

(2007) 02 CAL CK 0037
In the Calcutta High Court
Case No : W.P.S.T. No. 372 of 2006

State of West Bengal

APPELLANT

Vs

Mihir Kanti Chowdhury and Others

RESPONDENT

Date of Decision : 21-02-2007

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19, 20, 21, 22(2), 22(3)(f)
Constitution of India, 1950 — Article 226, 227
Evidence Act, 1872 — Section 123, 124
Limitation Act, 1963 — Section 5

Citation : 111 CWN 377

Hon'ble Judges : Bhaskar Bhattacharya, Acting C.J.; Kishore Kumar Prasad, J

Bench : Division Bench

Advocate : Joydeep Kar and Siddhartha Ghosh, for the Appellant; Dilip Kumar Chakraborty, M. S. Roy, Tapas Kumar Hazra and Sandip Kumar Bhattacharyya, for the Respondent

Final Decision : Allowed

Judgement

Bhaskar Bhattacharya, J.—Both these applications under Article 226/227 of the Constitution of India were heard analogously as a common question of law is involved in these two applications. The writ-petitioners before us filed two separate applications for review before the State Administrative Tribunal for review of two different orders passed by the Tribunal in two separate original applications u/s 19 of the Administrative Tribunal Act, 1985, (hereinafter referred to as the Act) more than one year after the passing of the original order sought to be reviewed. In one of the matters, such application was accompanied by an application u/s 5 of the Limitation Act for condonation of delay while in the other, no application for condonation of delay was at all filed.

2. The learned Tribunal below proceeded, as if, a period of 30 days is the requisite time within which an application for review must be filed and consequently, dismissed the one, which was accompanied by an application for condonation of delay by holding that sufficient cause was not made out for

condonation of the delay of 385 days. As regards the other application, which was not accompanied by any application for condonation of delay, the learned Tribunal held that the same was liable to be dismissed as hopelessly barred by limitation.

3. Being dissatisfied, the State of West Bengal, the applicant for review, has come up with these two writ-applications.

4. Mr. Kar, the learned Counsel appearing on behalf of the writ-petitioner in one of the matters, has strenuously contended before us that in the Act there is no provision specifying any period of limitation for filing an application for review although specific power of review is conferred upon by the Tribunal under the provision of Section 22(3)(f) of the Act as provided in the Code of Civil Procedure. Mr. Kar points out that the provision of limitation as provided in Section 21 of the Act is meant for filing of original application u/s 19 of the Act. According to Mr. Kar, the Legislature in its wisdom having decided not to specify any period of limitation for filing an application for review, it should be presumed that there is no period of limitation and therefore, the Tribunal should apply the principle of "delay and laches" while considering an application for review if filed after a long time from the date of passing of the original order sought to be reviewed.

5. Mr. Kar further submits that merely because the Tribunal is vested with the authority to review an order in terms of the provision of the Code of Civil Procedure, for that reason, the time specified in the Limitation Act for filing an application for review will not be applicable to the proceedings before the Tribunal. Mr. Kar submits that his client had no necessity to file any application for condonation of delay in filing the application for review before the Tribunal, inasmuch, as the question of praying for condonation arises when there is a specified period of limitation prescribed under the law.

6. According to Mr. Kar, the Tribunal below erred in law in considering the explanation given by his client in the so-called application u/s 5 of the Limitation Act, as if, the period of limitation for filing of the application for review was 30 days. He, therefore, prays for setting aside the order passed by the Tribunal with a direction upon the Tribunal to consider the application for review on merit.

7. Mr. Srimani, the learned Additional Government Pleader appearing on behalf of the writ-petitioner in the other matter has virtually adopted the argument advanced by Mr. Kar and has contended that as no period of limitation is prescribed under the Act or the Rules framed thereunder for the State Administrative Tribunal, his client did not feel the necessity of filing any application for condonation of delay. Mr. Srimani submits that the Tribunal refused to exercise jurisdiction vested in it by law by rejecting the application for review on the ground of limitation. He, therefore, prays for setting aside the order impugned in this application with a direction upon the Tribunal to dispose of the application for review on merit.

8. Mr. Chakraborty, the learned advocate appearing on behalf of the private-respondent has, however, opposed the aforesaid contentions advanced by Mr. Kar and Mr. Srimani and has contended that Mr. Kar's client itself having filed an application for condonation of delay, now cannot turn back and complain before this Court that there is no period of limitation for filing an application for review. According to Mr. Chakraborty, under the provision of the Act, the power of review having been conferred upon the Tribunal in accordance with the provision contained in the Code of Civil Procedure, it necessarily follows that the period of limitation for filing an application for review in a Court under the provision of CPC will be applicable and for that reason, the Legislature did not specify any period of limitation either in the Act or in the Rules framed thereunder. Mr. Chakraborty further contends that in the Central Administrative Tribunal Rules of Practice, 1993, a period of 30 days having been fixed for filing an application for review, the same period should be applicable for filing such an application even before the State Administrative Tribunal. Mr. Chakraborty, therefore, prays for dismissal of this writ-application as the writ-petitioner failed to satisfy the Tribunal that the same was filed at least within a reasonable time.

9. Therefore, the only question that arises for determination in these two writ-applications is whether the Tribunal below refused to exercise jurisdiction vested in it by law by holding that the period of limitation for filing an application for review of an original order passed by the Tribunal is 30 days as provided in the Limitation Act for filing an application for review.

10. In order to appreciate the previously mentioned question, it will be profitable to refer to the following provision contained in the Act:

"21. Limitation. - [1] A Tribunal shall not admit an application.

(a) in a case where a final order such as is mentioned in clause (a) of sub-Section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-Section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-Section (1), where-

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years, immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) No proceedings for the redressal of such grievance had been commenced before the said date before any High Court.

The application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-Section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-Section (1) or sub-Section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) or sub-Section (1) or, as the case may be, the period of six months specified in sub-Section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

21. Procedure and powers of Tribunals. (1) A Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, (5 of 1908) but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government, the Tribunal shall have power to regulate its own procedure including the fixing of places and times of its inquiry and deciding whether to sit in public or in private.

(2) A Tribunal shall decide every application made to it as expeditiously as possible and ordinarily every application shall be decided on a perusal of documents and written representations and [after hearing such order arguments as may be advanced.]

(3) A Tribunal shall have, for the purpose of [discharging its functions under this Act], the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, (5 of 1908) while trying a suit, in respect of the following matters, namely :

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) Subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872) requisitioning any public record or document or copy of such record or document from any office;

e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing a representation for default or deciding it ex parte;

(h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and

(i) Any other matter which may be prescribed by the Central Government."

11. After hearing the learned Counsel for the parties and after going through the aforesaid provisions contained in the Act, we find that although there is a

provision contained in the Act providing period of limitation for filing an application u/s 19 of the Act, there is no period prescribed under the Act for filing an application for review of an order thereon. We have already pointed out that Section 22(2) of the Act provides power of review upon the Tribunal in tune with the provisions contained in the Code of Civil Procedure. In our view, "the learned counsel appearing on behalf of the writ-petitioner were quite justified in contending that for the above reason, the period of limitation prescribed in the Limitation Act for filing an application for review will not be held applicable to a Tribunal. It is now settled law that the Limitation Act applies to Court and not to a Tribunal unless it is specifically provided by the Statute conferring power upon the Tribunal. (See: Sakuru Vs. Tanaji, ; Smt. Sushila Devi Vs. Ramanandan Prasad and Others, . Notwithstanding the fact that either in that Act or in the Rules framed thereunder, there is no provision providing any period of limitation for filing an application for review, the learned Tribunal below refused to exercise jurisdiction vested in it by law by not considering the application for review simply on the ground that the same was filed beyond the period of limitation and that the delay in filing such application beyond the period of 30 days was not explained.

12. In our view, if there is no period of limitation prescribed by any Statute for filing a particular type of application although in the selfsame Statute there is fixed period of limitation for filing a different variety of application, it should be presumed that the Legislature in its wisdom deliberately omitted any period of limitation for the former and in such a case, the Tribunal should apply the principle of "delay and laches" if any such application is filed with inordinate delay. In other words, in such a situation, all that a Tribunal is to see is whether the laches on the part of the applicant is such as to disentitle him to the relief claimed by him. [See State of U.P. and Others Vs. Raj Bahadur Singh and Another,]. We are not at all impressed by the submission of Mr. Chakraborty, the learned counsel appearing on behalf of the private-respondent that the period of limitation provided in the Rules of Practice for the Central Administrative Tribunal should be applicable for filing an application in the State Administrative Tribunal notwithstanding the fact that separate Rules have been enacted for the State Administrative Tribunal.

13. The Tribunal below in this case wrongly proceeded as if there is a specific period of limitation, i.e. 30 days for filing an application for review and therefore, the approach of the Tribunal in considering the explanation of delay given in one of these applications was erroneous. As pointed out by the Apex court in the case of Ajaib Singh vs. Sirhind Co-operative Marketing-cum-processing Service Society Ltd. & Anr., reported in (1999) 6 SCC 82, it is not for the Court or Tribunal to prescribe the limitation when the legislature in its wisdom had thought it fit not to prescribe any period. The Courts admittedly interpret law and do not make law. The personal view of the Judges, the Supreme Court proceeded, cannot be stretched to authorise them to interpret law in such a way, which would amount to legislation intentionally left over by the legislature.

14. We, therefore, set aside the orders impugned and direct the Tribunal to proceed to hear out the applications, as if, there is no period of limitation for filing an application for review, however, bearing in mind the principle of "delay and laches" which enjoins that the Tribunal will consider whether the petitioner had any laches on its part and if any laches is found, whether it is of such a nature so as to disentitle the relief claimed by it. The rule, which says that the Court may not enquire into belated and stale claim, is not a rule of law but a rule of practice based on sound and proper exercise of discretion. The principle on which the relief to a party on the ground of laches or delay is denied is that the rights, which had accrued to others by reason of delay in filing the petition, should, not be allowed to disturb unless there is reasonable explanation of delay. The real test to determine delay in such cases is that the petitioner should come to Court before a parallel right is created in favour of a third party and the lapse of time is not attributable to any laches or negligence (See: M/s. Behri Rohtas Light Railway Company Limited vs. District Board, Bhojpur & Ors., reported in AIR 1993 SC 802 at 805). The writ-applications, thus, succeed. In the facts and circumstances, there will be, however, no order as to costs.

Kishore Kumar Prasad, J.

I agree.