(1991) 02 AP CK 0008

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1958 of 1991

T.M. Asilamani APPELLANT

Vs

The State of A.P. and Another RESPONDENT

Date of Decision : 15-02-1991

Acts Referred:

Andhra Pradesh Scheduled Commodities (Regulation and Distribution by Card System) Order, 1973 — Section 17(1)
Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 10, 11, 12, 13, 14

Citation : (1991) 2 ALT 283

Hon'ble Judges : Radhakrishna Rao, J

Bench : Single Bench

Advocate : Y. Visweswara Rao, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Radhakrishna Rao, J.—This writ petition is filed by a fair price shop dealer questioning the endorsment of the Joint Collector, Krishna, dated 6-10-1990 rejecting the appeal petition filed by the petitioner as time barred and to quash the same by issuing a Writ of Certiorari.

2. The petitioner was originally appointed as a fair price shop dealer for Nunna Village, Vijayawada Rural Mandal, by the Sub-Collector, Vijayawada, through his proceedings dated 22-2-1987 under the provisions of the A. P. Scheduled Commodities (Regulation and Distribution by Card System) Order, 1973. While so, the Mandal Revenue Officer issued orders on 14-9-1989 suspending the petitioner as dealer. Aggrieved against the said order, the petitioner filed an appeal before the Chairman of the Zilla Abhivrudhi Sameeksha Mandali. The Chairman of the said Mandali allowed the appeal of the petitioner and directed the Civil Supplies authorities to issue necessary quotas for distribution after setting aside the order of suspension passed by the Mandal Revenue Officer on 14-9-1989.

3. The petitioner alleges that as the order of suspension has been cancelled by the Minister concerned who was the Chairman of the Mandali, the Civil Supplies authorities developed a grouse against him and so they have been weaving out ways and means to dislodge him from the dealership. Keeping that object in mind, the Mandal Revenue Officer, made a report against the petitioner through his proceedings dated 1-10-1989 to the Sub-Collector, Vijayawda, alleging certain irregularities during his supervision of the shop. Thereafter, the Sub-Colletor, Vijayawada, issued a show cause notice dated 28-11-1989 to the petitioner to submit his explanation to five charges levelled against him. The petitioner accordingly submitted an explanation with correct details. But the Sub-Collector, the petitioner alleges, having been carried away by the report of his subordinate officers and without properly applying his mind judiciously passed orders cancelling his appointment as Fair Price Shop dealer.

4. Aggrieved against the said order of the Sub-Collector, the petitioner preferred an appeal to the Joint Collector, Krishna. The Joint Collector, Krishna, after considering the submissions made by the petitioner, passed the impugned order rejecting the appeal preterred by the petitioner that there is delay of 9 days in filing the appeal and according to Section 17(1) of the A.P. Scheduled Commodities (Regulation and Distribution by Card System) Order, 1973 (''the Distribution Order'' for short) he is not vested with powers to condone the delay in filing the appeal. Challeging the said order, the petitioner filed this writ petition.

5. Sri Y. Visweswara Rao, the learned counsel for the petitioner mainly contends that the appellate authority erred in dismissing the appeal as time barred; the appellate authority has not considered the provisions u/s 29(2) of the Limitation Act, 1963 and the effect of absence of any specific provision excluding the application of Sections 4 - 24; and there being no specific exclusion under the Essential Commodites Act, the provisions u/s 4 - 24 of the Limitation Act do apply to the present case also and the appellate authority has ample power to condone the delay.

6. In a quite identical case in W.P. Nos. 17537 and 17538 of 1990, where the appellate authority dismissed the appeals holding that Section 5 of the Limitation Act will not apply following the decisions of the Supreme Court in Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., and Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others, this Court held on 5-2-1991 that in view of the principles laid down by the Supreme Court in the above two decisions which have been rightly followed by the appellate authority in those cases, the provisions of the Limitation Act are not applicable to the cases dealt with by the executive authorities which are only quasi-judicial auhorities under the Essential Commodities Act and the appeals have to be filed within 30 days of the order of the primary authority.

7. In this case also, the learned counsel placed reliance on a recent decision of the Supreme Court reported in Smt. Lata Kamat Vs. Vilas, a case arising under the Hindu Marriage Act (25 of 1955). In that case, the respondent-husband

before the Supreme Court instituted a petition for declaration that the marriage with the appellant-wife was a nullity under Sub-section (1), Sub-clause (d) of Section 12 of the Hindu Marriage Act. The III Joint Civil Judge, Senior Division, Nagpur, granted a decree in favour of the respondent husband on 3-5-1985. The wife filed a regular appeal before the 11 Additional District Judge, Nagpur. In that appeal, the husband raised a preliminary objection that after passing of the judgment and decree dated 3-5-1985 by the trial Court, he has married another lady on 27-6-1985 and when there was no impediment against him which could come in his way for contracting the second marriage as the parties were relegated to the position as if they were not married and therefore the marriage after the decree was legal and valid and consequently the appeal filed by the wife was not tenable having been rendered infructuous. The appellate Judge allowed the objection and dismissed the appeal. The second appeal preferred by the wife also met the same fate with the Bombay High Court. The Supreme Court held :

"The Schedule in the Limitation Act do not provide for an appeal, under the Hindu Marriage Act but it is only provided in Clause (4) of Section 28 of the Hindu Marriage Act. Thus the limitation provided in Clause (4) of Section 28 is different from the Schedule of the Limitation Act. According to Clause (2) of Section 29, provisions contained in Section 4 - 24 will be applicable unless they are not expressly excluded. It is clear that the provisions of the Act do not exclude operation of provisions of Sections 4 - 24 of the Limitation Act and therefore it could not be said that these provisions will not be applicable. It is therefore clear that to an appeal u/s 28 of the Hindu Marriage Act, provisions contained in Section 12, Clause (2) will be applicable, therefore, the time required for obtaining copies of the judgment will have to be excluded for computing the period of limitation for appeal".

8. As already stated above, that is a case arising under the Hindu Marriage Act and though the Schedule in the Limitation Act do not provide for an appeal, the Hindu Marriage Act provides for an appeal u/s 28. Therefore, the above decision is not applicable to the facts of this case.

9. The learned counsel for the petitioner further relied upon a judgment of a Division Bench of this Court reported in Government of A.P. v. Durgaram Prasad, (1983 (2) APLJ 83) It is a case arising under the Arbitration Act. In that case the facts are: a dispute arising out of a contract dated 22-5-1965 relating to the construction of Arts and Science College at Siddipet in Medak District was referred to an Arbitrator and the Arbitrator made and signed the award on 31-3-1979. The award was filed into Court by the Company i.e., the respondent before the High Court, with a prayer that it may be made a rule of the Court and decree may be passed in terms of the award and the petition is filed to set aside the award. The respondent therein filed a written statement denying the allegations and contentions and also stated that the. petition to set aside the award was not filed within the period of limitation prescribed under Article 119 (b) of the Limitation Act and it cannot be treated as an application to set aside

the award and the Court has no power to extend the period of limitation and permit the Chief Engineer to file objections beyond the period of Limitation. The issue that was considered is whether the defendant filed the objections to the award within the period of limitation and this was tried as a preliminary issue. The trial Court held that the provisions of Section 5 of the Limitation Act cannot be invoked and the Court has no power to extend the time for filing the objections beyond the period stipulated under Article 119 (b) of the Limitation Act and the order passed by the Court extending the time for filing the objections upto 27-9-1979 is of no consequence and the Court cannot look into the said objections. Aggrieved against the said decision, the Government preferred an appeal before the High Court. Rama Rao, J. speaking on behalf of the Bench, observed:

"The applicability of Section 5 of the old Act was confined to applications for leave to appeal and review and the applications under the provisions of Order 21 CPC were excluded from its ambit. The applicability of Section 5 to the proceedings under special enactment is inhibited in the absence of special provision to that effect in the enactment. Section 5 under 1963 Act is made applicable to all applications before the Court except the application under the provisions of Order 21 CPC and the applicaaility of the old provision is restricted to the specific applications and situations enumerated therein. In so far as the proceedings under special enactments the halting applicability of former Section 5 is patent and the present Section 5 has an universal application to the proceedings irrespective of the source, nature or otherwise. The present Section 5 applies to all proceedings by its own force without the necessity of being propelled by external aid. The present Section 5 comprehends a wide sweep and applies to all applications before the Court save the proceedings under Order 21 C.P.C. The trend towards intrusion of the provisions of Limitation Act in the proceedings under the special enactments is plainly discerned from Section 29(2) of the Act. In the absence of specification of period of limitation under the special enactment, the provisions of Sections 4 - 24 of the Limitation Act are made applicable. The provisions prescribing limitation under the special enactment prevails and in the absence of the same the provisions of Sections 4 - 24 are applicable. The cumulative effect of Section 5 and Section 29(2) of the new Act is that the power to condone delay in deserving cases of sufficient causes in all applications except under Order 21 C.P.C. is conferred on the Courts and the provisions of Sections 4 - 24 embrace the proceedings under the special enactment unless a different period of situation is visualised under the special Act".

10. But the Supreme Court in Nityanand M. Joshi v. The Life Insurence Corporation of India (2 supra) while reiterating the principle laid down in Town Municipal Council, Athani v. Presiding Officer, Labour Court Hubli (1 supra) held :

"In our view Article 137 only contemplates applications to Courts. In the Third Division of the Schedule to the Limitation Act, 1963, all the other applications mentioned in the various articles are applications filed in a Court. Further Section 4 of the Limitation Act, 1963 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". Again u/s 5 it is 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 Indian Limitation Act, 1963."

11. Therefore, following the two decisions of the Supreme Court in Nityanand''s case and Athani Town Municipal Council''s case (1 & 2 cited supra) it must be held that the Limitation Act cannot be applied to the cases dealt by the executive authorites as they are only quasi judicial authorities under the Essential Commodities Act and the appeals have to be filed within 30 days of the order of the primary authority.

12. In the result, the writ petition fails and it is accordingly dismissed. No costs. Advocate''s fee Rs. 200/-.

