IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.84 of 2018

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1. The State of Bihar, through the Principle Secretary, Water Resources Department, "Sinchai Bhawan", Harding Road, Patna.
2. The Engineer-in-Chief (North), Water Resources Department, "Sinchai Bhawan", Harding Road, Patna.
3. The Chief Engineer, Water Resources Department, Bhagalpur.
4. The Superintending Engineer, Water Resources Department, Sinchai Anchal, Bhagalpur.
5. The Executive Engineer, Water Resources Department, Food Control Division, Naugachia, District- Bhagalpur.
6. The Executive Engineer, Water Resources Department, Irrigation Division, Bhagalpur.

... ... Petitioner/s

Versus

Kems Service Pvt. Ltd. Through Its Managing Director, Mr. Mohan Kumar Khandelwal, Son of Shri Durga Khandealwal, 76, B1/B, Maurya Lok Complex, Dak Bunglow Road, P.S.- Kotwali, Patna, State- Bihar.

... ... Opposite Party

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Appearance :
For the Petitioner/s : Mr. Anjani Kumar, AAG-4
Mr. Alok Kr. Rahi, Advocate
For the Respondent/s : Mr. Rajendra Narain, Sr. Advocate
Mr. Manish Sahay, Advocate
Mr. Anil Kr. Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 15-04-2024

Re. I. A. no.2 of 2018

1. Heard learned counsel for the petitioners and learned Senior counsel for the opposite party.

2. The instant application has been filed on behalf of the petitioners under section 5 of the Limitation Act praying for condoning the delay of 3 years 3 months and 25 days in filing of the instant revision application.

3. Pursuant to the opposite party having participated in the tender process on a notice inviting tender having been published, the work in question was awarded to the opposite party and an agreement bearing Agreement no.1 S.B.D. of 2011-2012 was entered into between the opposite party and the departmental authorities. Some dispute having arisen between the parties led to filing of writ applications in this Court. The matter ultimately traveled to the Bihar Public Works Contracts Disputes Arbitration Tribunal wherein in Reference Case no.26 of 2013 an award dated 25.11.2014 was passed. It is this award dated 25.11.2014 which has been challenged by the petitioners in the civil revision application filed under section 13 of the Bihar Public Works Contracts Disputes Arbitration Tribunal Act, 2008 (hereinafter referred to as the 'Act of 2008'). The application against the award impugned dated 25.11.2014 having been preferred after a delay of 3 years 3 months and 25 days on 20.6.2018, the instant application has been filed on behalf of the petitioners praying for condonation of delay. Besides the application for condonation of delay, the petitioners have also filed a supplementary affidavit.

4. The case of the petitioners in brief is that prior to filing of a civil revision against the award dated 25.11.2014 it

was deemed proper to examine the facts and issues. The Department filed a civil review to the award which was registered as Civil Review no.1 of 2015, which was however dismissed by the learned Tribunal on 10.11.2016. Thereafter, the Executive Engineer, Flood Control Division examined the said order and sent the same to the Superintending Engineer vide letter dated 18.12.2016 with a request to consider filing a civil revision application before this Court. Thereafter, vide letter dated 19.1.2017 the matter was sent by the Superintending Engineer to the Chief Engineer to consider filing of the civil revision application. The Chief Engineer vide his letter dated 31.1.2017 opined that the civil revision may be filed before this Court. The panel advocate was requested to prepare the statement of facts for filing the application and thereafter on 24.4.2017 the file was sent to the Under Secretary and Joint Secretary of the Department for verification and perusing the statement of fact. The file was then sent to the Principle Secretary of the Department on 9.5.2017 who decided to take the opinion of the Law Department, Government of Bihar and the file was accordingly endorsed to the Department on 16.5.2017. The Law Department returned the file on 17.5.2017 with the opinion to prefer the civil revision against the award

dated 25.11.2014 passed in Reference Case no.26 of 2013 as also the order dated 10.11.2016 passed in Civil Review no.1 of 2015. The civil revision application was filed in this Court on 20.6.2018.

5. Learned counsel appearing for the petitioners submitted that the delay being procedural in nature, a justice oriented approach be adopted and the petition for condonation be considered liberally. It was submitted that the delay has been explained in the supplementary affidavit filed. In support of his contentions, learned counsel relied on the judgments in the case of **State of Haryana vs. Chandra Mani and others** [(1996) 3 SCC 132] and **State of Bihar & Ors vs Kameshwar Prasad Singh & Anr** [2000 (3) PLJR (SC) 81].

6. A counter affidavit was filed on behalf of the opposite party opposing the prayer of the petitioners in the limitation petition. It was submitted that the petitioners had miserably failed in explaining the delay of three and half years in filing of the revision application. They are required to explain everyday's delay. In fact, even the requisition for obtaining the certified copy was filed much beyond the period of limitation. Learned Senior counsel appearing for the respondent submitted that section 8 of the Act of 2008 provides that any of the

provisions of this Act would be in addition to and supplemental to the Arbitration and Conciliation Act, 1996 (herein after referred to as the 'Act of 1996') and in any case of conflict between the provisions of the two Acts, the Act of 1996 shall prevail to the extent of the conflict. It was further submitted that section 13 of the Act of 2008 provides for revision application to be filed within three months from the date on which the award is made. Section 34 of the Act of 1996 provides that an application may be filed for setting aside an arbitral award. Sub-section 3 of section 34 provides that an application for setting aside may not be made after three months have elapsed and further proviso thereto provides that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the period of three months, it may entertain the application within a further period of 30 days, but not thereafter. It was thus submitted by learned Senior counsel appearing for the opposite party that in view of the specific provision as contained in section 8 of the Act of 2008 which provides that the provisions of the Act will be in addition to and supplemental to the Act of 1996, a challenge to the award as provided under section 13 of the Act of 2008 by filing a revision application can only be made within 3 months from the date of

the award and in view of proviso to section 34(3) of the Act of 1996, the Court may entertain the application beyond the said period up to 30 days, but not thereafter. Learned Senior counsel submitted that with the specific bar in the statute as provided in proviso to section 34(3) of the Act of 1996 with respect to how many days of delay a Court can condone, any delay beyond the said period may not be condoned and the instant application for condonation of the delay be rejected. Learned Senior counsel in support of his contentions relied on the judgments in the case of **Union of India vs. Popular Construction Co.** [(2001) 8 SCC 470], **Mahindra & Mahindra Financial Services Ltd. vs. Maheshbhai Tinabhai Rathod** [(2022) 4 SCC 162], **Simplex Infrastructure Ltd. vs. Union of India** [(2019) 2 SCC 455], **Postmaster General & Ors. vs. Living Media India Ltd. & Anr.** [(2012) 3 SCC 563] and **Union of India vs. Tata Yodogawa Ltd.** [(2015) 9 SCC 102]. Reliance was also placed on the other orders of this Court.

7. Heard Sri Anjani Kumar, learned Senior counsel assisted by Sri Alok Kumar Rahi, learned counsel for the petitioners and Sri Rajendra Narain, learned Senior counsel assisted by Sri Manish Sahay, learned counsel for the opposite party.

8. Bereft of unnecessary details it may be stated that the instant application has been filed on behalf of the petitioners praying therein to condone the delay of 3 years 3 months and 25 days in filing of the instant revision application. The award dated 25.11.2014 passed in Reference Case no.26 of 2013 has been challenged in the instant revision application filed under section 13 of the Act of 2008. The limitation for filing of the application expired on 25.2.2015, however the application for obtaining the certified copy of the award was filed only on 6.6.2018 ie more than 3 years 3 months after expiry of the period of limitation. It would be relevant to note her that a revision application has been preferred under section 13 of the Act of 2008. Section 13(1) provides that an application may be made to the High Court within 3 months from the date on which the award is made under this Act. Section 8 of the Act of 2008 begins with a non-obstante clause and provides that the provisions of this Act shall be 'in addition to and supplemental to' the Act of 1996. Section 8 of the Act of 2008 is reproduced herein below for ready reference:-

> *"**8. Act to be in addition to Arbitration & Conciliation Act, 1996.-** Notwithstanding anything contained in this Act, any of the provisions shall be in addition to and supplemental to Arbitration & Conciliation Act,*

1996 and in case any of the provision contained herein is construed to be in conflict with Arbitration Act then the latter Act shall prevail to the extent of conflict."

9. On a reading of section 8 as quoted herein above, there remains no doubt that even for the purpose of filing an application under the Act of 2008, the main Act is the Arbitration and Conciliation Act, 1996 and the provisions of the Act of 2008 are 'in addition to and supplemental to' the said Act of 1996. This being the position, one may examine the period of limitation provided under the two Acts for challenging an award.

10. While section 13 of the Act of 2008 provides that a revision may be filed in the High Court within 3 months from the date on which the award is made, section 34(3) of the Act of 1996 provides that an application for setting aside may not be made after 3 months have elapsed from the date on which the party making that application had received the arbitral award. In the opinion of this Court, so far as the limitation to challenge the arbitral award under the two Acts are concerned, the period can be said to be the same ie 3 months though while in the Act of 2008 the time runs from the date on which the award is made, in the Act of 1996 the time runs from the date on which the party

receives the arbitral award. This question not being an issue in the instant case, this Court is not stating anything further except that section 8 of the Act of 2008 clearly mentions that in case any of the provisions contained in the Act of 2008 is construed to be in conflict with the Arbitration Act, 1996 then the Act of 1996 shall prevail to the extent of the conflict.

11. So far as the provision with respect to the Court's power to condone the delay in challenge to the arbitral award, so far as the Act of 2008 is concerned, the same is silent. Proviso to section 34(3) of the Act of 1996 provides that on being satisfied that the applicant was prevented by sufficient cause from making the application within the period of 3 months, the Court may entertain the application within a further period of 30 days, but not thereafter. Section 34(3) of the Act of 1996 is quoted herein below for ready reference :-

> *"**34. Application for setting aside arbitral award.**-(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:*
>
> *Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of*

> *three months it may entertain the application within a further period of thirty days, but not thereafter."*

12. Taking into consideration the provisions of section 13 of the Act of 2008 and section 34(3) of the Act of 1996, in view of the provision of section 8 of the Act of 2008, there remains no doubt in the opinion of this Court that though the delay in filing a revision application under the Act of 2008 may be condoned, however the delay of a period beyond 30 days cannot be condoned.

13. The Hon'ble Supreme Court in the case of **Assistant Commissioner (CT) LTU, Kakinda & Ors. vs. Glaxo Smith Kline Consumer Health Care Limited** [(2020) 19 SCC 681] proceeded to decide as to whether, if an appeal was presented beyond the condonable period as provided under the statute, could the Court condone the same. It held as follows:-

> *"**16.** Indubitably, the powers of the High Court under Article 226 of the Constitution are wide, but certainly not wider than the plenary powers bestowed on this Court under Article 142 of the Constitution. Article 142 is a conglomeration and repository of the entire judicial powers under the Constitution, to do complete justice to the parties. Even while exercising that power, this Court is required to*

bear in mind the legislative intent and not to render the statutory provision otiose. In a recent decision of a three-Judge Bench of this Court in ONGC v. Gujarat Energy Transmission Corpn. Ltd. [ONGC v. Gujarat Energy Transmission Corpn. Ltd., (2017) 5 SCC 42 : (2017) 3 SCC (Civ) 47] , the statutory appeal filed before this Court was barred by 71 days and the maximum time-limit for condoning the delay in terms of Section 125 of the Electricity Act, 2003 was only 60 days. In other words, the appeal was presented beyond the condonable period of 60 days. As a result, this Court could not have condoned the delay of 71 days. Notably, while admitting the appeal, the Court had condoned the delay in filing the appeal. However, at the final hearing of the appeal, an objection regarding appeal being barred by limitation was allowed to be raised being a jurisdictional issue and while dealing with the said objection, the Court referred to the decisions in Singh Enterprises v. CCE [Singh Enterprises v. CCE, (2008) 3 SCC 70] , CCE v. Hongo (India) (P) Ltd. [CCE v. Hongo (India) (P) Ltd., (2009) 5 SCC 791] , Chhattisgarh SEB v. CERC [Chhattisgarh SEB v. CERC, (2010) 5 SCC 23] and Suryachakra Power Corpn. Ltd. v. Electricity Deptt. [Suryachakra Power Corpn. Ltd. v. Electricity Deptt., (2016) 16 SCC 152 : (2017) 5 SCC (Civ) 761] and concluded that Section 5 of the Limitation Act, 1963 cannot be invoked by the Court for maintaining an appeal beyond maximum prescribed period in Section 125 of the Electricity Act.

17. *The principle underlying the dictum in this decision would apply proprio vigore to Section 31 of the 2005*

Act including to the powers of the High Court under Article 226 of the Constitution. Notably, in this decision, a submission was canvassed by the assessee that in the peculiar facts of that case (as urged in the present case), the Court may exercise its jurisdiction under Article 142 of the Constitution, so that complete justice can be done. This argument has been considered and plainly rejected in the following words : (ONGC case [ONGC v. Gujarat Energy Transmission Corpn. Ltd., (2017) 5 SCC 42 : (2017) 3 SCC (Civ) 47] , SCC pp. 48-51, paras 12-16)

"12. In A.R. Antulay v. R.S. Nayak [A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372] , while explicating and elaborating the principles under Article 142, Sabyasachi Mukharji, J. (as his Lordship then was) opined thus : (SCC p. 656, para 50)

'50. ... The fact that the rule was discretionary did not alter the position. Though Article 142(1) empowers the Supreme Court to pass any order to do complete justice between the parties, the court cannot make an order inconsistent with the fundamental rights guaranteed by Part III of the Constitution. No question of inconsistency between Article 142(1) and Article 32 arose. Gajendragadkar, J., speaking [Prem Chand Garg v. Excise Commr., AIR 1963 SC 996] for the majority of the Judges of this Court said that Article 142(1) did not confer any power on this Court to contravene the provisions of Article 32 of the Constitution. Nor did Article 145 confer power upon this Court to make rules, empowering it to contravene the provisions of the fundamental right. At AIR pp. 1002-03, para 12 : SCR p. 899 of the Reports,

Gajendragadkar, J., reiterated that the powers of this Court are no doubt very wide and they are intended and "will always be exercised in the interests of justice". But that is not to say that an order can be made by this Court which is inconsistent with the fundamental rights guaranteed by Part III of the Constitution. It was emphasised that an order which this Court could make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws. The court, therefore, held that it was not possible to hold that Article 142(1) conferred upon this Court powers which could contravene the provisions of Article 32.'

13. The said decision has been clarified by a Constitution Bench in Union Carbide Corpn. v. Union of India [Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584] , wherein M.N. Venkatachaliah, J. (as his Lordship then was) speaking for the majority, ruled that : (SCC pp. 634-35, para 83)

'83. It is necessary to set at rest certain misconceptions in the arguments touching the scope of the powers of this Court under Article 142(1) of the Constitution. These issues are matters of serious public importance. The proposition that a provision in any ordinary law irrespective of the importance of the public policy on which it is founded, operates to limit the powers of the Supreme Court under Article 142(1) is unsound and erroneous. In both Prem Chand Garg v. Excise Commr. [Prem Chand Garg v. Excise Commr., AIR 1963 SC 996] , as well as A.R. Antulay v. R.S. Nayak [A.R.

Antulay v. R.S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372] , cases the point was one of violation of constitutional provisions and constitutional rights. The observations as to the effect of inconsistency with statutory provisions were really unnecessary in those cases as the decisions in the ultimate analysis turned on the breach of constitutional rights. We agree with Shri Nariman that the power of the Court under Article 142 insofar as quashing of criminal proceedings are concerned is not exhausted by Section 320 or 321 or 482 CrPC or all of them put together. The power under Article 142 is at an entirely different level and of a different quality. Prohibitions or limitations or provisions contained in ordinary laws cannot, ipso facto, act as prohibitions or limitations on the constitutional powers under Article 142. Such prohibitions or limitations in the statutes might embody and reflect the scheme of a particular law, taking into account the nature and status of the authority or the court on which conferment of powers — limited in some appropriate way — is contemplated. The limitations may not necessarily reflect or be based on any fundamental considerations of public policy. Shri Sorabjee, learned Attorney General, referring to Garg case [Prem Chand Garg v. Excise Commr., AIR 1963 SC 996] , said that limitation on the powers under Article 142 arising from "inconsistency with express statutory provisions of substantive law" must really mean and be understood as some express prohibition contained in any substantive statutory law. He suggested that if the expression "prohibition" is read in place of "provision" that would perhaps convey the

appropriate idea. But we think that such prohibition should also be shown to be based on some underlying fundamental and general issues of public policy and not merely incidental to a particular statutory scheme or pattern. It will again be wholly incorrect to say that powers under Article 142 are subject to such express statutory prohibitions. That would convey the idea that statutory provisions override a constitutional provision. Perhaps, the proper way of expressing the idea is that in exercising powers under Article 142 and in assessing the needs of "complete justice" of a cause or matter, the Supreme Court will take note of the express prohibitions in any substantive statutory provision based on some fundamental principles of public policy and regulate the exercise of its power and discretion accordingly. The proposition does not relate to the powers of the Court under Article 142, but only to what is or is not "complete justice" of a cause or matter and in the ultimate analysis of the propriety of the exercise of the power. No question of lack of jurisdiction or of nullity can arise.'

14. In this regard, another Constitution Bench in Supreme Court Bar Assn. v. Union of India [Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409] opined : (SCC pp. 437-38, para 56)

'56. As a matter of fact, the observations on which emphasis has been placed by us from theUnion Carbide case [Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584] , A.R. Antulay case [A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372] and Delhi Judicial Service Assn. v. State of Gujarat [Delhi Judicial Service Assn. v. State of

Gujarat, (1991) 4 SCC 406] , go to show that they do not strictly speaking come into any conflict with the observations of the majority made inPrem Chand Garg case [Prem Chand Garg v. Excise Commr., AIR 1963 SC 996] . It is one thing to say that "prohibitions or limitations in a statute" cannot come in the way of exercise of jurisdiction under Article 142 to do complete justice between the parties in the pending "cause or matter" arising out of that statute, but quite a different thing to say that while exercising jurisdiction under Article 142, this Court can altogether ignore the substantive provisions of a statute, dealing with the subject and pass orders concerning an issue which can be settled only through a mechanism prescribed in another statute. This Court did not say so in Union Carbide case [Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584] either expressly or by implication and on the contrary it has been held that the Supreme Court will take note of the express provisions of any substantive statutory law and regulate the exercise of its power and discretion accordingly. ...'

15. From the aforesaid decisions, it is clear as crystal that the Constitution Bench in Supreme Court Bar Assn. v. Union of India [Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409] , has ruled that there is no conflict of opinion in Antulay case [A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372] or in Union Carbide Corpn. case [Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584] with the principle set down in Prem Chand Garg v. Excise Commr. [Prem Chand Garg v. Excise Commr.,

AIR 1963 SC 996] Be it noted, when there is a statutory command by the legislation as regards limitation and there is the postulate that delay can be condoned for a further period not exceeding sixty days, needless to say, it is based on certain underlined, fundamental, general issues of public policy as has been held in Union Carbide Corpn. case [Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584] . As the pronouncement in Chhattisgarh SEB v. CERC [Chhattisgarh SEB v. CERC, (2010) 5 SCC 23] , lays down quite clearly that the policy behind the Act emphasising on the constitution of a special adjudicatory forum, is meant to expeditiously decide the grievances of a person who may be aggrieved by an order of the adjudicatory officer or by an appropriate Commission. The Act is a special legislation within the meaning of Section 29(2) of the Limitation Act and, therefore, the prescription with regard to the limitation has to be the binding effect and the same has to be followed regard being had to its mandatory nature. To put it in a different way, the prescription of limitation in a case of present nature, when the statute commands that this Court may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provisions and policy of legislation. It is equivalent to Section 3 of the Limitation Act. Therefore, it is uncondonable and it cannot be condoned taking recourse to Article 142 of the Constitution.

16. We had stated earlier that we will be adverting to the passage in Suryachakra Power Corpn. Ltd. v. Electricity Deptt. [Suryachakra Power Corpn. Ltd. v. Electricity Deptt., (2016) 16 SCC 152 : (2017) 5 SCC

(Civ) 761] There, the Court had referred to Section 14 of the Limitation Act. It fundamentally relied on M.P. Steel Corpn. v. CCE [M.P. Steel Corpn. v. CCE, (2015) 7 SCC 58 : (2015) 3 SCC (Civ) 510] , wherein the Court after referring to certain authorities, analysed thus : (M.P. Steel Corpn. case [M.P. Steel Corpn. v. CCE, (2015) 7 SCC 58 : (2015) 3 SCC (Civ) 510] , SCC p. 91, para 43)

'43. ... when a certain period is excluded by applying the principles contained in Section 14, there is no delay to be attributed to the appellant and the limitation period provided by the statute concerned continues to be the stated period and not more than the stated period. We conclude, therefore, that the principle of Section 14 which is a principle based on advancing the cause of justice would certainly apply to exclude time taken in prosecuting proceedings which are bona fide and with due diligence pursued, which ultimately end without a decision on the merits of the case.'"

(emphasis in original and supplied)

Similarly, in State v. Mushtaq Ahmad [State v. Mushtaq Ahmad, (2016) 1 SCC 315 : (2016) 1 SCC (Cri) 255] , this Court opined that where minimum sentence is provided for an offence then no court can impose lesser punishment on ground of mitigating factors.

***18.** A priori, we have no hesitation in taking the view that what this Court cannot do in exercise of its plenary powers under Article 142 of the Constitution, it is unfathomable as to how the High Court can take a different approach in the matter in*

reference to Article 226 of the Constitution. The principle underlying the rejection of such argument by this Court would apply on all fours to the exercise of power by the High Court under Article 226 of the Constitution." (emphasis supplied)

14. Further the Hon'ble Supreme Court in the case of **Union of India vs. Popular Construction Co.** [(2001) 8 SCC 470] held as follows:-

*"**16.** Furthermore, Section 34(1) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award "in accordance with" sub-section (2) and sub-section (3). Sub-section (2) relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, sub-section (3) would not be an application "in accordance with" that sub-section. Consequently by virtue of Section 34(1), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed under Section 34 is emphasised by the provisions of Section 36 which provide that*

"where the time for making an application to set aside the arbitral award under Section 34 has expired... the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the

court".

This is a significant departure from the provisions of the Arbitration Act, 1940. Under the 1940 Act, after the time to set aside the award expired, the court was required to "proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow" (Section 17). Now the consequence of the time expiring under Section 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the court. If there were any residual doubt on the interpretation of the language used in Section 34, the scheme of the 1996 Act would resolve the issue in favour of curtailment of the court's powers by the exclusion of the operation of Section 5 of the Limitation Act" (emphasis supplied)

15. The Hon'ble Supreme Court in the case of **Postmaster General & Ors. vs. Living Media India Limited & Anr.** [(2012) 3 SCC 563] proceeded to hold as follows:-

*"**25.** We have already extracted the reasons as mentioned in the "better affidavit" sworn by Mr Aparajeet Pattanayak, SSRM, Air Mail Sorting Division, New Delhi. It is relevant to note that in the said affidavit, the Department has itself mentioned and is aware of the date of the judgment of the Division Bench of the High Court in Office of the Chief Postmaster v. Living Media India Ltd. as 11-9-2009. Even according to the deponent, their counsel had applied for the*

certified copy of the said judgment only on 8-1-2010 and the same was received by the Department on the very same day. There is no explanation for not applying for the certified copy of the impugned judgment on 11-9- 2009 or at least within a reasonable time. The fact remains that the certified copy was applied for only on 8-1-2010 i.e. after a period of nearly four months.

29. *In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.*

30. *Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be*

dismissed on the ground of delay."

(emphasis supplied)

16. Though the limitation for preferring a revision application under section 13 of the Act of 2008 is three months, in view of the provisions of section 8 of the Act of 2008 read with proviso to section 34(3) of the Act of 1996, the delay in filing of the revision application may be condoned by the Court and the application for setting aside the award entertained upto a further period of 30 days, but not thereafter. As seen above, the Hon'ble Supreme Court in the case of **Assistant Commissioner (CT) LTU, Kakinda & Ors.** (*supra*) has held that in exercising powers under Article 142 of the Constitution in assessing the need to do complete justice to the parties, the Supreme Court will take note of the express prohibitions in any substantive statutory provision and regulate the exercise of its powers and discretion accordingly. It further held that what the Supreme Court cannot do in exercise of it's plenary powers under Article 142 of the Constitution, the High Court cannot take a different approach in the matter under Article 226 of the Constitution. Thus in view of the categorical bar as provided in the proviso to section 34(3) of the Act of 1996 that the delayed application under section 34 may be entertained upto a further period of 30 days beyond the period of limitation but not thereafter, in the

opinion of the Court, the delay in filing of the instant application which is of 3 years 3 months and 25 days cannot be condoned.

17. In addition to the above a perusal of the limitation petition in the instant case would show that except for mentioning as to how the file moved from one table to the other no just or reasonable explanation has been furnished. Though the application was filed in the year 2018, a supplementary affidavit in continuation of the same with 'better averments' was filed in the year 2024. However here also, no explanation was provided nor could the same be given as to why when the limitation for filing the revision application against the award impugned expired on 25.2.2015, why the application for obtaining the certified copy was filed 3 years 3 months late on 6.6.2018. Reference in this context may be made to the judgment in the case of **Postmaster General & Ors.** (*supra*).

18. In the opinion of this Court the judgments in the case of Chandra Mani (*supra*) and Kameshwar Prasad Singh (*supra*) are of no assistance to the petitioners in view of the facts and circumstances stated herein above.

19. In the facts and circumstances of the case, it is held that the petitioners have not made out any case for condonation of delay in filing of the instant revision application.

20. I. A. no. 2 of 2018 stands dismissed.

21. The limitation application filed by the petitioners having been dismissed, the revision application also stands dismissed.

(Partha Sarthy, J)

avinash/shiv

AFR/NAFR	
CAV DATE	N/A
Uploading Date	15.04.2024
Transmission Date	N/A