

(1999) 07 P&H CK 0145
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6587 of 1998

Punjab State Electricity Board

APPELLANT

Vs

Radha Steel Polling Mills and Others

RESPONDENT

Date of Decision : 08-07-1999

Acts Referred:

Electricity Act, 1910 — Section 36, 36(2)
Electricity Rules, 1956 — Rule 6
Limitation Act, 1963 — Section 29, 5

Citation : AIR 2000 P&H 94 : (1999) 3 CivCC 405 : (1999) 123 PLR 603 : (2000) 1 RCR(Civil) 217

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : Sanjeev Sharma, for the Appellant; Ashwani Telwar, (for No. 1), for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—The question of law that arises for adjudication in this petition is whether the Appellate Authority constituted under the Indian Electricity Act, 1910 (hereinafter referred to as the 1910 Act") can condone delay in the filing of appeal under the Indian Electricity Rules, 1956 (hereinafter referred to as "the 1956 Rules") by invoking the provisions of the Limitation Act, 1963 (hereinafter referred to as "the 1963 Act").

2. The facts necessary for deciding the above noted question are that on the basis of test checking of the meter installed in the premises of respondent No. 1, petitioner-Punjab State Electricity Board (hereinafter described as "the Board") sent a revised bill of Rs. 1,05,330.93 to respondent No. 1 who challenged the same by filing civil suit. On a reference being made to him by the Civil Court, the Chief Electrical inspector, Punjab passed award dated 15-9-1994 directing the Board to pay back the amount realised from respondent No. 1 towards power factor surcharge and demand surcharge by holding that the same were not

leviable. The petitioner filed an appeal u/s 36(2) of the 1910 Act for setting aside the award made by the Chief Electrical Inspector. It also applied for condonation of delay in the filing of appeal by submitting an application u/s 5 of the 1963 Act. The Principal Secretary to Government of Punjab, Department of Power dismissed the appeal by observing as under :

"Even if the contention of the appellant is accepted that there was some inadvertent delay in processing of the award in various offices of PSEB, it is admitted that the order was received in the office of the applicant on 1-2-95. Hence the appeal has been filed beyond the limitations prescribed under Rule 6 which is three months from the date on which such order has been served or delivered. In view of the ruling in the judgment of Patna High Court as noted above, I find that Section 5 of the Limitation Act would not apply to the present appeal and the appellate authority has no power or jurisdiction to condone the delay. Application for condonation of delay is, therefore, rejected. Consequently, the appeal against the award is also dismissed as barred by limitation".

3. Shri Sanjeev Sharma assailed the correctness of the impugned order by arguing that the Principal Secretary has gravely erred in holding that the provisions of the 1963 Act are not applicable to the proceedings of appeal filed under the 1910 Act. He submitted that the concerned officer dismissed the application for condonation of delay by erroneously assuming that he was not acting as a Court while hearing the appeal. Shri Sharma took us through the provisions of the 1910 Act, the 1956 Rules and the 1963 Act and argued that in view of the authoritative pronouncement of the Supreme Court in *Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker*, , the provisions of the 1963 Act must be held applicable to the appellate power exercisable by the State Government u/s 36(2) the 1910 Act. He submitted that the Appellate Authority constituted under the 1910 Act should be treated as a Court for the purposes of the 1963 Act. Learned counsel further submitted that the decision of the Apex Court in *Sakuru Vs. Tanaji*, and of the Patna High Court in *Jaimangal Ltd. Avantee Hotel and Another Vs. State of Bihar and Others*, cannot be treated as good law in view of the later pronouncement of the Apex Court in *Mukri Gopalan's* case (supra). On the other hand, Shri Ashwani Talwar urged for dismissal of the writ petition by arguing that while exercising the appellate power u/s 36(2) of the 1910 Act, the State Government cannot be treated as a Court and the provisions of the 1963 Act cannot be applied to the appeals filed u/s 36(2) of the 1910 Act.

4. We have thoughtfully considered the respective submissions and have gone through the decisions relied upon by the learned counsel. Section 36 of the 1910 Act, Rule 6 of the 1956 Rules and Sections 3 4 and 29 of the 1963 Act read as under :

"Section 36 of the 1910 Act.

36. Appointment of Electrical Inspector.-- (1) The appropriate Government may, by notification in the Official Gazette, appoint duly qualified persons to be

Electrical Inspectors and every Electrical Inspector so appointed shall exercise the powers and perform the functions of an Electrical Inspector under this Act within such areas or in respect of such class of works and electric installations and subject to such restrictions as the appropriate Government may direct.

(2) In the absence of express provision to the contrary in this Act, or any rule made thereunder, an appeal shall lie from the decision of an Electrical Inspector to the appropriate Government or if the appropriate Government, by general or special order so directs, to an Advisory Board".

"Rule 6 of the 1956 Rules.

6. Appeals.-- (1) An appeal against an order served under the rules shall lie-

(a) If the order is served by an officer appointed to assist an Inspector and authorised under Sub-rule (2) of Rule 4A, to the Inspector;

(b) if the order is served by an Inspector, to the Central Government or the State Government, as the case may be.

(2) In the case of an order of an Inspector on an appeal preferred to him under Clause (a) of Sub-rule (1), a further appeal shall lie to the Central Government or the State Government, as the case may be;

(3) Every appeal made under Sub-rule (1) shall be In writing, shall be accompanied by a copy of the order appealed against and shall be presented within 3 months of the date on which such order has been served or delivered or is deemed to have been served or delivered as the case may be".

"Sections 3. 4. 5 and 29 of the 1963 Act.

3. Bar of limitation.--(1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence.

(2) For the purposes of this Act-

(a) a suit is instituted-

(i) in an ordinary case, when the plaint is presented to the proper officer;

(ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and

(iii) in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator;

(b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted-

(i) in the case of a set off, on the same date as the suit in which the set off is

pleaded;

(11) In the case of a counter claim, on the date on which the counter claim is made in Court;

(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that Court".

4. Expiry of prescribed period when Court is closed.-- Where the prescribed period for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the Court reopens.

Explanation.-- A Court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day".

5. Extension of prescribed period in certain cases.-- 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.

Explanation.-- 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 this Section.

29. Savings.-- (1) Nothing in this Act shall affect Section 25 of the Indian Contract Act, 1872 (9 of 1872).

(2) 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.

(3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

(4) Sections 25 and 26 and the definition of "easement" in Section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1882) may for the time being extend".

An analysis of the provisions of the 1910 Act and the 1956 Rules, which have been extracted herein above shows that the appropriate government has the power to appoint duly qualified persons to be Electrical Inspectors to exercise the

powers and perform the functions of an Electrical Inspector. The powers of the Electrical Inspector or any officer appointed to assist him are enumerated in Rules 5, 46 and 52 and other provisions of the 1956 Rules. Any person aggrieved by an order passed under the 1956 Rules can file appeal before the Central Government or the State Government, as the case may be. The period of limitation prescribed in Rule 6 (3) of the 1956 Rules is three months of the date on which such order has been served or delivered or is deemed to have been served "or delivered. There is no provision in the 1956 Rules for extension of the period of limitation specified in Sub-rule (3) or for condonation of delay in the filing of appeal.

5. A careful reading of the provisions of the 1963 Act reproduced herein above shows that by virtue of Section 29(2), the provisions of Section 3 have been made applicable where the period of limitation prescribed under any special or local law for any suit, appeal or application is different from the period prescribed by the Schedule appended to the 1963 Act. This sub-section also declares that 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 in so far as they are not expressly excluded by such special or local law.

6. The issue relating to applicability of the provisions of the 1963 Act to the proceedings which are regulated by the special statutes has been considered by the Supreme Court in a large number of cases. In one of the earliest decisions in *Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others*, , the Apex Court ruled that the provisions of Article 181 of the Limitation Act, 1908 cannot be invoked in dealing with applications u/s 33-C(2) of the Industrial Disputes Act, 1947.

7. In *Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc.*, , their Lordships of the Supreme Court repelled the argument urged on behalf of the employer that an application filed u/s 33-C(2) of the Industrial Disputes Act, 1947 after more than 3 years is liable to be dismissed as time barred. While dealing with the scope of Article 137 of the 1963 Act, which is part materia to Article 181 of the old Act, their Lordships observed as under :

"This point, in our opinion, may be looked at from another angle also. When this Court earlier held that all the articles in the third division to the schedule, including Article 181 of the Limitation Act of 1908 governed applications under the CPC only, it clearly implied that the applications must be presented to a Court governed by the Code of Civil Procedure. Even the applications under the Arbitration Act that were included within the third division by amendment of Articles 158 and 178 were to be presented to Courts whose proceedings were governed by the Code of Civil Procedure. At best the further amendment now made enlarges the scope of the third division of the schedule so as also to include some applications presented to Courts governed by the Code of Criminal Procedure. One factor at least remains constant and that is that the applications

must be to Courts to be governed by the articles in this division. The scope of the various articles in this division cannot be held to have been so enlarged as to include within them applications to bodies other than Courts, such as a quasi-judicial tribunal, or even an executive authority. An Industrial Tribunal or a Labour Court dealing with applications or references under the Act are not Courts and they are in no way governed either by the CPC or the Code of Criminal Procedure. We cannot, therefore, accept the submission made that this article will apply even to applications "made to an Industrial Tribunal or a Labour Court. The alterations made in the article and in the new Act cannot, in our opinion, justify the interpretation that even applications presented to bodies, other than Courts, are now to be governed for the purposes of limitation by Art. 137.

8. In *Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others*, , their Lordships of the Supreme Court held as under :

"In our view Article 137 only contemplates applications to Courts. In the Third Division of the Schedule to the Limitation Act, 1963, all the other applications mentioned in the various articles are applications filed in a Court. Further Section 4 of the Limitation Act, 1963, provides for the contingency when the prescribed period for any application expires on a holiday and the only contingency contemplated is "when the Court is closed." Again u/s 5 it is only a Court which is enabled to admit an application after the prescribed period has expired if the Court is satisfied that the applicant had sufficient cause for not preferring the application. It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to Courts, and that the Labour Court is not a Court within the Indian Limitation Act, 1963."

9. The proposition of law which emerges from these decisions is that the provisions of the 1963 Act apply to the proceedings in the Courts and not to appeals, applications etc. filed before Tribunals and quasi-judicial authorities, notwithstanding the fact that such Tribunals and authorities may be vested with certain powers under the CPC or the Code of Criminal Procedure and their proceedings may be akin to those of Courts.

10. The issue which remains to be decided is whether the appropriate government, while exercising the powers u/s 36(2) of the 1910 Act and the 1956 Rules, acts as a Court and whether the provisions of Sections 5 and 29 of the 1963 Act can be invoked by it while deciding an appeal. In this context, it is necessary to bear in mind that the provisions of the CPC and the Code of Criminal Procedure have not been expressly made applicable to appeal which may be filed u/s 36(2). The appellate authority does not have the power to summon the witnesses and documents. It can neither compel a person to make a statement on oath nor can it punish any person for violating the provisions of the 1910 Act or the rules framed thereunder. The only thing which the appellate authority is required to do is to decide the appeal filed by the aggrieved party and while doing so it is bound to comply with the rule of *audi alteram partem*. Thus, the proceedings of the appellate authority are quasi-judicial in nature.

However, that is not sufficient to record a conclusion that the appellate authority is a Court or its proceedings have the trapping of a Court so as to attract the applicability of Section 5 of the 1963 Act empowering it to condone the delay in the filing of appeal. This view of ours finds support from the observations made by the Supreme Court in *Sakuru Vs. Tanaji*, . In that case, their Lordships of the Supreme Court dealt with a question whether the provisions of Section 5 of the 1963 Act can be invoked for condoning the delay in the filing of appeal before the Collector u/s 90 of the A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1958. By virtue of Section 93 of the Act which was under consideration before the Apex Court, the provisions of the Indian Limitation Act, 1908 were sought to be made applicable for the purpose of computation of limitation. After examining the issue from different angles, their Lordships of the Supreme Court held that the Collector, before whom the appeal was preferred by the appellant u/s 90 of the Act not being a Court, the Limitation Act, as such, had no applicability to the proceedings before him. While dealing with Section 93 of the Act, their Lordships held as under :

"On a plain reading of the section it is absolutely clear that its effect is only to render applicable to the proceedings before the Collector, the provisions of the Limitation Act relating to computation of the period of limitation. The provisions relating to computation of the period of limitation are contained in Sections 12 to 24 included in Part III of the Limitation Act, 1963. 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. We are, therefore, in complete agreement with the view expressed by the Division Bench of the High Court in *Venkaiah's* case (AIR 1978 Andh Pra 166) that Section 93 of the Act did not have the effect of rendering the provision of Sec. 5 of the Limitation Act, 1963 applicable to the proceedings before the Collector."

11. In *Jaimangal Ltd. Avantee Hotel and Another Vs. State of Bihar and Others*, , a Division Bench of the Patna High Court interpreted the provisions of the 1910 Act and held as under :

"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. Having regard to the nature of jurisdiction exercised under the Act, the State Government or the Advisory Board is not a Court. Undoubtedly, it is not a Court within the meaning of the Civil P. C. or the Criminal P. C.....

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."

12. We respectfully agree with the ratio of the decision of Patna High Court and hold that the appellate authority does not have the power to condone the delay in the filing of appeal u/s 36(2) of the 1910 Act read with Rule 6(3) of the 1956 Rules and the order Annexure P.6 passed by the State Government does not suffer from any error of law.

13. The judgment of Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker, , relied upon by Shri Sharma does not have any bearing on this case. A careful reading of that decision shows that the application filed by the landlord (respondent) for ejection of the tenant (appellant) was accepted by the Rent Controller, Kannur, Kerala. The appeal of the tenant was dismissed as time barred by the District Judge, Thalassery. He held that the provisions of Section 5 of the Limitation Act cannot be invoked for condonation of delay in the filing of appeal because he was not acting as a Court. Their Lordships of the Supreme Court accepted the plea of the tenant and held as under :

The appellate authorities as constituted u/s 18 being the District Judges they constituted a class and cannot be considered to be *persona designata*. The appellate authority functions as a Court.

When the first schedule of the Limitation Act prescribes no time limit for a particular appeal, but the special law prescribes a time limit for it, it can be said that under the first schedule of the Limitation Act all appeals can be filed at any time, but the special law by limiting it provides for a different period. While the former permits the filing of an appeal at any time, the latter limits it to be filed within the prescribed period. It is, therefore, different from that prescribed in the former and thus Section 29(2) would apply even to a case where a difference between the special law and Limitation Act arose by the omission to provide for limitation to a particular proceeding under the Limitation Act. Once the two conditions namely (i) There must be a provision for period of limitation under any special or local law in connection with any suit, appeal or application. (ii) The said prescription of period of limitation under such special or local law should be different from the period prescribed by the schedule to the Limitation Act are satisfied. Section 29(2) on its own force will get attracted to appeals filed before appellate authority u/s 18 of the Rent Act. When Section 29(2) applies to appeals u/s 18 of the Rent Act, for computing the period of limitation prescribed for appeals under that Section, all the provisions of Sections 4 to 24 of the Limitation Act would apply. Section 5 being one of them would therefore get attracted. It is also obvious that there is no express exclusion anywhere in the Rent Act taking out the applicability of Section 5 of the Limitation Act to appeals filed before appellate authority u/s 18 of the Act. Consequently, all the legal requirements for applicability of Section 5 of the Limitation Act to such appeals in

the light of Section 29(2) of Limitation Act can be said to have been satisfied. It is, therefore, clear that the appellate authority constituted u/s 18 of the Kerala Rent Act, 1965 functions as a Court and the period of limitation prescribed therein u/s 18 governing appeals by aggrieved parties will be computed keeping in view the provisions of Sections 4 to 24 of the Limitation Act, 1963. Such proceedings will attract Section 29(2) of the Limitation Act and consequently Section 5 of the Limitation Act would also be applicable to such proceedings. Appellate authority will have ample jurisdiction to consider the question whether delay in filing such appeals could be condoned on sufficient cause being made out by the concerned applicant for the delay in filing such appeals.

14. A bare reading of the above extracted observations shows that the Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker, , their Lordships of the Supreme Court were dealing with the exercise of appellate jurisdiction by the District Judge u/s 18 of the relevant Statute and not a case like the present one in which the appropriate government acts as an appellate authority under the 1910 Act and the Rules framed thereunder. Therefore, on the basis of the judgment in Mukri Gopalan's case (supra), it cannot be held that while exercising power u/s 36(2) of the 1910 Act read with Rule 6 of the 1956 Rules, the appellate authority acts as a Court for the purpose of Section 5 of the 1963 Act."

15. For the reasons mentioned above, the writ petition is dismissed. However, it is made clear that the petitioner shall be free to challenge the impugned order by filing an independent writ petition.