(2010) 06 MAD CK 0129

In the Madras High Court

Case No : Writ Petition No. 14533 of 2001 and W.P.M.P. No. 31906 of 2001

The Commissioner, Udumalaipet Municipality APPELLANT

Vs

Rajammal and Others RESPONDENT

Date of Decision : 08-06-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 29, 5
Payment of Gratuity Act, 1972 — Section 7(7)
Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 — Section 25(2)
Tamil Nadu General Sales Tax Act, 1959 — Section 31

Citation : (2010) 06 MAD CK 0129

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : G. Sankaran, for the Appellant; K. Surendranath, for RR 1 to 8, 10 to 13 and N. Senthilkumar, AGP for RR 14 and 15, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The petitioner is the Commissioner, Udumalaipet Municipality. He has come forward to challenge the order, dated

18.4.2001 passed by the appellate authority (15th respondent) under the Payment of Gratuity Act.

2. By the impugned order, the appellate authority (15th respondent), refused to condone the delay in preferring appeals and dismissed IA Nos. 26

to 38 of 2001 which challenged the order of the Controlling Authority (14th respondent), dated 16.8.1999.

3. It was claimed by the Municipality that the order of the Controlling Authority was received by them on 16.8.1999 and they ought to have filed

an appeal on or before 16.10.1999. But, however, they could not file it in time. As there was delay of 463 days, IA Nos. 26 to 38 of 2001 were filed to condone the delay in filing appeal in terms of Section 5 of the Limitation Act. It was found that as per Section 7(7) of the Payment of

Gratuity Act, an appeal will have to be filed within 60 days to the appellate authority and in case of delay, the appellate authority had power only to

condone a further delay of 60 days. Therefore, since the application filed by the municipality was beyond time, their application for condonation of

delay was rejected. The writ petition was filed against the said order and the same was admitted on 10.8.2001 and an interim stay was granted.

4. Subsequently, on behalf of contesting respondents, a petition to vacate the stay was filed in WVMP No. 29930 of 2001. But however, this

Court made the interim stay absolute insofar as the recovery of interest amount alone.

5. The short question that arises for consideration is whether the impugned order suffers from any infirmity?

6. Though the learned Counsel for the petitioner contended that the contesting respondents cannot have the benefit in addition to the other terminal

benefits given to them, this Court is not inclined to entertain such an argument and will confine to the reasons found in the impugned order. It was

submitted by the learned Counsel for the petitioner that a division bench of this Court in Maheswari Fireworks Industries v. Commercial Tax

Officer and Ors. reported in 2001 Vol. 121 STC 272 has held that though the authority under the Act may be statutorily precluded from

condoning the delay in filing an appeal as the Act itself has prescribed a limitation, the same thing will not be available to the High Court while

exercising the power under Article 226 of the Constitution of India. But, however, it is seen that the division bench exercised power under peculiar

facts and circumstances of the case and directed for re-hearing of the appeal.

7. Mr. K. Surendranath, learned Counsel appearing for contesting respondents placed reliance upon the following judgments of this Court. The

first is relating to Special Officer, Salem Cooperative Primary Land Development Bank, Salem v. Deputy Commissioner of Labour and Anr.

reported in 1998 III LLJ (Supp) 1168. In paragraph 13, it was observed as follows:

13. As I have already pointed out, Section 29 of the Limitation Act is not at all applicable to a proceeding before the authorities under the Payment

of Gratuity Act, 1972. Secondly, the Proviso to Section 25(2) of Tamil Nadu Buildings (Lease & Rent Control) Act, 1960 is in negative form,

while the Proviso to Section 7(7) of the Payment of Gratuity Act has contained only a positive word. Hence it cannot be contended that there is

prohibition in the former enactment and the same is not in the later enactment.

8. He also referred to the judgment in Special Officer, Kanniyakumari District Co-operative Printing Works Ltd. Vs. Appellate Authority under

Payment of Gratuity Act and Others, . In that case, after referring to the appeal provisions, this Court in page 540 held as follows:

...The first respondent therefore rightly rejected the appeal on that sole ground that the appeal had been filed beyond the period prescribed under

the provisions of the Act. When the appeal was not filed in the manner in which it ought to have been filed, it cannot be held that even if the

memorandum of appeal grounds had been filed within the stipulated time without necessary deposit to be made under the second proviso to

Section 7(7), the appeal was filed within time. When statute has prescribed a specific period and also made it mandatory for the party intending to

prefer an appeal against the order of the Controlling Authority that along with the appeal the proof for deposit of the amount ordered by the

Controlling Authority should be enclosed, it is incumbent on the party concerned to comply with the said provision in letter and spirit in order to

make him eligible to be heard by the Appellate Authority. When the petitioner failed to comply with the mandatory provision, he cannot be heard

to complain against the action of the statutory authority functioning under the Act. In such circumstances, the order of the first respondent in

rejecting the appeal which was admittedly not filed in the manner prescribed under the relevant provision, there is no scope for interfering with the

said order of the first respondent. Therefore, the writ petition fails and the same is dismissed.

9. He also referred to the subsequent division bench judgment of this Court in Indian Coffee Worker''s Co-op. Society Ltd. v. Commissioner of

Commercial Taxes reported in 2002 (1) CTC 406. In that case, the division bench specifically referred to case in Maheswari Fireworks Industries

v. Commercial Tax Officer and Ors. reported in 2001 STC (Vol. 121) 272 (cited supra). In paragraphs 22 and 23, it was held as follows:

22. ...Of course, the learned Counsel for the petitioner placed reliance on the Division Bench decision of this Court reported in 2001 STC

(Vol.121) 272 (Maheswari Fireworks Industries v. Commercial Tax Officer and Ors.) and submitted that the High Court while exercising

jurisdiction under Article 226 of Constitution of India, even though appeal before the appellate authority was filed beyond 60 days (prescribed time

of 30 days to file appeal + 30 days for which period alone appellate authority has power to condone) if the explanations offered by the assessee

for not filing appeal within the said period are acceptable, then the High Court can direct the appellate authority to dispose of the appeal on merits.

In the present case, the request of the petitioner is that the appellate authority may be directed to consider the appeal on merits and the assessee

did not apply in time as the assessee had by then applied for exemption and was waiting for the orders from the Government and that the

Government granted exemption for the year 1990-91. The fact that the request of the assessee was then under consideration by the Government,

cannot be an acceptable explanation for not filing the appeal in time. That apart this Court is of the view that the ruling of the Supreme Court

reported in 2001(4) CTC 213 (cited supra), which came to be rendered after the ruling of the Division Bench of this Court has laid that once the

statute prescribed the time limit, it cannot be extended further. In 2001 121 STC 272 (cited supra), a Division Bench has ruled that the limitation

prescribed u/s 31 of the Tamilnadu General Sales Tax Act cannot be made applicable to the High Court while exercising jurisdiction under Article

226 of Constitution of India. In this case, we are not called upon to decide that issue. But the question is whether on that basis this Court can direct

the appellate authority to consider the appeal on merits after the expiry of prescribed time. In our considered view, this Court has no jurisdiction to

pass such an order as otherwise it would be nothing but this Court re-writing the provisions of the Act in exercise of its powers under Article 226

of Constitution of India. This Court is also inclined to point out that the ruling of the Supreme Court viz. Mohd. Ashfaq Vs. State Transport

Appellate Tribunal, Uttar Pradesh and Others, and Commissioner of Sales Tax, Uttar Pradesh Vs. The Modi Sugar Mills Ltd., were not brought

to the notice of that Division Bench.

23. The legal position is as follows:

(a) An appeal u/s 30(1) of the Tamil Nadu General Sales Tax Act, 1959 has to be filed within 30 days before the appellate Assistant

Commissioner. The appellate Assistant Commissioner is empowered to condone the delay for further period of 30 days if sufficient cause for not

presenting the appeal in time is shown and satisfied by the appellate authority.

(b) Under no circumstances, the appellate authority has power to condone the delay beyond 30 days.

(c) While the High Court exercising the jurisdiction under Article 226 of Constitution of India, approves the correctness of the order of the

appellate authority, it has no power to direct the appellate authority to consider the appeal on merits as otherwise it would be nothing but Court

extending the period of limitation.

(d) Even if the High Court accepts the explanation given by the assessee for not filing the appeal within the period prescribed under the Act, it

cannot direct the appellate authority to consider the matter on merits as the High Court exercising jurisdiction under Article 226 of Constitution of

India, cannot re-write the provisions of the Act.

10. In the light of the above binding precedents, the impugned order does not suffer from any infirmity or illegality. Hence the writ petition deserves

to be dismissed. Accordingly, the writ petition will stand dismissed. However, there will be no order as to costs. Consequently, connected

miscellaneous petition stands closed.