(2002) 03 AP CK 0104

In the Andhra Pradesh High Court

Case No : Writ Petition No. 10504 of 1991

Warangal District Co-operative Society Ltd. — APPELLANT

Vs

Appellate Authority under Payment of Gratuity Act, 1972 and Others — RESPONDENT

Date of Decision : 22-03-2002

Acts Referred:
Limitation Act, 1963 — Section 5
Payment of Gratuity Act, 1972 — Section 10(1), 7(7)

Citation : (2002) 3 LLJ 616

Hon'ble Judges : J. Chalameswar, J

Bench : Single Bench

Advocate : C. Ramesh Sagar, for the Appellant; Government Pleader for Respondents 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

J. Chalmaeswar, J.—Respondents Nos. 3 to 15 herein filed an application u/s 10(1) of the Payment of Gratuity Act before the second respondent herein claiming certain amounts towards gratuity payable by the said applicants on account of closure of an establishment known as Warangal District Co- operative Marketing Society Limited. The said establishment was admittedly closed on October 1, 1987. The second respondent on consideration of the material before him allowed the claim of respondents Nos. 2 to 15 herein by two separate orders dated August 17, 1990, and October 1, 1990, respectively in different applications filed by respondents No. 2 to 15 herein. The further details of which may not be necessary.

2. Aggrieved by the decision of the second respondent, the petitioner herein preferred appeals to the first respondent herein u/s 7(7) of the Payment of Gratuity Act, 1972. Though it is not clear from the record as to the date of the presentation of the above mentioned appeals by the petitioner herein, the appellate authority, as a matter of fact, recorded a finding that the appeals were

preferred after the lapse of 120 days.

3. u/s 7(7) of the Payment of Gratuity Act, the normal period of limitation for preferring an appeal, passed by the primary authority, u/s 7(7), Sub-section (4) is 60 days from the date of the receipt of the order. However, the appellate authority is empowered to extend the said period of limitation by another 60 days if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days. In fact the relevant portion of Sub-section (7) reads as follows:

"Any person aggrieved by an order under Sub-section (4), within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days."

4. As the appeals were preferred beyond the period of limitation, prescribed under the Act, the petitioner herein, it appears, filed an application seeking the condonation of delay invoking Section 5 of the Limitation Act, 1963. The appellate authority declined to condone the delay by a common order passed in all the above mentioned appeals dated July 17, 1991, holding that the appellate authority acting u/s 7(7) of the Payment of Gratuity Act would not invoke u/s 5 of the Limitation Act, 1963. Challenging the same, the present writ petition is filed.

5. Learned counsel for the petitioner argued that the appellate authority acting u/s 7(7)(7) ''of the Payment of Gratuity Act is a Court and, therefore, entitled to exercise the power to condone the delay as provided u/s 5 of the Limitation Act, 1963. For this purpose, learned counsel relied on a judgment of the Supreme Court in Sahkari Ganna Vikas Samiti Ltd. Vs. Mahabir Sugar Mills (P) Ltd., .

6. Secondly, learned counsel submitted that in view of the judgment of the Supreme Court in Shantilal M. Bhayani v. Shanti Bai 1995 Suppl (4) SCC 578 as there is no provision under the Payment of Gratuity Act, which excludes, the application of the provisions of the Limitation Act to the proceedings under the Payment of Gratuity Act, Section 5 of the Limitation Act is still applicable to the proceedings under the Payment of Gratuity Act.

7. For the purpose of the present case, I do not propose to go into the question whether the appellate authority constituted under the Payment of Gratuity Act, 1972, is a Court and, therefore, Section 5 of the Limitation Act applies to such an authority. I shall presume for the purpose of this case that such an authority is a Court, but in my view, the presumption would not automatically solve the problem.

8. The question would be whether the special period of limitation is prescribed under any particular enactment for regulating the proceedings under the said enactment? Whether the provisions of the Limitation Act, 1963, could still be invoked while dealing with the proceedings under the said special enactment?

9. Looking at the scheme of the Limitation Act, Section 3 of the Act declares that every suit instituted, appeal preferred and application made after the period prescribed for such institution, preference, etc., shall be dismissed. However, Section 5 stipulates that any appeal" or application, except the application under Order 21 of the Code of Civil Procedure, if filed beyond the period of limitation prescribed under the Limitation Act could still be admitted by the Court, if the Court is satisfied that such an appellant or applicant had sufficient cause for not preferring the appeal or not making the application within the prescribed period of limitation. From the above two Sections, it appears that a suit filed beyond the prescribed period of limitation is absolutely barred, but an appeal preferred beyond the period of limitation prescribed could still be considered if the appellate Court is satisfied that such delay is by virtue of a cause which was not within the control of the appellant. Section 29(2) of the Limitation Act reads as follows:

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 were 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 - 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law."

An analysis of the above sub-section shows that where a special period of limitation different from the one prescribed in the Schedule to the Limitation Act, 1963, is prescribed by any special or local law for the purpose of filing the suit, appeal, or application, the bar contained u/s 3 shall apply and such a suit or application is required to be dismissed as if that such a special limitation is prescribed under the Schedule to the Limitation Act. It is further provided in the sub-section that provisions contained in Sections 4 - 24 of the Limitation Act shall apply to the cases where a special limitation is prescribed as mentioned above, to the extent to which they have not expressly excluded by such special local law. Interpreting the scope of Section 29(2), the Supreme Court in Shantilal M. Bhayani v. Shanti Bai, (supra), held that as there was no specific exclusion of application of the Limitation Act in the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, the appellate authority under the Act was entitled to invoke the powers u/s 5 of the Limitation Act and condone the delay in preferring the appeal under the said Act, though the said appeal was preferred beyond the period of special limitation prescribed under the Tamil Nadu Buildings (Lease and Rent Control) Act. Obviously, their Lordships while deciding the case had in mind the last clause of Section 29 of Sub-section (2) ... ""they are not expressly excluded..."

10. Sovereign Legislature (Parliament) is competent to create such legal fictious as the one created u/s 29(2) of the Limitation Act and also competent to prescribe the limitation of such fictions.

11. However, the difficulty in this case is that the limitation prescribed under the Payment of Gratuity Act, once again an enactment made by Parliament is only 60 days for the purpose of preferring an appeal. Under the proviso to Section 7(7), Sub-section (7), the appellate authority is empowered to "extend the period" of limitation by another sixty days. In other words, the appellate authority is empowered to condone the delay to upper limit of another sixty days beyond the prescribed period of limitation. No doubt, the Payment of Gratuity Act does not expressly exclude the operation of the Limitation Act, but the fact remains that the Payment of Gratuity Act is of the year 1972 where the Limitation Act is of the year 1963. The settled principle of interpretation of statutes is that if there are two mandates by the Sovereign Legislature, the later of the two shall prevail. Therefore, the fact that there was no express exclusion of Section 5 of the limitation under the Payment of Gratuity Act makes no difference while construing the scope of the power of the appellate authority constituted under the Payment of Gratuity Act, to condone the delay in preferring the appeals. The legal position enunciated by the Supreme Court in Shantilal M. Bhayani v. Shanti Bai (supra), in my view, must be understood in the context of the Limitation Act, 1963, and the special period of limitation, prescribed in any other special or local law prior to the date of the enactment of the Limitation Act. It is worthwhile mentioning that that the Tamil Nadu Buildings (Lease and Rent Control) Act, which is the subject matter of the issue before the Supreme Court in the above case was of the year 1960.

12. In view of my conclusion on this, I do not wish to examine the question whether the appellate authority under the Payment of Gratuity Act is a Court or not though a Division Bench of the Calcutta High Court in a decision in City College Vs. State of West Bengal and Others, dealing with the identical situation held that the appellate authority under the Payment of Gratuity Act could not condone the delay beyond 120 days on the ground it is not a Court.

13. In the circumstances, I do not see any reason to interfere with the impugned order. The appellate authority, in my view, rightly refused to condone the delay.

14. The writ petition is, therefore, dismissed. No costs.

