
(2012) 04 P&H CK 0174

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11818 of 2006

Sudarshan Kumar Modi

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 27-04-2012

Acts Referred:

General Clauses Act, 1897 — Section 9

Limitation Act, 1963 — Section 12(1)

Wild Life (Protection) Act, 1972 — Section 40(4), 40A, 40A(1), 63

Citation : (2012) 2 EFLT 770

Hon'ble Judges : M.M. Kumar, Acting C.J.;Alok Singh, J

Bench : Division Bench

Advocate : Arstu Chopra, for the Appellant; Sudeepti Sharma, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

M.M. Kumar, A.C.J.—This order shall dispose of a bunch of petitions (C.W.P. 11747, 11748, 11749, 11818 of 2006) because common questions of law and facts have been raised and the petitioner(s) are members of the same family. In all the petitions two basic orders have been challenged. The first one is the adjudication order dated 19.5.2006 (P-4), which has been passed by the Deputy Director, Wildlife Regional Office, Ministry of Environment and Forests, New Delhi-respondent No. 2. The other order is dated 20.7.2006 (P-3), issued by the Forest Range Officer, Patiala-respondent No. 3 u/s 40A of the Wild Life (Protection) Act, 1972 (for brevity, "the Act"). By order dated 19.5.2006 the applications for grant of immunity u/s 40A of the Act and issuance of ownership certificate to retain wild life articles, have been rejected on the ground that the application(s) were received after the prescribed period of limitation. The possession of wildlife articles have been treated as illegal which are required to be surrendered to the State Government. Recommendation has been made to initiate legal proceedings against the parties (P-4). Consequently, the Forest Range Officer, Patiala, issued order(s) dated 20.7.2006 to the petitioner(s) directing them to surrender the

wildlife articles, namely, "Shahtoosh Shawl", in his office within a period of 15 days (P-3). The adjudicating order, dated 19.5.2006 (P-4), has been challenged on the ground that it is contrary to the notification dated 18.4.2003 (P-1), issued by the Ministry of Environment and Forests in exercise of power u/s 40A read with section 63 of the Act. Brief facts may first be noticed which are narrated from CWP No. 11818 of 2006. The petitioner had acquired two "Shahtoosh Shawls" weighing 480 and 425 gms, which as per law were required to be declared to the Chief Wild Life Warden or any other authorised officer in terms of section 40A of the Act. Consequent upon the declaration made, a certificate of ownership was to be issued. After such a declaration, the petitioner becomes entitled for immunity of possession in view of the provisions of section 40A(1) of the Act. In the absence of any such declaration u/s 40(4) of the Act such items have to be surrendered.

The Union of India, Ministry of Environment and Forests-respondent No. 2 issued a notification dated 18.4.2003 (P-1), framing the rules for declaration of wild life stock, which are known as "the Declaration of Wild Life Stock Rules, 2003" (for brevity, "the Rules"). The Rules postulate for a procedure for filing application in terms of section 40A of the Act. As per Rule 4 (2) the applications were required to be filed within a period of 180 days from the date of publication of the Rules. Accordingly, the last date of filing the application worked out to be 15.10.2003.

2. The petitioner filed the necessary application in the prescribed manner on 13.10.2003, which had concededly been received in the office of Chief Wild Life Warden, Punjab, Chandigarh, on 15.10.2003. As per the procedure, the Chief Wild Life Warden, Punjab, forwarded the application of the petitioner for issuance of certificate of possession to respondent No. 2 i.e., Ministry of Environment and Forests, New Delhi. The application was rejected on 19.5.2006 on the ground that it was not received within the prescribed time-limit and, therefore, certificate of possession could not be issued (P-4). On the basis of order dated 19.5.2006 (P-4), the Forest Range Officer, Patiala respondent No. 3 issued order, dated 20.7.2006, directing the petitioner to surrender two "Shahtoosh Shawls"-wild life article within 15 days. On 28.7.2006, the petitioner made efforts to secure information under the Right to Information Act, 2005 with regard to date of receipt of his application but he was advised to come on 4.8.2006, which was the date fixed for surrendering "Shahtoosh Shawls". Feeling aggrieved, the petitioner filed the instant petition on 31.7.2006, which came up for hearing before a Division Bench on 1.8.2006. The Division Bench stayed operation of the order dated 20.7.2006 (P-3) requiring him to surrender the possession of "Shahtoosh Shawls".

3. In response to the notice of motion reply has been filed by respondent Nos. 1 and 3. It has been conceded that the application filed by the petitioner reached the respondents on 15.10.2003. However, it has also been pointed out that in pursuance to the Rules, on 29.3.2003 public notices were issued in the newspapers, namely, Hindustan Times (English); Dainik Tribune (Hindi); Jagbani

(Punjabi); Rojana Chardi Kala (Punjabi) [R-1 Colly]. According to respondent Nos. 1 and 3 public notices were again published in the newspapers on 9.10.2003, such as The Tribune (English) and Dainik Bhaskar (Hindi) [R-2 Colly]. It has also been emphasised that the total period from the date of publication of the notices i.e., 29.3.2003 to the date of receipt of application filed by the petitioner works out to be 200 days whereas the permissible period is 180 days. The table for calculation of the aforesaid period as relied upon by respondent Nos. 1 and 3 is as under:

4. We have heard learned Counsel for the parties and have minutely perused the pleadings as well as the Rules. In order to appreciate the controversy it would be necessary to read the relevant provisions of the Rules. Rule 3 casts an obligation on the authorities to publicise the intent of notification and afford assistance to public in making of application. The same reads as under :

3. Publicity of intent of notification and Assistance in making application.--(1) The Chief Wild Life Warden or the officer authorized by the State Government in this regard shall cause to give wide publicity to the intent of this notification in the regional language through electronic or print media or such other means.

(2) The Chief Wild Life Warden or the officer authorized by the State Government in this regard shall take necessary action to assist the local communities and individuals especially the poor and illiterate in the declaration of their possession, filling up the specified form and any other matter connected therewith and shall make every attempt to ensure that no individual or community associated with animals is deprived of this opportunity.

5. Likewise, Rule 4 of the Rules deals with the procedure for filing application and the period prescribed for presenting the application is 180 days from the date of publication of the Rules. Rule 4 is set out below for a ready reference :

4. Procedure for filing applications.--(1) An application to the Chief Wild Life Warden or the officer authorized by the State Government in this regard shall be presented in the Form annexed to these rules by the applicant either in person or by an agent or by duly authorized legal practitioner or sent by registered post addressed to the Chief Wild Life Warden or the officer authorized by the State Government in this regard of the concerned State or the Union territory.

(2) The application under sub-rule (1) shall be presented in four complete sets within a period of one hundred and eighty days from the date of publication of these rules.

(3) The applicant may attach to and present with his application an acknowledgment slip as is given in the Form which shall be signed by the official receiving the application on behalf of the Chief Wild Life Warden or the officer authorized by the State Government in this regard in acknowledgment of the receipt of the application.

6. Rule 5 further requires that the application be scrutinised and the applications

which are found to be in order, shall be duly registered and given serial number. The applications which are found to be defective were required to be returned to the applicants within 15 days for rectifying the defects, which could be resubmitted with corrections within 15 days from the date of receipt. Place and date of hearing the application was also required to be notified as per Rule 7 and the decision of the application is also regulated by Rule 8 of the Rules. Rules 5, 7 and 8 of the Rules reads as under:

5. Presentation and scrutiny of applications.--(1) The Chief Wild Life Warden or the officer authorized by the State Government in this regard shall endorse on every application the date on which it is presented or deemed to have been presented under that rule and shall sign the endorsement.

(2) If on scrutiny, the application is found to be in order, it shall be duly registered and given serial number.

(3) If the application, on scrutiny, is found to be defective, the same shall be returned to the applicant within fifteen days for rectifying the defects and resubmitting the corrected application within fifteen days from the date of its receipt.

(4) If the applicant fails to rectify the defect within the time allowed under sub-rule (3), the Chief Wild Life Warden or the officer authorized by the State Government in this regard may, by order and for the reasons to be recorded in writing, decline to register the application.

7. Date and place of hearing to be notified.--The Chief Wild Life Warden or the officer authorized by the State Government in this regard shall notify to the parties the date, place and time of hearing of each application, if required.

8. Decision on applications.--The Chief Wild Life Warden or the officer authorized by the State Government in this regard shall verify the facts mentioned in the application and make such inquiry as may be required.

(2) The Chief Wild Life Warden shall, as far as possible, decide the application within six months of the date of its presentation and communicate the same to the applicant in writing under his own signature by registered post.

7. A careful reading of sub-rule (2) of Rule 4 of the Rules makes it patent that the application has to be filed under sub-rule (1) of Rule 4 within a period of 180 days from the date of publication of the Rules. The notification admittedly was published on 18.4.2003. The undisputed fact is that the petitioner filed the application on 13.10.2003, which has been received by respondent No. 3 on 15.10.2003. The period of 180 days would come to an end on 15.10.2003, as has been rightly urged by the learned Counsel for the petitioner. The application filed by the petitioner could not be regarded as time barred as it was filed within the period (sic) 180 days. For the month of April 2003, 12 days would survive and the table of calculation would be as under:

8. If the aforesaid calculation is correct then firstly the period of 180 days would end on 15.10.2003. The application would at best be within period of limitation.

9. If the argument of learned State Counsel is accepted that it was delayed by one day even then the law will come to the rescue of the petitioner. Section 9 of the General Clauses Act, 1897 (for brevity, "the 1897 Act") deals with commencement and termination of time. Section 9 of the 1897 Act incorporates the principle of excluding the day from which the period is to be reckoned. The same principle is adopted by section 12(1) and (2) of the Limitation Act, 1963. Therefore, if 18th day of April 2003 (when the Rules were published for the first time) is excluded the limitation would commence from 19.4.2003 and the application of the petitioner would be within period of limitation as one day has to be excluded. The aforesaid provision came up for consideration of Hon''ble the Supreme Court in the case of M/s. Saketh India Limited and others Vs. M/s. India Securities Limited, Accepting the aforesaid principle, their Lordships of Hon''ble Supreme Court followed their earlier judgment rendered in the case of Haru Das Gupta Vs. The State of West Bengal, and observed as under :

5. Similar contention was considered by this Court in the case of Haru Das Gupta Vs. The State of West Bengal, wherein it was held that the rule is well established that where a particular time is given from a certain date within which an act is to be done, the day on that day is to be excluded; the effect of defining period from such a day until such a day within which an act is to be done is to exclude the first day and to include the last day. In the context of that case, the Court held that in computing the period of three months from the date of detention, which was February 5th, 1971, before the expiration of which the order or decision for confirming the detention order and continuing the detention thereunder had to be made, the date of the commencement of detention, namely, February 5th has to be excluded; so done, the order of confirmation dated May 5th, 1971 was made before the expiration of the period of three months from the date of detention. The Court held that there is no reason why the aforesaid rule of construction followed consistently and for so long should not be applied.....

10. The above principle would clearly show that the day of commencement of the period of limitation has to be excluded and the application received on 15.10.2003 by respondent No. 3 cannot be regarded as time barred. It follows that the adjudication order dated 19.5.2006 (P-4) suffers from patent legal infirmity and is, thus, liable to be declared as illegal and violative of the provisions of Rule 4 (2) of the Rules. Consequential order dated 20.7.2006 (P-3) asking the petitioner to surrender two Shahtoosh Shawl is also liable to be declared illegal.

11. There is another aspect of the matter. Respondent Nos. 1 and 3 have claimed that they have complied with the provisions of Rule 3 of the Rules by publication of public notices in the newspapers on 29.3.2003 and 9.10.2003 (R-1 Colly and R-2 Colly respectively). A casual glance at Rule 3 would make it patent that the

Chief Wild Life Warden or the authorised officer is under an obligation to give wide publicity to the intent of the notification dated 18.4.2003 in the regional language through electronic or print media. Sub-rule (2) of Rule 3 of the Rules casts a further obligation on the authorities to take necessary action to assist the local communities and individuals, especially poor and illiterate, in the declaration of their possession, filling up the specified form and any other matter connected therewith. They are obliged to make every attempt to ensure that no individual or community associated with animals is deprived of the opportunity provided by the Rules. Apart from this, respondent Nos. 1 and 3 only published the public notices which are far from answering the requirement of Rule 3 (1) and (2). The public notice reads as under :

It is hereby declared for the information of general public that as required in section 40(4) of the Wildlife (Protection) Act, 1972, any person in the possession of any animal, article, trophy (other than musk or rhino horn) or skin specified in Schedule I or Schedule II (Part II) of the said Act should declare stock of such animals, animal articles/trophies, skins to the Chief Conservator of Forests and Chief Wildlife Warden, Punjab, SCO Nos. 2463-64, Sector 22-C, Chandigarh within 90 days from the publication of this notice. Financial Commissioner (Forests) and Secretary to Govt. of Punjab Deptt. Of Forests and Wildlife Preservation.

12. Once the respondents have not done their duty in accordance with the Rules then it is very strange for them to raise the boggy of period of limitation. The provisions of Rules are confiscatory in nature and, therefore, principle of strict construction has to be followed. It is not understood as to how the public notice was given on 29.3.2003 whereas the notification of the Rules was issued on 18.4.2003. The other public notice was issued on 9.10.2003, which is very close to the last date of 180 days, which was 15.10.2003. Therefore, on that score also the adjudication order dated 19.5.2006 (P-4) and consequential order dated 20.7.2006 (P-3) are liable to be set aside. As a sequel to the above discussion, these petitions succeed. Adjudication Order dated 19.5.2006 (P-4) and consequential order dated 20.7.2006 (P-3) are quashed. The respondents may consider the application (s) of the petitioner(s) on merit and decide the same within a period of two months from the date of receipt of a copy of this order. In case it is decided in favour of the petitioners then the necessary certificate shall be issued without any further delay.

A photocopy of this order be placed on the files of connected cases.