
(2000) 08 OHC CK 0025
In the Orissa High Court
Case No : Misc. Appeal No. 895 of 1997

Union of India (UOI)	Vs	APPELLANT
Orissa State Electricity Board and Others		RESPONDENT

Date of Decision : 14-08-2000

Acts Referred:

Limitation Act, 1963 — Section 14, 5
Railway Claims Tribunal Act, 1987 — Section 17

Citation : (2002) ACJ 430 : AIR 2001 Ori 109 : (2000) 90 CLT 639

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : B. Pal, P.C. Panda, A. Kr. Mishra, S.K. Ojha and D. Das, for the Appellant; N.C. Panigrahi and S.C. Dash, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Misra, J.—The Union of India has filed this appeal u/s 23 of the Railway Claims Tribunal Act, 1987 challenging the order refusing to review the earlier decision of the Railway Claims Tribunal, Bhubaneswar Bench, awarding a sum of Rs. 81,245/-.

2. The facts and circumstances giving rise to the present appeal may be noticed in brief. The Orissa State Electricity Board filed Money Suit No. 6 of 1989 on the ground of non-delivery of one tank/wagon containing light diesel oil booked from Visakhapatnam for delivery at Talcher Thermal Power Station Siding, vide R/R 035544. dated 8-6-1986. The suit proceeded ex parte and ultimately an ex parte decree was passed. The present respondents levied execution by filing an application before the Railway Claims Tribunal which was numbered as O.A. No. 203/91. The respondents thereafter instead of pursuing O.A. No. 203/91 filed O.A. No. 91/95 on 16-10-1995 before the Railway Claims Tribunal treating the earlier ex parte decree of the Civil Court as a nullity as by the time the suit was taken up for hearing, Railway Claims Tribunal had already been established.

3. The present appellant in written statement, apart from taking other pleas and

denying the allegations made, also took the plea that the application was barred by limitation.

4. The Railway Claims Tribunal, found that though the claim application was barred by time, there was sufficient cause to condone delay and accordingly after condoning delay, award was made directing payment of compensation along with interest.

5. Thereafter, the present appellant filed a review application vide Misc. Case No. 18/ 97 contending, inter alia, that no interest should have been awarded from a date anterior to the actual date of filing the claim before the Railway Claims Tribunal. Rejection of such petition is being challenged in the present appeal.

6. In this appeal, it is contended that Sections 5 and 14 of the Limitation Act are not applicable to a claim application under the Railway Claims Tribunal Act and as such, the Tribunal should not have condoned delay by invoking the principles applicable under Sections 5 and 14 of the Limitation Act. It is further contended that the onus was on the Orissa State Electricity Board to prove actual shortage. In this connection reliance has been placed upon the decisions of Orissa High Court reported in Union of India (UOI) Vs. Aluminium Industries Limited, and 89 (2000) CLT 425 (Union of India v. Industrial Development Corporation Ltd. and the decision of the Madhya Pradesh High Court reported in Radheshyam Agarwal Vs. Union of India (UOI) and Others,

7. Chapter-III of the Railway Claims Tribunal Act, 1987, deals with jurisdiction, powers and authority of the Claims Tribunal and Chapter-IV deals with the procedure. Section 13 of the Act envisages:--

13. Jurisdiction, powers and authority of Claims Tribunal.-

(1) The Claims Tribunal shall exercise, on and from the appointed day, all such jurisdiction, powers and authority as were exercisable immediately before that day by any civil Court or a claims Commissioner appointed under the provisions of the Railway Act,--

(a) relating to the responsibility of the railway administrations as carriers under Chapter VII of the Railways Act in respect of claims for-

(i) compensation for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to a railway administration for carriage by railway.

(ii) compensation payable u/s 82A of the Railways Act or the rules made thereunder; and

(b) in respect of the claims for refund of fares or part thereof or for refund of any freight paid in respect of animals or goods entrusted to a railway administration to be carried by railway.

(1-A) The Claims Tribunal shall also exercise on and from the date of commencement of the provisions of Section 124A of the Railways Act, 1989 (24

of 1989), all such jurisdiction, powers and authority as were exercisable immediately before that date by any civil Court in respect of claims for compensation now payable by the railway administration u/s 124A of the said Act or the rules made thereunder,

(2) The provisions of the Railways Act, 1989 (24 of 1989), and the rules made thereunder shall, so far as may be, be applicable to the inquiring into or determining, any claims by the Claims Tribunal under this Act,"

Section 15 of the Act envisages:--

"15. Bar of jurisdiction.-

On and from the appointed day, no Court or other authority shall have, or be entitled to exercise any jurisdiction, powers or authority in relation to the matters referred to in Sub-sections (1) and (1-A) of Section 13."

There cannot be any doubt that on and from the appointed day, that is to say, the day with effect from which the Railway Claims Tribunal was established u/s 3 of the Act, all other Courts ceased to have any jurisdiction over any matters coming within the scope of Section 13 (1) and (1-A). In other words, the Civil Courts lost jurisdiction even over the pending suits. This is made amply clear by providing for transfer of pending cases as contained in Section 24 of the Act, which is extracted hereunder:--

"24. Transfer of pending cases.-

(1) Every suit, claim or other legal proceeding (other than an appeal) pending before any Court, Claims Commissioner or other authority immediately before the appointed day or, as the case may be, the date of commencement of the provisions of subsection (1-A) of Section 13 being a suit, claim or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after the appointed day or, as the case may be, the date of commencement of the provisions of Sub-section (1-A) of Section 13 within the jurisdiction of the Claims Tribunal, shall stand transferred on that day or, as the case may be date to the Claims Tribunal.

(2) Where any suit, claim or other legal proceeding stands transferred from any Court, Claims Commissioner or other authority to the Claims Tribunal under subsection (1),--

(a) the Court, Claims Commissioner or other authority shall, as soon may be after such transfer, forward the records of such suit, claim or other legal proceeding to the Claims Tribunal;

(b) the Claims Tribunal may, on receipt of such records, proceed to deal with such suit, claim or other legal proceeding, so far as may be, in the same manner as an application, from the stage which was reached before such transfer or from any earlier stage or de novo as the Claims Tribunal may deem fit."

It is, thus obvious that after establishment of the Railway Claims Tribunal, the pending suit before the Civil Judge should have been transferred by the Civil Court to the Railway Claims Tribunal,

8. A perusal of the materials on record clearly indicates that the suit was filed on 19-6-1989 (obviously within the period prescribed) at a time when the Tribunal had not been constituted. Thus, when the suit was filed, the Civil Court had jurisdiction in the matter. However, with effect from 18-11-1989 on constitution of the Tribunal, it must be taken that the Civil Court lost jurisdiction to deal with the matter and as such thereafter the case should have been decided by the Tribunal and not by the Civil Court. Thereafter, the execution case was filed before the Tribunal and ultimately without pursuing the same, the respondents filed a claim application for compensation before the Tribunal on 16-10-1995. It is obvious that the respondents were pursuing their remedy before the Civil Court and by filing execution case under a mistaken notion obviously on the advice of their legal adviser.

9. Section 17(1) of the Act prescribes the period of limitation for filing of various claim applications. However, Section 17(2) of the Act enables the Railway Claims Tribunal to entertain any claim application even after the period of limitation if the applicant satisfies the Claims Tribunal that he had sufficient cause for not making application within such period. The provisions contained in Section 17(2) of the Act empowering the Claims Tribunal to condone the delay in filing any claim application is akin to the powers of a Court to condone delay u/s 5 of the Limitation Act. Therefore, even though the provisions contained in Sections 5 and 14 of the Limitation Act have not been specifically referred to in the Railway Claims Tribunal Act, it goes without saying that the Railway Claims Tribunal shall have power to condone delay if sufficient cause is shown. Evidently, a cause which is otherwise considered as sufficient u/s 5 or Section 14 of the Limitation Act can be considered as sufficient cause for the purpose of exercising jurisdiction u/s 17(2) of the Railway Claims Tribunal Act.

10. In the present case, the duty was cast on the Civil Court to transfer pending suits to the Railway Claims Tribunal after such Tribunal was established. It is obvious that the Civil Court committed mistake in proceeding with the suit and ultimately deciding the same. It is, of course, true that the counsel for the plaintiff in the suit could have also pointed out the lack of jurisdiction of the Civil Court. It may be that the counsel for the plaintiff might have been unaware of the establishment of the Railway Claims Tribunal. The matter has been compounded further by the Railways by not appearing in the suit as otherwise, their counsel could have pointed out about such establishment of Railway Claims Tribunal. At any rate, the fact remains that due to mistake on the part of all concerned including the Court, the matter remained pending before the Civil Court and ultimately ex parte decree was passed and the claimant tried to execute the ex parte decree by filing application before the Railway Claims Tribunal. Law is well settled that no suitor should suffer for the mistake

committed by a Court. Similarly, a litigant should not suffer for the bona fide mistakes committed by his counsel. It is obvious that in the present case, the counsel for the claimant prosecuted the matter in a wrong forum under a bona fide mistaken plea. Even though Sections 5 and 14 of the Limitation Act not ipso facto applicable, the principles envisaged therein can be applied for the purpose of considering as to whether there was sufficient cause in filing the application before the Railway Claims Tribunal beyond the prescribed period of limitation. The Tribunal has considered that there was sufficient cause. In the review application, though such a point had not been taken, the counsel now contends that sufficient cause had not been shown. Since the Tribunal has found that there was sufficient cause, it would not be proper to come to a different conclusion in an appeal against the subsequent order refusing to review the earlier award. Moreover, pursuing a matter in a Court without jurisdiction under a bona fide mistake can be considered to be a sufficient cause. Thus, the first contention regarding limitation cannot be accepted.

11. The learned counsel for the appellant then contended that the onus was on the Orissa State Electricity Board to prove actual shortage in view of the decisions reported in Union of India (UOI) Vs. Aluminium Industries Limited, and Union of India (UOI) and Another Vs. Aluminium Industries Ltd., A perusal of the review application indicates that this was not one of the questions raised in the review application. The present appeal purports to be directed against the subsequent order of the Railway Claims Tribunal refusing to review the earlier order. As such questions which were not raised in the review application cannot be raised by the present appeal.

12. For the aforesaid reasons, I do not find any merit in this appeal which is accordingly dismissed. There will be no order as to costs.