

(1979) 04 AHC CK 0022

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 326 of 1976

Surendra Kumar Goel

APPELLANT

Vs

State Transport Appellate Tribunal, U.P. and another

RESPONDENT

Date of Decision : 20-04-1979

Acts Referred:

Limitation Act, 1963 — Section 29(2), 5
Motor Vehicles Act, 1939 — Section 64A

Citation : (1979) 04 AHC CK 0022

Hon'ble Judges : K.N.Singh, J; K.N.Seth, J and K.C.Agrawal, J

Final Decision : Dismissed

Judgement

K. C. Agrawal, J.—This Full Bench has been constituted on a reference made by a Division Bench for deciding the following two questions:

I. Whether Section 5 of the Limitation Act, 1963, would, by virtue of Section 29 (2) of the said Act, apply to revision filed before the State Transport Appellate Tribunal under the Motor Vehicles Act beyond the period of limitation prescribed for filing it ?

2. If the provisions of Section 5 of the Limitation Act are not applicable, will the principle contained in the said section apply to a revision filed as referred to in question No. 1 ?

The facts necessary for appreciating the controversy involved in the present case are these: The petitioner made an application for the grant of a permit on ChandpurBijnorviaHaldwani route. The permit was granted to the petitioner. The permit, however, contained certain conditions. Aggrieved by the conditions imposed in the permit, the petitioner filed a revision under Section 64A of the Motor Vehicles Act before the State Transport Appellate Tribunal. The revision had been filed beyond the period of limitation prescribed by the proviso to Section 64A of the said Act. The proviso lays down that a revision has to be filed by a person aggrieved within thirty days from the date of the order. Having found that the revision had been filed beyond the limitation prescribed, the State

Transport Appellate Tribunal dismissed the same on July 28, 1975. The Tribunal repelled the contention of the petitioner that the delay in filing the revision under Section 64A was condonable under Section 5 of the Limitation Act. It held that since the Tribunal was not a Court, the provisions of the Indian Limitation Act were not applicable to the proceedings before it. Being aggrieved, the petitioner filed the writ petition which came up for hearing before a Division Bench.

Placing reliance on a decision of a Division Bench, in *Qasimuddin v. Assistant Sugar Commissioner cum Appellate Authority*, Bijnor 1974 A. L. J. 137 and *Competent Authority* 1974 A. L. J. 813 the petitioner contended that the Motor Vehicles Act being the special law, Section 5 of the Limitation Act was attracted to the revision filed by the petitioner under Section 29 (2) of the Limitation Act. Having felt doubt about the correctness of the view taken in aforesaid two cases, the Bench made the present reference.

The question is, whether the provisions of the Limitation Act, 1963 (hereafter referred to as the Act of 1963) confined in its operation to proceedings before Court. It is not necessary for us to mention about the law of limitation in India before the Act, 1908. It would, however, suffice to mention that even before the enforcement of the Limitation Act, 1908, attempts were made to introduce a uniform law of limitation applicable alike to Courts established by the Royal Charter and other Courts (See: Third Law Commission Report page 2). The preamble to the Limitation Act, 1908 says:

"Whereas it is expedient to consolidate and amend the law relating to the limitation of suits, appeals and certain applications to Courts.....It is hereby enacted as follows;

The Act of 1908 contained 30 Sections and 183 Articles. The sections deal with general principles applicable to extension of time to Courts. Articles 1 to 149 related to suits. Articles 150 to 157 related to appeals and Articles 158 to 183 related to applications."

The need for reform of the law of Limitation in India was, however, still felt. The main reason according to the Third Report of the Law Commission, was the conflict of Judicial opinions on matters governing the rights of the parties. Judicial decisions also brought to light difficulties and doubts. As the law Commissioner said:

"It cannot be gainsaid that the law should be simple and certain. The time of the Courts should not be vested in disputes concerning the shadow and not the substance. As far as possible, legislation should avoid the possibility of conflict between various Articles and not allow the residuary Article to confer any additional advantage."

It submitted its Third Report making recommendations for the reform in the Limitation Act, 1908. In making recommendations the Law Commission examined the provisions of the Old Limitation Act with a view:

"To see in what manner it can be simplified and modernized in the light of the judicial decisions which have brought to light difficulties and doubts." It observed that "We do not propose any substantial change in the structure of the Act and would accordingly retain its divisions into sections and Articles."

On a review of the various provisions of the Limitation Act, 1963 and the Articles of the 1st Schedule, it would be found that the Limitation Act applies to Courts.

In *Athani Municipality v. Labour Court*, Hooglee A. I. R. 1969 S. C. 1336 the Supreme Court considered this aspect. It held "but we do not think that this addition necessarily implies that the Limitation Act is intended to govern proceedings before any authority, whether executive or quasijudicial, when, earlier, the old Act was intended to govern proceedings before Civil Court only."

It would be noticed that the Schedule to the Limitation Act is with a reference to Sections 2 (j) and 3 of the Limitation Act. Clause (j) of Section 2 defines the expression "period of limitation" as the period of limitation prescribed for any suit, appeal or application by the Schedule, and prescribed period means the period of limitation computed in accordance with the provisions of this Act. Section 3 of the Act states that subject to the provisions contained in Sections 4 to 24 (inclusive of the Act) every suit, appeal preferred and an application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence.

Reading these two provisions together, it is clear that period of limitation prescribed is only for the suit, appeals and applications.

The next question, now we may proceed to consider is, whether Section 5 of the Limitation Act applies to Courts or that it can be made applicable to proceedings before bodies other than Courts such as quasijudicial Tribunals and Executive Bodies, Section 5 (as read) before the Act of 1963, laid down that when the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within time the Court could extend the same. Section 5 thus was applicable only to Courts. By the new Act, the Legislature did not bring about any substantial change in Section 5 except laying down that this Section would not apply to any applications, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure. Another change made in this connection was that instead of leaving to different States or other High Court, to extend the application of Section 5 to application other than these enumerated in that Section, as now enforced, the section provides for the automatic application of this section to all proceedings. The applicability of Section 5 is, however, confined to Courts. The Court is given the power to condone the delay and admit the appeal or application, notwithstanding that it has been filed after the expiry of limitation.

In *Town Municipal Council, Athani v. Presiding Officer, Labour Court*, Hooglee (supra) the Supreme Court further was called upon to consider the question of applicability of Article 137 of the Limitation Act. The Supreme Court gave two

reasons for holding that Article 137 of the Limitation Act was not applicable to the proceedings initiated before the Labour Court under Section 33C (2) of the Industrial Disputes Act. The first ground was that in spite of the changes made in the Indian Limitation Act, 1963, no drastic change was intended in the scope of Article 137 so as to include within it all applications irrespective of the fact, whether they had any reference to the Code of Civil Procedure or not. The Court held that in spite of the changes, the interpretation of Article 18" of the Limitation Act, 1908 would apply to Article 137 of the Limitation Act, 1963. The second reason given was that it has only application to Court that were intended to be covered under Article 137 of the Limitation Act, 1963. In this case, the Supreme Court observed that "The High Court ignored the circumstance that the provisions of Article 137 were sought to be applied to an application which was prosecuted not to a court but to Labour Court dealing with an application under Section 33C (2) of the Act and that such a Labour Court is not governed by any procedural Code relating to Civil or Criminal proceedings." These observations would make it clear that the view of the Supreme Court taken in that case was that the Limitation Act could not apply to proceedings before bodies other than Courts.

In *Nityanand M. Joshi v. Life Insurance Corporation of India* A. I. R. 1970 S. C. 209, the appellants filed applications against the respondents under Section 33C (2) of the Industrial Disputes Act for computing in terms of money, the benefit of holidays and for recovering the amount. The application was dismissed by the Labour Court on the ground that it was barred under Article 137. The Supreme Court held as follows:

"In our view Article 137 contemplates applications to Courts. In the Third Division to the Limitation Act, 1963, and all the other applications mentioned in the various articles are the applications filed in the Court. Further Section 4 of the Limitation Act 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". Further under Section 5 of the Limitation Act, 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 meaning of the Limitation Act, 1963."

It would be noticed that in *Nityanand M. Joshi* case, the Supreme Court felt doubtful about the view taken by the Supreme Court in *Town Area Municipal Council, Athani* case on the first point. But it did not express its views on it. The first ground was that in spite of change the interpretation of Article 151 would apply to Article 137 of the Limitation Act, 1963. It, however, agreed with the view taken by the Supreme Court on the second ground. The second ground was that the Limitation Act was not applicable to proceedings before bodies other than Courts.

Sri I. P. Naithani counsel appearing for the petitioner, however, contended that since the decision given in Town Area, Athani's case has been overruled by the Supreme Court in the Kerala State Electricity Board v. T. P. Kunhailiumma A. I. R. 1977 S. C. 282, hence the view taken in the earlier case that the Limitation Act applies only to proceedings in Courts does not hold good. The submission made is not correct. In Kerala Electricity Board case, an application was filed before the District Judge under Section 16(5) of the Indian Telegraph Company, Act, 1805 read with Section 51 of the Indian Electricity Act, 1910 claiming an enhancement of compensation. The State Electricity Board filed an objection. One of the points was that the application was barred by time under Article 137 of the Limitation Act, 1963. For the State Electricity Board, the argument raised was that Article 137 did not apply to the proceedings under the Telegraph Act. The District Judge held that the application was governed by Article 137 of the 1963 Limitation Act, and, therefore, the petition since it was filed beyond three years was barred by time. It would, however, be found that although in this case, the Supreme Court did not agree with the view taken in the Athani's case, that the old interpretation of Article 181 of the Limitation Act was applicable to Article 137 also, but it agreed that the second ground given in the Town Area Athani's case, that the Limitation Act applied to revisions or applications filed under any Act to a Civil Court. The Supreme Court observed:

"The conclusion we reached is that Article 137 of the 1963 Limitation Act will apply to any petition or application filed under any Act to a Civil Court. With respect we differ from the view taken by the two Judge Bench of this Court in Athani's Municipal case and held that Article 137 of the 1963 Limitation Act is not confined to applications contemplated by or under the Civil Procedure Code. The petition in the present case was to the District Judge as a Court. The petition was one contemplated by the Telegraph Act for judicial decision. The petition is an application falling within the scope of Article 137 of the 1963 Limitation Act."

As already stated above, in this case, the Supreme Court had differed with its earlier view only on one out of, two points. The second point that the application under Article 137 could be made only to a court and not to any other body was not departed from. Dealing with this aspect of the matter, the Supreme Court pointed out that "it has to be an application to a Court for the reasons that Sections 4 and 5 of the 1963 Limitation Act speak of expiry of prescribed period when the Courts closed and extension of prescribed period if the applicant or the appellant satisfies the Court that it had sufficient cause for not preferring the appeal or making the application during such period."

It would be noticed that the Supreme Court found that the District Judge, who was trying the application made under the Telegraphs Act, was a Civil Court and as such, the Article 137 of the Limitation Act as applicable to the proceedings initiated before it.

The discussion made above leaves no room for doubt that Section 5 of the Limitation Act is applicable only to a Court and that this section was not

applicable to proceedings before bodies other than Courts.

The next submission made by Sri L. P. Naithani was that the change made in the preamble of the Limitation Act, 1963 would demonstrate that the applicability of the Limitation Act has not to be confined to the court but it should be extended to Tribunals other than Court.

In this connection, the learned counsel pointed out difference between the preamble of the Limitation Act, 1908, and the long title given in the Limitation Act, 1963. Under the old Act, no doubt, the Legislature had definitely provided in the preamble that the limitations of suits, appeals and certain applications given in the Act shall apply to Courts, but the mere omission to repeat the same in the present Act does not in any way affect the interpretation. It would be noticed that in Athani's Municipality case, the Supreme Court was considering the new Act and after interpreting the new Act it had found that the provisions of the new Act were applicable to Courts. It is no doubt true that the title form a very important part of the Act and where the language of the Act is ambiguous the title can be usefully referred. However, where the language in the enactment is clear, its construction cannot be affected in any way by the consideration of the title of the Act. The object of the preamble only is to enact the intention of the Legislature in passing the enactment. It cannot, however, either restrict or widen the terms of a section when such terms are clear and unambiguous. In the instant case, we have already shown above, from the language employed in Section 5 of the Act, and its scheme, that it cannot be applied to bodies other than Courts.

The next question is, could Section 5 of the Limitation Act apply to a quasijudicial tribunal by virtue of Section 29(2) of the Limitation Act, as it now stands. Briefly, we may give the history of this section. Section 29(2) as enacted in the Limitation Act, 1908 read as under:

Nothing in this Act shall:

(a)

(b) Affect, alter any period of limitation specifically prescribed for any suit, appeal or application by any special or local law now or hereafter in force in British India."

This section, however, gave rise to a controversy. According to one view, none of the provisions of the Limitation Act, namely. Sections 4 to 25 applied where there was a special or local law. The contrary view, however, was that in order to compute the period of limitation prescribed by any special Act, Sections 4 to 25 could be taken into account. This section itself, however, was amended in 1922 and after amendment it read as under:

(1) Nothing in this Act shall affect Section 25 of (Sic.). The Indian Contract Act, 1872.

(2) Where any special or local law prescribes for any suit, appeal or application

period of limitation different from the period prescribed therefor by the first schedule, the provisions of Section 3 shall apply, as if such period were prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law:

(a) That provisions contained in Section 4, Sections 1 to 18, and Section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law, and

(b) The remaining provisions of this Act shall not apply.

(3)?????????..

The amendment made in subsection (2) of Section 29 would thus show that to a proceeding before a Court created by a special or local Act, provisions of Sections 4, 9 to 18 and 29 would apply provided that its applicability had not been excluded. If the legislature did not intend to apply the aforesaid sections, to proceedings before a Court created by the special Act, it was necessary to exclude the same. It would, however, be noticed that Section 5 did not find a mention in clause (a) of subsection (2) of Section 29. The consequence was that Section 5 was clearly excluded and it was necessary for the legislature to specifically apply it, if it so desired.

In *Kaushalya Rani v. Gopal Singh A. I. R. 1964 S. C. 260*, the Supreme Court was called upon to consider the question of the applicability of Section 5 to an appeal against an order of acquittal filed under Section 417(3) of the Code of Criminal Procedure. The Supreme Court pointed out that so far as an appeal by the State Government against acquittal is concerned, the law of limitation is the general law laid down in the Limitation Act (Article 157) to which Section 5 applied by its own force but with regard to an appeal by a private citizen, the Supreme Court found that the Legislature had made a special provision in Section 417 and provided that the same had to be preferred within 60 days from the date of order. In that sense, the Rule of 60 days bar was a special law. To such appeals, the provisions of Section 5 did not apply. The Supreme Court observed that:

"In our opinion, therefore, the provisions of the Code supplemented by the provisions of Section 29(2) of the Limitation Act, made it clear that Section 5 of the Limitation Act, would not apply to an application for special leave to appeal under Section 427(3) of the Code." Thus the view taken by the Supreme Court was that Section 417(4) was the special law in this the meaning of Section 29(2) of the Limitation Act, Section 5 did not apply automatically. It was necessary to make it applicable. What is required to be noted is that even in a proceeding before a court, Section 5 was held inapplicable.

Dealing with Section 29, the Law Commission stated at page 24 of its recommendations that "combined operation of clauses (a) and (b) of subsection (2) is that so far as special and local laws are concerned only Sections 4, 9 to 18

and 22 of the Act apply and that too subject to such modifications as may be prescribed. We consider that there is no need for these restrictions and that the principles contained in Sections 4 to 25 should be made applicable to all Special or local laws leaving it open to the Legislature to exclude the application of any or all of these sections in any given case."

As a result of these recommendations, Section 29(2) was amended. Section 29(2) which is relevant for our purposes reads as under:

"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 was 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 were not expressly excluded by such special or local law." In order that Section 29(2) may apply, two conditions are required to be satisfied:

- (i) The special or local law must have prescribed a period of limitation for a suit, appeal or application.
- (ii) Such period must be different from that prescribed by the first Schedule to the Limitation Act.

The Limitation Act does not define the expressions "special law" or "local law". It is not possible to attempt an exhaustive definition of these expressions. Some help, however, can be derived from the definitions of these words given in the Indian Penal Code. Section 41A of the Indian Penal Code defines special law as a law applicable to a particular subject.

"A local Law" has been defined as a law applicable only to a particular part of India. Since it is not necessary for us to deal with this point in detail, we would contain ourselves by referring to a decision of the Supreme Court given in *Kaushalya Rani v. Gopal Singh* (supra), where the Supreme Court says that:

"Special law", therefore, means a law enacted for special cases, in special circumstances, in contradiction to the general rules of the law laid down, as applicable generally to all the cases with which the general law deals."

Thus the Limitation Act is a general law laying down the general rules of limitation applicable to all cases dealt with by the Act but there are Acts which do not although generally deal with the limitation but lay down special provisions for instituting proceedings before a Court, i. e., Section 22 of the U. P. Act No. XIII of 1972, Section 9 of the U. P. Public Premises (Eviction of Unauthorized Occupants) Act, 1972, Section 110D of the Motor Vehicles Act. These are few instances of special laws within the meaning of Section 29 (2) of the Limitation Act, 1963.

The requirement of Section 29 (2) further is that the limitation should be

"different from the period prescribed by the Schedule". It governs two types of cases. Firstly, where special or local law specially modifies or changes the limitation provided for in the schedule. Secondly, where the special or local law provides for a period of limitation but the Limitation Act does not make any provision for the same. Section 29 also provides that in such an event two consequences would follow. These are, (i) that the period of limitation prescribed by special or local laws shall be regarded as prescribed by that Act for the purposes of Section 3 of the Limitation Act. (ii). That, sections, namely, Sections 4 to 24, shall apply to such suits, appeals or applications, so far as their application is not excluded by such special or local law. What it means is that the suits, appeals and applications contemplated by the Special or Local Law should be of the same nature as that provided for by the Schedule to the Limitation Act, Since the provisions of the Limitation Act are confined to their operation to proceedings before Courts, the proceeding, initiated or instituted under a special or local law, in order to attract the application of Section 29 (2) thereof, must also be capable of being taken in Courts. Therefore, if the special law provides for the remedies of either a suit, appeal or application with a different period to be instituted in a Court, the Sections 4 to 24 will come into play in determining the period prescribed therefor. If, however, the forum prescribed under the special law is not a Court but is in quasijudicial Tribunal or any other body, Section 29 (2) will not apply. In order to apply Section 29, the proceedings contemplated must be of the same nature except that the period of limitation could be different. It may be pointed out that had Section 29 (2) been not enacted, the irresistible conclusion would have been that none of the provisions of the Limitation Act would have applied to the proceedings taken under the special law. In that event, the provisions of Sections 4 to 24 of the Limitation Act could not be applied. But now by having provided in Section 29 (2) for determining the period of limitation, Sections 4 to 24 would have to be applied. The Legislature has made it clear that these provisions will have to be taken into account for the purposes of determining whether any proceeding is instituted in time or can be treated as having been instituted in time. We, therefore, are unable to find substance in the submission of the learned counsel for the petitioner that even if the special or local law provides for a special forum for adjudication of disputes before it, Section 29 (2) would be attracted.

At this place, it may be useful to refer to the recommendation of the Law Commission while suggesting amendment of Section 5 of the Limitation Act. Before Act 1963, Section 5 did not apply to special laws and that if any special law wanted to apply the same to the proceedings contemplated it, it was necessary to specifically make a provision in that respect. But, as the Law Commission considered that there was no need for this restriction, it recommended that Sections 4 to 25 should be made applicable to all special or local law, leaving it open to the legislature to exclude any or all of these sections. The previous interpretation of Section 29 (2) also was that it was applicable to Courts created by special or local laws. The Legislature did not make any change

in that regard and accepted the recommendations the Law Commission. The change only was to apply Section 5 and some other sections which were not previously made applicable to special or local laws. Our interpretation in that Section 29(2) applies the provisions of Sections 4 to 24 only to Courts and that they cannot apply to proceedings before a Tribunal, which is not a Court, appears to be in consonance with the Report of the Law Commission.

Counsel for the petitioner, however, objected to the report of the Law Commission being taken into account for the purposes of interpreting Section 29(2). He contended that by considering the legislative history the, Court shall travel outside the limits of permissible Judicial Interpretation and shall supplement the Statute by engrafting to it meaning that cannot be fairly ascertained from it is the form in which it was enacted. The submission made is not correct. The Legislative history is written evidence of Legislative intent and purpose. It may be true that the legislative history should be used for interpreting the provisions of law with restraint but it is not correct that it cannot be taken into account at all.

In *Udayan chivhal v. R.C. Bail*, AIR 1977 SC 2319, while interpreting Section 12 of the Limitation Act, the Supreme Court referred to the recommendations of the Law Commission and noted that. "We are happy that in arriving at this decision we are effectuating the useful recommendation of the Law Commission Court will do its duty not to recommence another series of litigation."

In *Union of India v. Sankal Chand*, AIR 1977 SC 2328 at page 2373, Krishna Iyer, J. has expressed that, "the legislative history plus then circumspect limits may be consulted by Court to resolve ambiguities." "As a result of the amendment made in Section 29(1) of the Limitation Act, 1963, Section 5 thus became applicable to the proceedings a Court created under a special law automatically. Now if the applicability of Section 5 has to be excluded, it is necessary that a special provision should be made in that respect by the legislature, previous to the amendment. Section 5 did not apply to the courts created under the special laws. It was incumbent for the Legislature under the old law to include it if it desired to do so, the difference between the old law and the new law has been noted by the Supreme Court in *Mangoo Ram v. Delhi Municipality*, AIR 1976 SC 105. The Supreme Court said that:

"Whereas under the India Limitation Act, 1908, Section 29, subsection (2), clause (b) provided that for the purposes of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions of the Indian Limitation Act, 1908 other than those contained in Sections 4, 9 to 18 and 22, shall not apply and, therefore, the applicability of Section 5 was in clear and specific terms excluded. Section 29, subsection (2) of the Limitation Act, 1963, enacts in so many terms that for the purpose of determining the period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24, which

would include Section 5 shall apply in so far as and to the extent to which they are not expressly excluded by special law or local law.?

The above observations would show that so long as the old Limitation Act was in force, Section 5 could not be taken advantage of for computing the period of limitation in instituting proceedings under a special law. Now Section 5 would apply to the proceedings taken before a Court under a special law. As a result, Section 5 has to be referred to for deciding whether a proceedings should be entertained or whether it should be thrown out as being barred by time.

We may now refer to the decisions of the various Courts in which the view taken has been that Section 29(2) will apply only to Courts created by the special or local law and that it will not apply to any forum other than a Court. It may be pointed out that from the language of Section 5 itself, it has expressly made applicable to application and appeal before a Court. This position obtained in the old Act and continued to be the same under the new Act. In a number of decisions arrived at under the old Act, the view taken had been that Section 5 could apply only to a Court. The legislature did not depart from that view and maintained the same by enacting Section 5 in the same language in which it had been previously enacted. Although some changes have been made in Section 5 of the new Act but those are inconsequential for the purposes of deciding the controversy involved in this case.

We may first refer to a decision of which the Supreme Court reported in AIR 1975 SC 177. To us, it appears that it is a direct authority on the controversy in hand and there is no escape from the conclusion that Section 29(2) would not apply to the proceedings before an authority other than a Court.

Shorn of unnecessary details, the relevant facts of this case that an application made for extension of time to the Block Development Officer, Bijpur, who was discharging the functions under Section 5 of the Kosi Area (Restoration of Lands to Raiyats) Act, was allowed on 25th November 1965. Against the said order, the appeal preferred to the Additional Collector was accepted on the 3rd October, 1966. The first respondent of the appeal before the Supreme Court then filed a writ petition challenging the order of the Additional Commissioner. The High Court accepted the writ, and restored the order of the Block Development Officer. The High Court held that:

"In any case, after coming into force of the New Limitation Act, 1963, the petitioner (first respondent) had a right to ask the Court concerned to condone the delay in depositing the same under Section 5 of the Act"

An appeal was filed in the Supreme Court. One of the points raised was that the Addl. Collector was not a Court, Section 5 of the Limitation Act, did not apply. The Supreme Court held that the High Court erred in applying Section 5 of the Limitation Act. The relevant observations of the Supreme Court are extracted below;

"The third ground on which the decision of the High Court rests relates to the applicability of Section 5 of the Limitation Act, 1963. We do not see how Section 5 could be invoked in connection with the application made on October 17, 1965 by the first respondent. Under Section 5 in appeal or application "may be admitted after the prescribed period, if the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period. The Collector to whom application was made was not a Court, though Section 15 of the Act vested with him certain specified powers under the Code of Civil Procedure also, the kind of application that was made had no time limit prescribed for it and no question of extending the time could, therefore, arise. We, therefore, think that the High Court misdirected itself in referring to Section 5 of the Limitation Act,

It would thus be seen that the Supreme Court did not accept the view of the High Court that after coming into force of the new Limitation Act, 1963, the petitioner had a right to ask the Court to condone the delay. This was, obviously because of the reasons that the authority trying the application was not a Court. Had the Supreme Court thought, that Section 29 (2) was applicable to a forum other than a Court created under a special Statute, the decision would have been different.

Another important decision which is found in. *The Commissioner of Sales Tax, U. P., Lucknow v. M/s. Person Tools and Plants, Kanpur* AIR 1975 S. C. 1039. This appeal was filed against a Full Bench judgment of the Allahabad High Court. This case before the Allahabad High Court was a reference made under the U. P. Sales Tax Act. The question referred was :

"Whether under the circumstances of the case Section 14 of the Limitation Act extended the period for filing of the revisions by the time during which the restoration applications remained pending as being prosecuted bonafide" ?

The reference was heard by a Full Bench of three learned Judges. Each of whom wrote a separate judgment. Dwivedi, J., held that the words "suits", "cause of action", "plaintiff" and "defendant" suggested that subsection (1) of Section 14 used the word "Court" in the narrower sense and not in the wider sense. Hence having regard to subsection (2) of Section 14, the word "Court" signified a Court in stricto sensu and did not include an authority who acted as a Tribunal or quasijudicial tribunal. He, however, was of the view that the principles of Section 14 of the Limitation Act could be applied to an authority other than a Court. Singh, J., held that after the amendment in Section 29 (2), of the Limitation Act, 1963, Section 14 applied to all the authorities including the Sales Tax (Judge) Revisions. His view was that the applicability of Section 14 could not be confined to Courts. On these grounds, he agreed with the answer given by Dwivedi, J.

Hari Swarup, J. held that neither Section 14 (2) in terms nor the principles behind it could apply to the proceedings before the Judge (Revision), Sales Tax. The reasoning was that Section 14(2) applies to Courts and as the Judge

(Revision), Sales Tax was not a Court, there was no room for argument that Section 14 in terms applied to proceedings to the Tribunal.

The Supreme Court reversed the majority judgment and upheld the view taken by Hari Swarup, J. It held :

"The above observations were quoted with approval by this Court in Jagannath Prasad's case (1932) 2 S. C. R. 850 : AIR 1963 S. C. 416 and it was held that a Sales Tax Act, 1948 was not a Court within the meaning of Section 195 of the Code of Criminal Procedure although he is required to perform certain quasijudicial functions. The decision in Jagannath Prasad's case, it seems, was not brought to the notice of the High Court. In view of these pronouncements of this Court, there is no room for argument that the Appellate Authority and the Judge (Revisions), Sales Tax exercising jurisdiction under the Sales Tax Act are Courts. "They are merely administrative Tribunals and not Courts." "Section 14, Limitation Act, therefore, does not in terms apply to proceedings before such Tribunals."

The learned counsel for the petitioner, however, attempted to distinguish this case on the ground that since the Supreme Court did not refer to Section 29 (2) of the Limitation Act, the Supreme Court must be held that Section 29 (2) of the Limitation Act, 1963 was not considered in the said case. We find no justification for this submission. It will not be possible for us to accept the above submission. This would necessarily lead us to hold that the Supreme Court was not aware of Section 29 (2) of the Act. Although there may not be a specific mention of Section 29 (2), but the controversy resolved was that despite the amendment made in 1963 in Section 29, Section 14 (2) was not applicable to a tribunal. For the reasons given in that judgment, Section 5 will also not apply.

Next attempt was made to distinguish the aforesaid Supreme Court case on the ground that since the Supreme Court had found that Section 14 (2) had been expressly excluded from its applicability to the proceedings before the Judge (Revision), Sales Tax, the said decision was not an authority helpful to decide the controversy involved in the present case. The learned counsel is not right in distinguishing the Supreme Court case on this ground. After having decided that Section 14 (2) of the Limitation Act does not apply in terms, the Supreme Court proceeded to decide whether the general principles underlying Section 14 (2) was also not applicable. The necessary result of the decision of the Supreme Court was that the judgments of Dwivedi, J. and Singh, J. were reversed. Singh, J. had found that Section 14 (2) could be applied to the Judge (Revision), Sales Tax with the aid of Section 29 (2). He was overruled by the Supreme Court.

Apart from these cases, references may also be made to the decisions of the Supreme Court given in *The Kerala State Electricity Board v. T. P. Kunhaliumma* (supra), *Nitya Nand M. Joshi v. Life Insurance Corporation of India* (supra), *Town Municipal Council, Athani's v. Presiding Officer, Labour Court* (supra). In all these cases, the Supreme Court had held that Section 5 applied to courts.

In *Ulahannam Chakko and others v. Parsed Marakkar and others* AIR 1978 Kerala 161, the Kerala High Court followed its Full Bench decision given in the case of *Jokkim Fernandez v. Amina Kunri Umma* AIR 1974 Kerala 162 and held that the Limitation Act had application only to Courts. It found that Section 5 of the Limitation Act could not apply to an authority which was not a Court. In interpreting Section 29 (2), the view taken by the Kerala High Court was that as the appellate authority under the Kerala Buildings (Lease and Rent Control) Act is not a Court, where an appeal under the Rent Control Act is provided, it had no power to condone delay under Section 5 of the Limitation Act. In the Full Bench case of *Jokkim Fernandez* the principles of Section 14 of the Limitation Act was held not applicable on the ground that the said section also did not apply to an authority other than a Court. The view taken by us in this case is further supported by the decision of the Madras, Bombay and Mysore High Courts. These decisions are found to be reported in *S. Ganapathi v. N. Kumarswamy* AIR 1975 Madras 383 and *Bando Bannji Mutalik v. Bhaskar Balaji Kulkarni* AIR 1972 Mysore 311. We may extract a portion from the judgment of the Mysore High Court, where it has been observed:

"Shortly put, if the special or local law provides for a special forum for adjudication of disputes arising under it, although when the period of limitation is different from the one prescribed under the Limitation Act, it would not attract the provisions of Section 29 (2) or any other provisions of the Limitation Act in the absence of any specific provisions having been made as to their applicability."

We find ourself in complete agreement with the view taken by the Mysore High Court in the aforesaid Case. We find little substance in the submission of the petitioners learned counsel that in the aforesaid cases, the Courts were not called upon to decide the scope and applicability of the provisions of Limitation Act to period of limitation prescribed by special laws.

Great emphasis was led by the learned counsel for the petitioner on certain observations of the Supreme Court made in *Mohammad Ashfaq v, State of U.P.* AIR 1975 S. C. 2161. According to the petitioner this decision showed that Section 5 of the Limitation Act would have been found applicable to the proceedings before the Regional Transport Authority, if the provision excluding its applicability had not been expressly found in the Motor Vehicles Act. In other words, the submission was that since in the aforesaid case, the Supreme Court found that Section 5 of the Limitation Act had been expressly excluded, it held that the same was not applicable. But if Section 5 would have not been excluded, the Supreme Court must have found that it would be applicable to the proceedings before the Regional Transport Authority, although, it was not a court.

The question there considered was, of course, regarding the applicability of Section 5 of the Limitation Act to an application filed before the Regional Transport Authority for renewal of a permit under Section 15 (2) and (3) of the Motor Vehicles Act. Under subsection (2), the application for removal of a permit had to be made within the time prescribed and under Clause 3 the Regional

Transport Authority may entertain an application for removal of a permit after the specified time, if the application is made not more than 15 days after the said date. The question was, whether Section 29 (2) of the Limitation Act could permit the Regional Transport Authority to entertain an application even beyond the outer limit of more than 16 days. The Court observed:

"Section 29, subsection (2) of the Limitation Act, 1963, makes Section 5 application in the case of an application for renewal unless its applicability can be said to be expressly excluded by any provision of the Act. The only provision of the Act sought to be pressed into service for this purpose was subsection (3). Does subsection (3) expressly exclude further extension of time under Section 5 ? If it does, then Section 5 cannot be availed of by the appellant for condonation of the delay. Subsection (3) in so many terms says that the Regional Transport Authority may condone the delay in making of an application for renewal and entertain it on merits provided the delay is of not more than 15 days, the R. T. A. shall not be entitled to entertain it, or in other words it shall have no power to condone the delay. There is thus an express provision in subsection (3), that delay in making an application for renewal shall be condonable only if it is of not more than 15 days and that expressly excludes the applicability of Section 5 in cases where an application for renewal is delayed by more than 15 days."

We are unable to find anything in the above observation which could be of any help to the learned counsel for the petitioner and to hold that an application to excuse delay would lie to an authority other than a Court. On the other hand, if the Limitation Act would apply *proprio vigore* even to the Regional Transport Authority, the conclusion of the Supreme Court would have been different.

The only other case that remains to be considered in this regard is the Commissioner of Sales Tax, U.P. v. Madan Lal Dan & Sons AIR 1977 S. C. 523. In this case, the Supreme Court held that Section 12(2) of the Limitation Act,

1963 applied before the Judge (Revision), Sales Tax. It would suffice to mention that the attention of the Supreme Court to its own decisions that a Judge (Revision), Sales Tax, is not a court had not been invited. As a matter of fact, the controversy in the manner in which it arose before us was neither discussed nor adjudicated upon. We have got direct authorities of the Supreme Court, the references to which have been made before. We can do no better than citing a decision of the Supreme Court given in Mamleshwar Prasad and another v. Kanhaiya Lal AIR 1975 S. C. 907, where the circumstances under which an authority may not be binding have been elucidated.

The next question that was raised by the learned counsel for the petitioner that since the Tribunal created by the Motor Vehicles Act was a "Court" the provisions of Section 5 apply to it. This submission is devoid of substance. It is clear from the examination of the relevant provisions of the Act that the Motor Vehicles Tribunal was a special Tribunal created by State and it does not form part of the

hierarchy of the established Civil" Codes of the State. Even if, it be correct that the decision given by it involves a judicial element, that is not conclusive of the controversy. The Tribunal not being a Court, its decision involving a judicial element is a quasijudicial act and the proceedings before it in which such a decision is rendered is quasijudicial proceedings. This controversy has also been a subject matter of the number of decisions of the various High Courts and the Supreme Court. Before proceeding to consider the decisions, we may point out that; the term "Court" is not defined in the Limitation Act, 1963, nor was it defined in the Limitation Act, 1908, which it repealed and replaced. This term should, therefore, be taken in its accepted meaning in legal parlance and would thus mean a court of law in the hierarchy of the Courts established and that the dispensation or administration of justice throughout the State.

Coming to the case law, the first decision which may be noted in *Virendra Kumar Satyawadi v. State of Punjab* AIR 1956 S. C. 153, the Supreme Court pointed out that "it is a familiar feature of modern legislation to set up bodies and tribunals, and entrust to them work of judicial character, but they are not "courts" in the accepted sense of that term though they may possess some of the trappings of a Court."

The question whether a tribunal is or is not a Court does not admit of easy solution. In the words of the Supreme Court in *Virendra Kumar's* case that "when a question, therefore, arises as to whether an authority created by an Act is a Court as distinguished from a quasijudicial tribunal, "what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a Court.""

The question as to what would constitute a court properly so called was considered by the Supreme Court in *Brij Nandan Sinha v. Jyoti Narain* AIR 1956 S. C. 66. In this case, the Supreme Court quoted with approval the following negative proposition in relation to this subject. These propositions were given by the Privy Council in *Shell Co. of Australia v. Federal Commissioner of Taxation* 1931 A. C. 275. These propositions are as under:

- "(1) A tribunal is not necessarily a court in this strict sense because it gives a final decision;
- (2) Nor because it hears witnesses on oath;
- (3) Nor because two or more contending parties appear before it between whom it has to decide;
- (4) Nor because it gives decisions which affect the rights of subjects;
- (5) Nor because there is an appeal to a Court;
- (6) Nor because it is a body to which a matter is referred by another body."

Speaking of an Industrial Tribunal, Kania, C. J. in *Bharat Bank v. Employees Bharat Bank* AIR 1950 S. C. 188, said that such a tribunal is discharging functions

very near to those of a Court although it is not a Court in the technical sense of the words. Mahajan, J., in the same case said (paragraph 27) that the Industrial Tribunal might rightly be described as quasijudicial body because they are out of hierarchy of the ordinary system. Again Gajendragadkar, J. in *Engineering Mazdoor Sabha v. Hind Cycles Limited*, Bombay A.I.R 1963 S. C. 874, pointed as follows:

"The expression "a court" in the technical sense is a Tribunal constituted by the State as a part of ordinary hierarchy of courts which are invested with the State's inherent judicial powers. The Tribunal as distinguished from the court, exercises judicial powers and decides matters brought before it judicially or quasijudicially, but it does not constitute a court in the technical sense."

In view of the guidelines, we find that the Motor Claims Tribunal could not be held to be a "Court" and as such the petitioner was not entitled to the benefit of Section 5 of the Limitation Act.

For what we have said above, we must find that the decision of this Court given in *Qasimuddin v. Asstt. Sales Tax Commissioner* 1974 A L J 133 and *R. E. Company v. Compelent* 1974 ALJ 831, does not lay down the law correctly and is required to be overruled. In *Qasimuddin's* case, an appeal had been filed under Section 3 (5) of the U. P. Sugar cane Purchase Tax Act, 1961 before the Assistant Commissioner cum Appellate Authority, but the memorandum of appeal was not accompanied by proof of payment of tax admitted by the appellant to be due from him as required by the proviso to Section 3 (5) of that Act. At the hearing of the appeal, it was submitted on behalf of the petitioner that he may be permitted to deposit the admitted tax and the appeal be heard on merits after condoning the delay. The Appellate Authority held that there was no provision in the U. P. Sugarcane Purchase Tax Act, 1961 applying Section 5 of the Limitation Act to proceedings under it. On this view, the appeal was dismissed. Aggrieved by the aforesaid judgment, a writ petition was filed in this Court. After considering Section 29(2), this Court held that since, there was no provision in the U. P. Sugar cane Purchase Tax Act, 1961 either excluding or limiting the application inter alia of Section 5 of the Limitation Act, Section 5 was attracted to an appeal filed under Section 3(5) of the U.P. Sugarcane Purchase Tax Act, 1961. Admittedly, the Assistant Commissioner cum Appellate Authority was not a Court. The fact that since it was not a Court the provisions of Section 5 could not be applied, with the aid of Section 29(2) was not brought to the notice of the Bench deciding the aforesaid Case. As we have held above, that Section 29(2) could not be applied to a situation like the present, we must hold that the decision given in *Qasimuddin's* case does not lay down the law correctly. The same appears to be the position in *JR. R. Engineering* case. In this case, a Division Bench of the High Court held that Section 5 of the Limitation Act applied to an application made under Section 15 of the Payment of Wages Act to a prescribed Authority. A prescribed Authority is not a "Court" and as such, Section 5 did not apply to the application filed before it for setting aside the order made earlier under Section

15 (2) of the Payment of Wages Act. We are unable to hold that the benefit of Section 5 was available to the applicant of that case who had filed the application for recalling the ex parte order made under Section 15 (2). The only other question that remains to be considered is "if the provisions of Section 5 of the Limitation Act are not applicable, could the principles contained in the said section apply to a revision. It is not necessary for us to discuss this point in detail except to point out the decisions of the Supreme Court which are of the conclusive nature. Before doing so, we shall note that the rights of filing a revision had been given by Section 64A of the Motor Vehicles Act. The right had to be exercised in accordance with the procedure prescribed for it. The procedure was that the revision had to be preferred within thirty days from the date of the order. In order to avail of that right, it was incumbent upon the petitioner to have filed the revision within the time stipulated therefor. In our opinion, the provisions of filing the revision within 30 days made in Section MA of the Motor Vehicles Act is conclusive in what it provides. It is not possible to invoke any principle for holding that the benefit of Section 5 could be extended to such a case in *Maqbool Ahmad v. Onkar Pratap Narain*, AIR 1935 PC 85, the arguments before the Privy Council was that a Court had discretion to relieve litigants in cases of hardship from operation of the Limitation Act. The Privy Council did not accept the argument and held:

"In their Lordships opinion, it is impossible to hold that in a matter which is governed by an Act which in some limited respects gives the Court a Statutory discretion, there can be implied in the Court outside the limits of the Act, a general discretion to dispense with the provision."

A similar view was taken by the Supreme Court in *India Electric Works Limited v. Jamesh Mantosh* AIR 1971 SC 2313. The Supreme Court said:

".....All questions of limitation must be decided by the provisions of the Act and the Court cannot travel beyond them." In *Sales Tax Commissioner v. Parson Tools and Plants* (Supra) the alternative argument before the Supreme Court was that on the basis of the general principles underlying Section 14 (2) of the Limitation Act, applicable on grounds of justice, equity and good conscience, the time spent by the assessee of that case should have been excluded. The Supreme Court repelled the argument and held that the general principles could not be imported for condoning the delay. The Supreme Court observed:

"In the light of what has been said above, we are of the opinion, that the High Court was in error in importing wholehog the principle of Section 14 (2) of the Limitation Act into Section 10 (3B) of the Sales Tax Act."

We, therefore, hold that the principles contained in Section 5 of the Limitation Act did not apply to the revision filed by the petitioner before the Motor Vehicles Appellate Tribunal.

For what we have said above, we answer the first question in the negative and hold that Section 5 of the Limitation Act does not apply to a revision filed before

the State Transport Appellate Authority, under Section 64A of the Motor Vehicles Act beyond the period of limitation prescribed for filing it.

The second question is also decided in the negative by answering that the principle contained in Section 5 does not apply to a revision filed before the State Transport Authority under Section 64A.

Let the papers of the aforesaid case be laid before the Bench concerned with the answer given above.