
(2000) 08 BOM CK 0002
In the Bombay High Court
Case No : First Appeal No. 492 of 1998

Tukaram Vithoba Jogi

APPELLANT

Vs

Western Coalfields Ltd., Chandrapur

RESPONDENT

Date of Decision : 10-08-2000

Acts Referred:

Coal Bearing Areas (Acquisition and Development) Act, 1957 — Section 14

Citation : (2000) 08 BOM CK 0002

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : Kishore Lambat, for the Appellant; S.C. Mehadia, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, J.—The short question raised in the present appeal is whether the Tribunal constituted under the Coal Bearing Areas (Acquisition & Development) Act, 1957, is competent to condone delay in presenting the application even after the period specified under Sub-rule (5) of Rule 7 of the Coal Bearing Areas (Acquisition & Development) Rules, 1957.

2. Before dealing with the rival contentions, it would be appropriate to reproduce the relevant provisions of the Act and the Rules. Section 14 reads thus :-

14. (1) Where the amount of any compensation payable under this Act can be fixed by agreement, it shall be paid in accordance with such agreement.

(2) Where no such agreement can be reached, the Central Government shall constitute a Tribunal consisting of a person who is or has been or is qualified to be a judge of a High Court for the purpose of determining the amount.

(3) The Central Government may in any particular case nominate a person having expert knowledge in mining to assist the Tribunal, and where such nomination is made, the person or persons interested may also nominate any other person for the same purpose.

(4) At the commencement of the proceedings before the Tribunal the Central Government and the person interested shall state what in their respective opinions is a fair amount of compensation.

(5) The Tribunal shall after hearing the dispute, make an award determining the amount of compensation which appears to it to be just, and specify the person or persons to whom the compensation shall be paid; and in making the award the Tribunal shall have regard to the circumstances of each case and to the foregoing provisions of this Act with respect to the manner in which the amount of compensation shall be determined insofar as the said provisions or any of them may be applicable.

(6) Where there is a dispute as to the person or persons entitled to compensation and the Tribunal finds that more persons than one are entitled to compensation, it shall apportion the amount thereof among such persons and in such manner as it thinks fit.

(7) Nothing in the Arbitration Act, 1940, shall apply to any proceedings under this section.

(8) The Tribunal, in the proceedings before it, shall have all the powers which a Civil Court has while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely :-

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

(ii) requiring the discovery and production of any document;

(iii) reception of evidence on affidavits;

(iv). requisitioning any public record from any court or office; and

(v) issuing commissions for examination of witnesses.

Rule 7(5) of the Rules framed under the said Act reads thus :-

7. Procedure to be followed by Tribunal -

(5) Any person who has been admitted to be interested and who has accepted the payment of compensation under protest may within six weeks of the date of such acceptance prefer an application to the Tribunal for determining the sufficiency of the amount of compensation.

Provided the Tribunal may entertain an application preferred within thirty days after the expiry of the specified period if it is satisfied that the applicant had sufficient cause for not preferring the application within the specified period.

3. The learned counsel for the appellant has vehemently argued that section 14 of the Act does not prescribe any limitation for presentation of the application. It is his submission that since the Act does not prescribe for the outer limit, it is

open for the Tribunal to condone the delay even after the period specified under the proviso to sub-rule (5) of Rule 7. In support of his contention, reliance has been placed on the decision of the Madhya Pradesh High Court, reported in 1981, MPLJ, 46

4. On the other hand, the respondent contends that the Tribunal has no jurisdiction to condone delay if the application is presented after the period specified under the proviso to sub-rule (5). To buttress the said contention, reliance has been placed on the decisions of the Apex Court reported in AIR 1976 SC 2161 and The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur, .

5. Having heard both the sides. I am inclined to accept the stand taken by the respondent that the Tribunal has no jurisdiction to entertain an application preferred by the claimant after the expiry of thirty days after the specified period of six weeks from the date of acceptance of the payment of compensation. This proposition is supported by the above mentioned decisions of the Supreme Court. The Supreme Court in the decision reported in Mohd. Ashfaq Vs. State Transport Appellate Tribunal, Uttar Pradesh and Others, , was called upon to consider similar provision in the Motor Vehicles Act, 1939. Sub-section (3) of section 58 of the said Act is almost *pari materia* to the provision with which we are concerned. While construing the said provision, the Apex Court in Para 8 of the said decision reported in Mohd. Ashfaq Vs. State Transport Appellate Tribunal, Uttar Pradesh and Others, has taken the view that since the maximum period has been provided, it is not open to the Authority to entertain the application after that period. In other decision of the Apex Court reported in The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur, , the Apex Court considered similar provision being section 10 of the Uttar Pradesh Sales Tax Act. In para 8 of the said decision the Apex Court has pointedly held that the Revising Authority has no discretion to extend the period beyond a further period provided in Subsection (3)(b).

6. The decision relied upon by the learned counsel for the appellant, no doubt, observes that to avoid conflict between Rule 7(5) and Section 14. the provisions of Rule 7(5) must be construed to be directory. Madhya Pradesh High Court has, thus taken the view that failure to make an application under sub-rule (5) of Rule 7 does not disentitle the claimant to insist that the Reference made to the Tribunal should be decided by it. In my view, the question, which arose for consideration before the Madhya Pradesh High Court was whether the Tribunal could dismiss the Reference for default of appearance and was it bound to determine the amount of compensation even though the party, who claims compensation, is absent and does not produce any evidence. Madhya Pradesh High Court had no occasion to consider the issue which is involved in the present case and, therefore, the said decision cannot be cited as an authority in support of the proposition that the Tribunal can entertain the application even after the specified period under the proviso to sub-rule (5) of Rule 7.

In the circumstances, this appeal is devoid of merits, and the same deserves to be dismissed. Accordingly, the appeal stands dismissed.