

(2001) 09 CAL CK 0017

In the Calcutta High Court

Case No : Writ Petition No's. 1751 and 1752 of 2001

Shree Gopal Engg. Works Ltd. and Another

APPELLANT

Vs

Cesc Limited and Others

RESPONDENT

Date of Decision : 19-09-2001

Acts Referred:

Electricity Act, 1910 — Section 24, 26(6), 36, 36(2), 37
Limitation Act, 1963 — Section 10, 11, 12, 12, 13
Limited Liability Partnership Act, 2008 — Section 10, 11, 12, 13, 14
Representation of the People Act, 1951 — Section 81

Citation : 106 CWN 787

Hon'ble Judges : Kalyan Jyoti Sengupta, J

Bench : Single Bench

Advocate : Pratap Chatterjee, for the Appellant; Pranab Kumar Roy, for the Respondent

Judgement

Kalyan Jyoti Sengupta, J.—Both the matters are taken up for hearing as the points raised herein are identically same and the same can be disposed of by a common judgment. The facts in both the cases are not disputed much. Both the petitioners previously filed writ petitions contending that there was defect in functioning of the respective electric meters installed at their service installation. While disposing of the writ petitions the Hon'ble Mr. Justice Pinaki Chandra Ghose has been pleased to direct all the disputes to be referred to the Chief Electrical Inspector, West Bengal. The Chief Electrical Inspector thereafter has decided and made awards. The awards apparently have gone in favour of the petitioners. The CESC has preferred two appeals against the aforesaid two awards apparently u/s 36(2) of the Indian Electricity Act. 1910. The awards were passed on 13th February 2001 and 19th July 2001 respectively. Appeals were preferred against the aforesaid two orders on 11th June 2001 and 12th September 2001 respectively.

2. In the writ petition the short point is that whether the aforesaid two appeals can be entertained by the appellate authority after expiry of limitation period of

three months or not.

3. Mr. Pratap Chatterjee, learned Senior Advocate submits that the appellate authority cannot entertain any appeal beyond the prescribed period of limitation which in this case is three months. He submits that the appellate authority has no jurisdiction and/or authority to condone delay drawing the principle and/or analogy of Section 5 of the Limitation Act, 1963. He submits that the provision of Section 5 of the Limitation Act is applicable only in case of Court not even in case of Tribunal formed under a statute. The appellate authority under the aforesaid Act cannot by any stretch of imagination be termed to be a Court so as to apply the provision of Limitation Act 1963.

4. His further contention is that the provision of Limitation Act cannot be made applicable even by analogy unless of course there is expressed provision for making Limitation Act 1963 applicable. In this statute there is no such provision. There are other Acts by which power of condoning delay has been conferred explicitly not by implication. In support of this contention he has relied on a judgment of Division Bench of the Patna High Court reported in Jaimangal Ltd. Avantee Hotel and Another Vs. State of Bihar and Others, .

5. Mr. Pranab Kumar Roy, learned Senior Advocate while opposing contention of Mr. Chatterjee submits that there is no prescribed period of limitation fixed for the appeal of this nature u/s 36(2) of the Indian Electricity Act, 1910. He rather contends that if there is any prescribed period of limitation for any appeal then the same has been provided in the Indian Electricity Rules 1956 which has been framed in exercise of the powers conferred u/s 37 of the Indian Electricity Act, 1910. Under Rule 6(3) it has been provided that the appeals as contemplated under the Rules are to be preferred within three months from 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. He contends that these two appeals are not intended to prefer under Rule 6 of the aforesaid Rule rather it is preferred u/s 36(2) for which no prescribed limitation period has been provided. The provision of the aforesaid Rule cannot be made applicable in case of the Act. He submits that in this case though there is no prescribed period of limitation under the Act but the appeals may be preferred within reasonable time as it has been observed by the Supreme Court in a decision reported in Collector of Central Excise, Jaipur Vs. M/s. Raghuvar (India) Ltd., .

6. Having heard respective contention of the learned Advocates and having gone through the materials, the points which have fallen for consideration in the case are as follows:

i) Whether the present two appeals are intended to have been preferred u/s 36(2) of the aforesaid Act or not.

ii) If not, whether the time limit prescribed in Rule 6(2) of the aforesaid Rule should be applied in this case and in such event whether appeals can be entertained beyond the time limit of three months from date or not

7. Upon careful reading of the Act as well as the Rules it appears to me that the legislature has intended to make provision for preferring appeal in two different modes. One is provided in the Act itself u/s 36(2) and another is provided for under Rule 6 of the Indian Electricity Rules 1956 (hereinafter referred to as the said Rules). The language of Section 36(2) is in my view different from the language of appealability provision of the Rules. So, it would be useful to reproduce the provision of Section 36(2) of the Act which is as follows:

36(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.

8. In the aforesaid sub-section (2) of Section 36 it seems that this is a general provision of appealability from the decision of the Electrical Inspector to the appropriate Government or if the appropriate Government, by general or special order so directs to an Advisory Board. In this sub-section there is no prescribed period of limitation for preferring such appeal.

9. I accept argument of Mr. Roy that appealability provision provided in Rule 6 of the said Rules really applies to the cases where any assistant to the Electrical Inspector or Inspector himself has passed an order or has taken a decision under the Rules. The language of Rule 6 of the said Rules is very clear enough which is reproduced hereunder:

Rule 6. Appeals :--(1) An appeal against an order served under these rules shall lie--(a) If the order is served by an officer appointed to assist an Inspector and authorized 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.

10. Mr. Roy has rightly argued that the appealability provision under the Rules is confined to the Rules only and it does not extend to the appealability provision of the Act. It is settled law that unless expressly provided in the statute itself the overriding effect of the Rules over the Act cannot be thought of. It is clear from the language of the said Rules that the appeals contemplated in the Rule 6 has to be made within three months from 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. Under the provision of the Rules there is no provision of service of any order

made under the Act by the Electrical Inspector. The machinery for preferring appeal and disposal of the same under the Act stands on a different footing from that of the Rules. Hence I am unable to accept argument of Mr. Chatterjee that provision of limitation prescribed in Rule 6 also governs the appeals under the Act. The Rules have been framed by the Central Electricity Board in exercising power u/s 38(1) - Therefore it has got statutory force. The aforesaid Rule contemplates variety of orders and decisions on variety of subject passed by the assistant to the Electrical Inspector as well as the Electrical Inspector. To illustrate a few of them are decisions and/or orders passed under sub-rule (2) of Rule 4A, Rule 134, Rule 52 and the appeals against those orders can be preferred under Rule 6 and are to be preferred within prescribed period of limitation as mentioned in the Rule itself. Therefore, I accept argument of Mr. Roy that there is no prescribed period of limitation fixed for preferring any appeal against any order served or delivered under the Act.

11. Now, it has to be examined whether the orders passed and subsequently served by the Electrical Inspector in these two matters were really passed under the Act or the Rules.

12. It appears that the Chief Electrical Inspector had to pass awards pursuant to the order of this Court. From the two orders of this Court passed by Justice Ghose and Justice Bhattacharya it appears that the disputes between the parties related to unmetered consumption and further functioning of the meter. The Electrical Inspector has decided and passed order on the question of the functioning of the meters and so he has held that the meters were found to be correctly functioning. So the subject matter and/or dispute in the adjudication proceeding and the award themselves really expressly related to and/or are covered by the disputes contemplated u/s 26 (6) of the Act. This section deals with the difference and/or disputes of correctness or incorrectness of the meters and also consequential and/or incidental thereto. The Electrical Inspector while deciding the issue before him has quantified the energy consumed during the relevant period. Therefore, I am of the view that the orders passed by the Electrical Inspector in these two cases were made and delivered under the Act not under the Rules.

13. Though there is no prescribed period of limitation it cannot be construed that right of preferring appeal will remain available for indefinite period. Such appeal obviously has to be preferred within a reasonable period. The theory of reasonableness cannot be laid down inflexibly and it depends upon each and every individual case and circumstances suiting the cause. In any proceeding before the Court of law the reasonable time may be three years or more but in case of the proceeding under the special statute which deals with emergent and essential supplies the reasonable period should be much less than the period in case of the Court proceedings. In one word, period in the garb of being reasonable should not be fixed to the extent of period that may lead to absurdity. If in this case the reasonable period for preferring an appeal is conceived as

being three years then this will lead to absurdity, though no time period has been fixed in the Act, but in case of appeal under the Rule such period has been provided for three months. It is settled law that under the same law (that include Act and Rules framed thereunder) if any particular provision is contemplated for the same object in one place there cannot be different provision in an other place. In the Rules the period of limitation has been prescribed for three months from the date of delivery of the order. Therefore, in the Act itself there cannot be different period of limitation from that of the Rule as both the Act and Rules are subserving and/or aiming at to fulfil the same purpose and object. So. I hold that though no fixed period of limitation has been provided for, this reasonable period is to be construed to have been made for preferring appeal, is three months from date of serving the order as has been provided in the Rule itself. Mr. Roy has very effectively assisted me in this regard to come to conclusion by referring to a Supreme Court judgment reported in Collector of Central Excise, Jaipur Vs. M/s. Raghuvar (India) Ltd., . In this decision it has been observed amongst other as follows :

Any law or stipulation prescribing a period of limitation to do or not to do a thing after the expiry of period so stipulated has the consequence of creation and destruction of rights and, therefore, must be specifically enacted and prescribed therefore. It is not for the Courts to import any specific period of limitation by implication where there is really none, though Courts may always hold when any such exercise of power had the effect of disturbing the rights of a citizen that it should be exercised within a reasonable period.

14. Now while coming to conclusion the real controversy in these two cases is whether Section 5 of the Limitation Act, 1963 will be made applicable or not, though Mr. Chatterjee has argued that it will not, with an authority of the decision of Division Bench of the Patna High Court reported in Jaimangal Ltd. Avantee Hotel and Another Vs. State of Bihar and Others, . This decision of the Patna High Court has clearly and expressly held amongst other that the appellate forum in the Act dealt with therein is not a Court, so section 5 of the Limitation Act has no manner of application. It has been further held that provision of Sections 4 to 24 to the Limitation Act 1963 apply only to a case where the special or local law prescribed for any suit, appeal or application a period of limitation is different from the period prescribed by the Rule of the Limitation Act for preferring such a suit, appeal or application before a Court exercising civil or criminal jurisdiction. It has also been held that the Limitation Act does not vest power in the appellate authority to condone delay in preferring an appeal. Hence the appellate authority has no power or jurisdiction to condone delay in filing an appeal before it.

15. The Patna High Court in the above judgment did not have occasion to advert to the real issue in the light of the provision of Section 29(2) of the Limitation Act 1963. The ratio decided in this judgment is that the Appellate Authority, viz., the Central Board under the Rules and the Act of the Electricity Act 1910 is not a

Court, is not disputed but point is whether provision of Section 5 of the Limitation Act in view of Section 29(2) is applicable in the appeal contemplated under the Act or Rules or not. So, it is necessary to reproduce Section 29(2) of the Limitation Act 1963 which is as follows :

Section 29(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.

16. The aforesaid sub-Section (2) of Section 29 of the Limitation Act 1963 contemplates two things viz., (i) if the prescribed period for limitation for the suit, appeal or application provided in the special statute is different from the period prescribed by the Schedule under Limitation Act 1963, the provision of Section 3 shall apply as if such different period were the period prescribed by the Schedule and (ii) for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provision contained in Sections 4 to 24 (inclusive) shall apply in so far as, and to the extent to which, they are not expressly excluded by such special or local law. The meaning and significance of the words "determining any period" are giving exclusion of time in some cases, viz., under Sections 12, 14, 15, 17, 18 and 19 and further condoning delay in Section 5 of the Limitation Act 1963. The case on hand relates to condonation of delay u/s 5 of Limitation Act 1963. Therefore, the crux of the question is whether in this act there is any provision whereby expressly it excludes the applicability of Section 5 of the Limitation Act or not.

17. I do not find either from the Rules or from the Act which expressly excludes the applicability of Section 5 of the Limitation Act. The Patna High Court decision has not adverted to the aforesaid point. Therefore," the aforesaid decision is not relevant nor applicable here, rather I find a decision of the Full Bench of the Madhya Pradesh High Court reported in AIR 1978 Madh Pra 72 (Vijaysingh vs. Competent Authority, Sub-Divisional Official, Tarana) while giving answer to this relevant question as to whether provision of Section 5 of the Limitation Act is applicable in the special or local law of Madhya Pradesh Ceiling on Agricultural Holdings Act 1960, it has been held in Paragraphs 8 and 9 amongst other as follows :

Apparently, sub-Section (2) of Section 29 as it stands today is different from how it stood before the Limitation Act of 1963. In the earlier provision, the provisions, contained in Section 5 could be specified if they were so applied specifically in the local or special law whereas sub-Section (2) of Section 29 as it stands enacted now makes the provisions contained in Sections 4 to 24 of the Limitations Act applicable except when they are specifically excluded by the local

or special law. The provisions contained in the Ceiling Act do not specifically exclude the application of Section 5 of the Limitation Act. Consequentially, it cannot be doubted that to an objection application as provided for in sub-Section (3) of Section 11 of the Ceiling Act, Section 15 of the Limitation Act will be applicable.

Therefore, our answer to the second question is that Section 5 of the Limitation Act 1963 will be applicable for considering the question of limitation in regard to an objection petition filed under sub-Section (3) of Section 11 of the Madhya Pradesh Ceiling on Agricultural Holdings Act 1960.

18. The Supreme Court judgment referred to by The Commissioner of Income Tax, Delhi and Rajasthan Vs. National Finance Ltd., has dealt with in case of the Income Tax Act 1922 and by this Income Tax Act the provision of Section 5 of the Limitation Act was not extender to the said Act. Moreover at that time present Limitation Act 1963 was not enacted and the provision of Section 29 stands differently from the previous corresponding law.

19. In a decision of Supreme Court rendered in case of Hukumdev Narain Yadav Vs. Lalit Narain Mishra, exclusion of the said Sections 4 to 24 by necessary implication has been spelt out, while dealing with the provision of Section 81 of the Representation of People Act, after examining the scheme and object of the statute and interpreting the section being mandatory in nature it is held that the Representation of People Act is a complete code by itself. If on examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Special Act. Indian Electricity Act 1910 and Rules framed thereunder are neither a complete code by themselves nor I find by necessary implication provisions of Sections 4 to 24 of the Limitation Act has been excluded.

20. The decision cited by Sakuru Vs. Tanaji, is wholly inappropriate in this case. So far the decision of Supreme Court reported in Birla Cement Works Vs. G.M., Western Railways, and another, is concerned, it was held in the context of provision of Section 78B of Railways Act 1890 that provided limitation of claim for six months, and Limitation Act 1963 has no application as it was not a civil Court. The limitation prescribed therein will obviously exclude the applicability of the Limitation Act 1963 to the extent of inconsistency.

21. It is nobody's case that the appellate authority being a Tribunal has inherent power to condone delay. Therefore, I refrain from dealing with this point whether this Appellate Authority has got inherent power or not. So, the decisions reported in Syed Ajaz Ali Khan and Others Vs. Mohammad Rafiq and Others, are not considered nor dealt with. Under these circumstances I am unable to accept the argument of Mr. Chatterjee that Section 5 of the Limitation Act is applicable. I hold that Section 5 of the Limitation Act 1963 is not applicable.

22. I am also unable to accept argument of Mr. Chatterjee that the Chief

Electrical Inspector has decided the matter by way of special reference not under the provisions of the Indian Electricity Act and further no appeal lies from such report of special referee. As I have already indicated that the Court has referred the dispute under the provision of Section 24 of the Indian Electricity Act and the dispute which has been resolved by the Electrical Inspector are squarely covered u/s 26(4) of the Act. Therefore, I hold that the Electrical Inspector though decided pursuant to the order of this Court, but in substance and under the law has adjudicated under the provision as aforesaid. I hold unhesitatingly that the appeal is perfectly maintainable. Therefore, I do not find any merit in these two applications. Accordingly, I dismiss the same. The appeals, therefore, shall be heard by the Appellate Authority as above in accordance with law.

23. After the judgment is delivered, Mr. Sarkar, learned Advocate, submits that appropriate interim relief should be granted to his client for refund of the amount upon furnishing sufficient security.

24. I am of the view that this relief can only be granted at this stage by the Appellate Authority. If such application is made, the Appellate Authority would be entitled to consider the same. However, the appeal shall be disposed of upon hearing both the parties within a period of eight weeks from the date of communication of this order. All parties to act on a signed copy of the operative portion of this order upon usual undertaking.