(1991) 02 AP CK 0019

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 17537 and 17538 of 1990

Rajendra Modern Rice Mill and Another — APPELLANT

Vs

The Govt. of A.P. and Others — RESPONDENT

Date of Decision : 05-02-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Essential Commodities Act, 1955 — Section 6A, 6C
Limitation Act, 1963 — Section 29(2), 5

Citation : (1991) 2 ALT 156

Hon'ble Judges : Radhakrishna Rao, J

Bench : Single Bench

Advocate : B. Prakash Rao, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Radhakrishna Rao, J.—Proceedings u/s 6A of the Essential Commodities Act, 1955 have been initiated against the petitioners for contravention of the provisions of the Andhra Pradesh Rice Precurement Levy Order, 1984, by the authorities of the Civil Supplies Department. The Collector, Adilabad District, who is the 2nd respondent herein, passed an order of confiscation of 50% in W.P. 17538/90 and 25% in W.P. 17537/90 of the stocks seized, on 13-8-1990. Aggrieved against the said order, the petitioners have preferred appeals u/s 6C of the Essential Commodities Act. As Appeals have to be preferred within 30 days--the appeals in these have been filed with a delay of 5 days--the appellate authority dismissed the appeals on 16-10-1990 holding that Section 5 of the Limitation Act will not apply to the said authority. The appellate authority followed an order passed by this Court in W.P. No. 3951 of 1990 at the stage of admission on 13-3-1990. The Appellate authority also followed the decision of the Supreme Court reported in Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., and Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others, .

2. Questioning the validity of the orders passed by the appellate authority, the petitioners have now filed the writ petitions contending inter alia that the two decisions of the Supreme Court relied upon by the appellate authority did not arise under the Essential Commodities Act, 1955 and that the order of this Court in W. P. No. 3951 of 1990 dated 13-3-1990, which was followed by the appellate authority, was passed only at the admission stage and, therefore, the appellate authority has erred in dismissing the appeals as they are filed beyond 30 days. It is also contended by the petitioners that the provisions u/s 29(2) of the Limitation Act, 1963 and the effect of absence of any specific provisions excluding the applicability of Sections 4 - 24 of the Limitation Act were not considered by the appellate authority, whereas u/s 29(2) of the Limitation Act and as has been held by the appellate authority, there being no specific exclusion under the provisions of the Essential Commodities Act, the provisions under Sections 4 - 24 of the Limitation Act do apply to the present case also and the appellate authority has ample power to condone the delay, but the same was erroneously rejected.

3. In support of his contention, the learned counsel for the petitioners, Sri Prakasa Rao, placed reliance on a recent decision of the Supreme Court reported in Smt. Lata Kamat Vs. Vilas, a case arising under the Hindu Marriage Act (25 of 1955). In that case, the respondent-husband before the Supreme Court instituted a petition for declaration that the marriage with the applicant--wife was a nullity under Sub-section (1), Sub-clause (d) of Section 12 of the Hindu Marriage Act. The IIIrd Joint Civil Judge, Senior Division, Nagpur, granted a decree in favour of the respondent husband on 3-5-1985. The wife filed a regular appeal before the II Addl. District Judge, Nagpur. In that appeal, the husband raised a preliminary objection that after passing of the Judgment and decree dated 3-5-1985 by the trial Court, he has married another lady on 27-6-1985 and when there was no impediment against him which could come in his way for contracting the second marriage as the parties were relegated to the position as if they were not married and therefore the marriage after the decree was legal and valid and consequently the appeal filed by the wife was not tenable having been rendered infructuous. The appellate Judge allowed the objection and dismissed the appeal. The second appeal preferred by the wife was also dismissed by the Bombay High Court.

The Supreme Court held :

"The schedule in the Limitation Act do not provide for an appeal, under the Hindu Marriage Act but it is only provided in Clause (4) of Section 28 of the Hindu Marriage Act. Thus the Limitation provided in Cl/4) of Section 28 is different from the schedule of the Limitation Act. According to Clause (2) of Section 29, provisions contained in Sections 4 - 24 will be applicable unless they are not expressly excluded. It is clear that the, provisions of the Act do not exclude operation of provisions of Sections 4 - 24 of the Limitation Act and therefore it could not be said that these provisions will not be applicable. It is therefore clear that to an appeal u/s 28 of the Hindu Marrige Act, provisions contained in Section 12, Clause (2) will be applicable, therefore, the time required for obtaining copies of the Judgment will have to be excluded for computing the period of limitation for appeal."

4. As already stated, that is a case arising under the Hindu Marriage Act and though the Schedule in the Limitation Act do not provide for an appeal, the Hindu Marrige Act provides for an appeal u/s 28. Therefore, the above decision is not applicable to the facts of this case.

5. In Town Municipal Council, Athani v. Presiding Officer, Labour Court, Hubli (1 supra), the Supreme Court considered the question of Limitation tea petition under the Industrial Disputes Act. The Supreme Court held that Article 137 of the Schedule to the Limitation Act, 1963 does not apply to applications u/s 33C(2) of the Industrial Disputes Act so that no limitation is prescribed for such application. After referring to the earlier decisions, the Supreme Court held :

"It appears to us that the view expressed by this Court in those cases must be held to be applicable, even when considering the scope and applicability of Article 137 in the new Limitation Act of 1963. The language of Article 137 is only slightly different from that of the earlier Article 181 inasmuch as, when prescribling the three years'' period of limitation, the first column giving the description of the application reads as "any other application for which no period of limitation is provided elsewhere in this division". In fact the addition of the word "Other" between the words "any" and "application" would indicate that the legislature wanted to make it clear that the principle of interpretation of Article 181 on the basis of ejusdem generis should be applied when interpreting this article, regard must be had to the provisions contained in all the earlier articles. The other articles in the third division to the schedule refer to applications under the CPC with the exception of application under the Arbitration Act and also in two cases of applications under the Code of Criminal Procedure."

The Supreme Court further held :

"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. One factor at least remains constant and that is that the applications must be to Courts to be govered by the articles in this division. The scope of the various articles in this division cannot be held to have seen so enlarged as to include within them applications to bodies other than Courts, such as 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 purposes of Limitation by Article 137."

6. The same principle has been reiterated by the Supreme Court in Nityanand M. Joshi v. The Insurance Corporation of India (2 Supra) Therein it was held :

"in our view Article 137 only contemplates applications to Courts. In the Thrid 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."

7. In view of the principle laid down by the Supreme Court in the above two decisions which have rightly been followed by the appellate authority in these cases, this Court finds that the provisions of the Limitation Act cannot be applied to the cases dealt by the executive authorities which are only quasi-judicial authorities Under the Essential Commodities Act and the appeals have to be filed within 30 days and Section 5 of the Limitation Act is not applicable to the present cases.

8. The Writ petitions must fail and they are accordingly dismissed. No costs. Advocate''s fee Rs. 200/- each.