation Act as well as the Railway Claims Tribunal Act, held that the RCT is not a "Civil Court" and the provisions of Limitation Act have no application to the applications made under the Railway Claims Tribunal Act. In that case, the Supreme Court held (paras 3 and 4):

Section 17(1)(c) of the Limitation Act, 1963 would apply only to a suit instituted or an application made in that behalf in the civil suit. The Tribunal is a creature of the statute. Therefore, it is not a civil Court nor the Limitation Act has application, even though it may be held that the petitioner discovered the mistake committed in paying "overcharges" and the limitation is not saved by operation of S. 17(1)(c) of the Limitation Act.

Section 78-B of the Act provides that a person shall not be entitled to refund to overcharge or excess payment in respect of animals or goods carried by Railway unless his claim to the refund has been preferred in writing by him or on his behalf to the Railway Administration to which the animals or goods were delivered to be carried by Railway etc, within six months from the date of the delivery of the animals or goods for carriage by Railway The proviso has no application to the facts of this case An overcharge is also a charge, which would fall within the meaning of S. 79-B of the Act Since the claims were admittedly made under S. 78-B itself but beyond six months, by operation of that provision in the section itself, the claim becomes barred by limitation Therefore, the Tribunal and the High Court have rightly concluded that the petitioner is not entitled to the refund of the amount claimed.

16. While distinguishing the judgment of the Supreme Court in Union of India Vs. Prince Muffakam Jah and others, it is contended by the counsel for respondents that the provisions which were examined by the Supreme Court in the said

judgment relate to Kerala Buildings (Lease and Rent Control) Act 1965 He further contended that on a comparative reading of S. 18 of the Limitation Act the appeal provision is entirely different than that of the provisions of S. 17 of the Railway Claims Tribunal Act He, therefore, contends that in view of the judgment of the Supreme Court in Birla Cement Works Vs. G.M., Western Railways, and another, the appeal is liable to be dismissed.

17. Having heard the learned counsel on both sides, I have perused the order under appeal as well as the provisions of the Railway Claims Tribunal Act and the Limitation Act.

18. The contention urged by the counsel for appellant that the Railway Claims Tribunal is a civil Court cannot be accepted Merely because Section 18(3) of the Act provides that the Claims Tribunal, for the purpose of discharging the functions under the Act, shall have the same powers as are vested in the civil Court under the Code of Civil Procedure, 1908 and S. 25 provides that the proceedings before the Tribunal shall be deemed to be judicial proceedings as contemplated under Ss. 193, 210 and 228, IPC, they do not make the Railway Claims Tribunal a "Civil Court" Analogous provision to Section 18(3) of the Railway Claims Tribunal Act is to be found in S. 4 of the Commissions of Inquiry Act, 1952 and similar provision to that of S. 25 is to be found in S. 5(5) of the same Act (Commissions of Inquiry Act, 1952) In Dr Baliram Waman Hiray Vs. Justice B. Lentin and Others, the Supreme Court held (paras 32 and 33):

A Commission of Inquiry is not a Court properly so called. A Commission is obviously appointed by the appropriate Government for the information of its mind in order for it to decide as to the course of action to be followed. It is, therefore, a fact-finding body and is not required to adjudicate upon the rights of the parties and has no adjudicatory functions. The Government is not bound to accept its recommendations or act upon its findings. The mere fact that the procedure adopted by it is of a legal character and it has the power to administer an oath will not impart to it the status of a Court.

.....It is a familiar feature of modern legislation to set up bodies and tribunals. and entrust them with work of a judicial, quasi-judicial or administrative character, but they are not Courts in the accepted sense of that term, though they may possess, as observed by Lord Sankey, L.C. in Shell Co. of Australia's case (1931 AC 215) some of the trappings of a Court.

19. In any event this question is no longer res integra, in view of the decision of the Supreme Court in Birla Cement Works Vs. G.M., Western Railways, and another, In that decision, the Apex Court has clearly held that the Railway Claims Tribunal is a creature of the statute and is, therefore, not a civil Court. Even in the judgment relied upon by the counsel for the appellant in Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker, the Hon"ble Supreme Court proceeded on the basis that Rent Control Court functioning under the Rent Control Act may not be considered strictly as a civil Court fully covered by the Code of Civil Procedure.

20. This, however, does not conclude the matter here, since the further question which arises for consideration is whether S. 18 of the Limitation Act would be applicable to proceedings before the Railway Claims Tribunal, even though it is not a Court?. It is necessary, therefore, to refer to S. 29(2) of the Limitation Act. which reads thus:

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

21. It is clear from a reading of sub-section (2) of S. 29 of the Limitation Act that the provisions contained in Ss. 4 to 24 of the Limitation Act shall apply only to the extent to which they are not expressly excluded by such special or local law. The provisions of S. 18 of the Limitation Act (being one of the sections between S. 4 and 24) would apply to the Special Law, i.e., the Railway Claims Tribunal Act, only insofar as they are not excluded by the provisions of the Railway Claims Tribunal Act. Section 17(1)(a) of the Railway Claims Tribunal Act is specific and it stipulates that the Claims Tribunal shall not admit an application for any claim unless the application is made within three years from the date on which the goods in question were entrusted to the Railway Administration for carriage by Railway. Admission of a part of liability by the Railway Administration would be of no consequence, since the time-limit prescribed for laying any claim is three years from the date of entrustment of goods for carriage by Railway. It is, therefore, obvious that the applicability of S. 18 of the Limitation Act stands excluded to the claims under the Railway Claims Tribunal Act by virtue of the provisions of S. 17(1)(a) of the Railway Claims Tribunal Act. What is more, in view of the provisions contained in S. 29(2) of the Limitation Act, Section 18 of the Limitation Act shall have no application to the proceedings before the Railway Claims Tribunal. The attempt made by the appellant's counsel to categorise the cases firstly as those in which there is no correspondence and secondly where the Railway Administration acknowledges liability, does not find any support from the provisions of the Railway Claims Tribunal Act. The limitation prescribed under S. 17(1)(a) is three years from the date of entrustment of goods for carriage by Railway, irrespective of the fact whether or not the Railway Administration acknowledges a part of the claim.

22. Section 17(2) of the Railway Claims Tribunal Act, extracted above empowers the Tribunal to entertain an application beyond the period of limitation as prescribed in S. 17(1)(a), if the applicant satisfies the Claims Tribunal that he has sufficient cause for not making the application within such period.

23. In the result, the order of the Railway Claims Tribunal in O.A. No. 8 of 1990 dt. 21-9-1992 holding that the claim is barred by limitation is upheld and C.M.A.

No. 2028 of 1992 is dismissed. No costs.