

State of Madhya Pradesh and anr. Vs. Shekhar Constructions

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Court : Madhya Pradesh

Decided On : Nov-02-2007

Reported in : AIR2008MP59; 2008(1)ARBLR638(MP); 2007(4)MPHT503; 2007(4)MPLJ531

Judge : A.K. Patnaik, C.J., ;Dipak Misra, ;A.K. Gohil, ;Subhash Samvatsar and ;Rajendra Menon, JJ.

Appellant : State of Madhya Pradesh and anr.

Respondent : Shekhar Constructions

Advocate for Pet/Ap. : Mr. Sushil Kumar Jain

Judgement :

ORDER

Dipak Misra, J.

1. A Division Bench hearing the Civil Revision No. 142/2005 (State of Madhya Pradesh and Anr. v. Shekhar Constructions) expressed its doubt with regard to the correctness of the decision rendered in Civil Revision No. 1/2006 (State of Madhya Pradesh and Anr. v. Shriram and Sons) and referred two questions to be adjudicated by a Larger Bench. The two questions framed by the Division Bench are as under:

(i) Whether after amendment in Section 19 of the Adhiniyam application for extending the period of limitation in filing revision can be entertained if Court is satisfied that petitioner was prevented from sufficient cause can be examined by the Court in cases where cause of action for filing revision is accrued to the petitioner under the unamended provision of Section 19 and period of limitation is expired before the amendment in the Adhiniyam?

(ii) Whether the application to condone the delay will be maintainable and the amended provision of Section 19 of the Adhiniyam will have retrospective operation for pending petitions before the Court?

2. The matter was placed before the Bench consisting of three Judges. The Full Bench while answering the question expressed its doubt within regard to the legal substantiality of the decisions rendered by another Full Bench in M.P. State Electricity Board, Jabalpur v. Pandey Construction Co. 2005 (2) M.P.H.T. 206 : 2005 (2) MPLJ 550. This led to framing of the following question for consideration by a Larger Bench:

Whether in view of Section 29(2) of Limitation Act, 1963, provisions of Sections 4 to 24 (both inclusive) will apply to the proceedings, application and revision filed under the Adhiniyam, 1983, to condone delay

3. That is how the matter has been placed before us. Though the reference has been couched in the aforesaid manner the principal question that is required to be answered is whether the interpretation placed on Section 19 of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 (hereinafter referred to as 'the 1983 Act') in Pandey Construction (supra), is correct or the said decision requires to be reconsidered on the basis of the decision rendered in Mohd. Sagir v. BHEL 2004 (1) MPJR 316 : 2004 (2) M.P.H.T 179 (FB).

4. At the very outset we think it apt to state that in Pandey Construction (supra), the Full Bench had expressed the opinion that the decision rendered by the Apex Court in Nagarpalika Parishad, Morena v. Agrawal Construction Co. 2004 (II) MPJR 374, is binding precedent. The decision rendered in Pandey Construction (supra), is restricted to the facet of limitation in respect of revision as provided

under Section 19 of the 1983 Act and nothing has been said therein with regard to the applicability of the Limitation Act in respect of a proceeding or application under the 1983 Act. It is also worth noting that the said issues do not arise in the present Civil Revision, for the civil revision has been filed under Section 19 of the 1983 Act and the consideration, as is manifest from the factual matrix, is limited to limitation in respect of a revision preferred under the unamended provision. It is well settled in law that Court should refrain and restrain itself from answering academic issues. In this context, we may profitably refer to the decision rendered in Central Areca Nut & Cocoa Marketing & Processing Cooperative Ltd. v. State of Karnataka and Ors. : AIR 1998 SC2399 , wherein the Apex Court was dealing with the contentions raised by the appellant that the High Court was not justified in dealing with the issue which was purely academic. In that context Their Lordships expressed the opinion as under:

6. In our view, the submissions of learned Counsel for the appellant are liable to be accepted. The High Court had noticed that the matter had become academic and in fact, observed at the end of the judgment as follows:

Mr. Dattu, learned Government Pleader, pointed out that 1977 notification had since been superseded by 1984 notification which extended ,the benefit to all and therefore, striking down 1977 notification would be academic. It may appear to be so.

But the High Court went on to observe that it was nonetheless deciding the issue, so that in future when power is exercised by the State, the State could benefit by what was stated in the judgment.

Thereafter, Their Lordships proceeded to state as follows:

7. In our view, the High Court ought not to have gone into the question merely for the purpose of the future and, at any rate, ought to have noticed the highly inequitable consequences of its interference so far as the appellant-Society was concerned....Again Their Lordships in Paragraph 8 held as under:8. In that view of the matter, we hold that the High Court ought not to have gone into the issue on merits....

5. In this context, we may fruitfully refer to the decision rendered in the case of *State of Bihar v. Rai Bahadur Hurdut Roy Mod Lall Jute Mills* : [1960]2SCR331 , wherein it has been ruled thus:

In cases where the vires of statutory provisions are challenged on constitutional grounds, it is essential that the material facts should first be clarified and ascertained with a view to determine whether the impugned statutory provisions are attracted; if they are, the constitutional challenge to their validity must be examined and decided. If, however the facts admitted or proved do not attract the impugned provisions there is no occasion to decide the issue about the vires of the said provisions. Any decision on the said question would in such a case be purely academic. Courts are and should be reluctant to decide constitutional points merely as matters of academic importance.

6. In view of the aforesaid enunciation of law we restrict the reference only to the extent whether the decision rendered in *Pandey Construction Co. (supra)*, is correct or not.

7. To appreciate the controversy in proper perspective the factual backdrop in the case of *Pandey Construction Co. (supra)*, needs to be exposited. A Civil Revision was filed under Section 19 of the 1983 Act before this Court. The said revision was barred by limitation. An application was filed seeking condonation of delay. On behalf of the respondents a preliminary objection was advanced that the delay was not condonable in view of the decision rendered in *Nagarpalika Parishad, Morena v. Agrawal Construction Co.* 2004(11) MPJR SN 55. It is worth noting a Special Leave Petition was preferred against the decision of the Division Bench in *Nagarpalika Parishad Morena (supra)* and the Apex Court dismissed the Special Leave Petition. Regard being had to the preliminary objection raised, two questions were referred by the Division Bench for consideration by the Full Bench:

(a) Whether the power of High Court for exercise of revisional jurisdiction under Section 19 of the M.P. Madhyastham Adhikaran Adhiniyam, 1983 is totally constricted and restricted to a period of three months of the passing of the award which is the limitation prescribed for an aggrieved party or it can exercise such power of revision suo motu within a reasonable period of time that can travel

beyond three months?

(b) Whether the decision rendered in the case of Nagarpalika Parishad v. Agrawal Construction Co. 2004(2) MPJR 374, would be a binding precedent?

8. The Full Bench took note of the order passed by the Apex Court in Nagarpalika Parishad (supra) and expressed the opinion in Paragraph 24 as under:

24. In our opinion, the order passed by Supreme Court in Nagarpalika Parishad, Morena (supra) is a speaking order, gives reasons for refusing to grant leave, thus, statement of law contained in the order is a declaration of law by Supreme Court within the meaning of Article 141 of Constitution of India. The findings recorded by the Supreme Court bind the Court in any proceeding subsequent thereto. It is what is required of judicial discipline. Further it is well settled that a High Court cannot declare that a decision of Supreme Court is per incuriam.

9. Thereafter the Full Bench addressed itself with regard to the exercise of suo motu power of revisional jurisdiction. Eventually in Paragraph 31 the Full Bench answered the reference in the following terms:

31. We, thus, answer the questions referred thus:

(i) The decision rendered in Nagarpalika Parishad, Morena v. Agrawal Construction Co. 2004 (II) MPJR 374, by the Apex Court while dismissing the special leave petition is a binding precedent. The High Court cannot condone the delay if revision is preferred by an aggrieved party beyond a period of three months under Section 19 of the Act of 1983.

(ii) It is, however, open to the High Court to exercise suo motu. revisional jurisdiction under Section 19 of the M.P. Madhyastham Adhikaran Adhiniyam, 1983 even beyond period of three months of passing of award. However, such power has to be exercised within reasonable time considering the facts and circumstances of the case and the nature of the order which is being revised. While rejecting the revision petition filed by an aggrieved part as barred by limitation, if the circumstances so warrant, the High Court may decide to exercise the power of revision suo motu and call for the record and award from the

Tribunal.

10. As has been indicated earlier the Full Bench hearing the present civil revision was of the view that the decision rendered in Pandey Construction Co. (supra), requires reconsideration as it had not considered the Full Bench decision rendered in Mohd. Sagir (supra), and further the Apex Court in Nagar Palika Parishad, Morena (supra), has placed reliance on Nasiruddin and Ors. v. Sitaram and Ors. : [2003]1SCR634 and Union of India v. Popular Construction Co. : AIR 2001 SC4010 , though the view was different in the said two decisions inasmuch as Their Lordships in the said decisions have held that the provisions of Section 29(2) of the Limitation Act would be applicable, if there is no bar and the words used 'but not thereafter' which created an implied bar.

11. We have already stated that we will restrict our advertence with regard to the precedential facet and non-consideration of the Full Bench decision rendered in Mohd. Sagir (supra), in the backdrop of Section 19 of 1983 Act as that is the only issue which emanates in the present lis.

12. At this juncture it is condign to reproduce the order passed by the Division Bench in Nagarpalika Parishad, Morena v. Agrawal Construction Co. in Civil Revision No. 155/2003, decided on 25-8-2003:

Petitioner by Shri D.K. Katare, Advocate.

Respondent by Shri D.P.S. Bhadoriya and Shri Kamal Jain, Advocate.

Heard on M.C.P. No. 795/2003. This application is under Section 5 of the Limitation Act. Preliminary objection has been raised by respondent that provisions under Section 5 of Limitation Act are not applicable to the proceedings arising out of Madhya Pradesh Madhyastham Adhikaran Adhiniyam. In support of their contention Counsel for respondent referred a case of Nasiruddin and Ors. v. Sitaram and Ors. reported in : [2003]1SCR634 , and submitted that this being provisions of Limitation Act are not applicable. The Act has not provided any provision for condoning delay in filing the revision.

Counsel for the petitioner submitted that since the powers under Section 115 of the Code of Civil Procedure are conferred upon the High Court, therefore, provisions of Limitation Act will be applicable to the present case. Section 19 of the Adhiniyam clearly specifies that the revision shall be filed within three months from the date of passing of the award but this section does not provide for extension of time or condoning the delay in filing the revision filed beyond the period of three months. In the absence of any specific provision for condoning delay the delay in filing revision cannot be condoned.

The petitioner acquired knowledge of the award on 10-4-2003 after notice of execution was received. Thereafter they approached the Tribunal for certified copy on 5-5-2003 and received the certified copy on the same day and the revision is filed on 30-5-2003. Thus, the petitioner has not explained the delay between 10-4-2003 to 5-5-2003 and from 5-5-2003 till 30-5-2003. As such in the application sufficient cause has also not been shown. Even otherwise since provisions of Limitation Act are not applicable to the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, the application is dismissed.

Consequently, M.C.P. No. 794/2003 is also dismissed and the Civil Revision is dismissed as barred by limitation.

13. The Division Bench had placed reliance on the decision rendered in the case of Nasiruddin and Ors. (supra). The Apex Court while dismissing the Special Leave petition has passed the following order:

Heard Mr. Sushil Kumar Jain, learned Counsel for the petitioner at length.

In our view, there is no infirmity in the impugned judgment. The authority in the case of Nasiruddin and Ors. v. Sita Ram Agrawal reported in : [2003]1SCR634 has been correctly followed. Same view has also been taken by this Court in the case of Union of India v. Popular Construction Co. reported in : AIR 2001 SC4010 . The Special Leave Petition stands dismissed with no order as to costs.

14. Thus, Their Lordships have expressed held that the authority in the case oi Nasiruddin (supra), had been correctly followed. Apart from that Their Lordships

have also expressed the opinion that the same view has also been taken in the case of Popular Construction Co. (supra). The Full Bench in Pandey Construction Co. (supra), after referring to the decisions rendered in S. Shanmugavel Nadar v. State of T.N. and Anr. : [2003]263ITR658(SC) , Saurashtra Oil Mills Assn. Gujrat v. State of Gujrat and Anr. : [2002]1SCR1099 , Collector of Customs, Bombay v. Elephanta Oil and Industries Ltd., Bombay : 2003(152)ELT257(SC) , Batiarani Gramiya Bank v. Pallab Kumar and Ors. : (2004)ILLJ184SC and Hari Singh v. State of Haryana : 1993(66)ELT23(SC) , has expressed the opinion in Paragraph 24, which we have reproduced above.

15. The reason for reference is that the law laid down in Nasiruddin (supra) and Popular Constructions (supra), pertain to a different field and the language employed in the enactments under consideration therein was different. The question that emanates is whether the High Court can scan or scrutinize the speaking reason of an order of the Apex Court, more so, when Their Lordships have expressly and unequivocally stated that the decision rendered by the Apex Court has been correctly applied by the Division Bench, and further Their Lordships have relied upon the decision rendered in Popular Construction (supra) to indicate that the view expressed in Nasiruddin (supra), has been reiterated in the latter case. In this context, we may profitably refer to a three-Judge Bench decision in Director of Settlements, A.P. and Ors. v. M.R. Apparao and Anr. : [2002]2SCR661 , wherein Their Lordships after referring to Ballabhadras Mathuradas Lakhani v. Municipal Committee, Malkapur : AIR 1970 SC1002 , Krishena Kumar v. Union of India : (1991)ILLJ191SC , State of U.P. v. Synthetics and Chemicals Ltd. : 1993(41)ECC326 , Arnit Das v. State of Bihar : 2000 CriLJ2971 , in Paragraph 12 have expressed the view as under:

12. Mr. Rao then placed reliance on yet another decision of this Court in the case of A-One Granites v. State of U.P. to which one of us (Pattanaik, J.) was a party. In that particular case the applicability of Rule 72 of the U.P. Minor Minerals (Concession) Rules, 1963 was one of the bones of contention before this Court and when the earlier decision of the Court in Prem Nath Sharma v. State of U.P. was pressed into service, it was found out that in Prem Nath Sharma case, the applicability of Rule 72 had never been canvassed and the only question that had

been canvassed was the violation of the said Rules. It is in this context, it was held by this Court in Granite case, as the question regarding applicability of Rule 72 of the Rules having not been referred to, much less considered by Supreme Court in the earlier appeals, it cannot be said that the point is concluded by the same and no longer res integra (SCC p. 544, para 14).

This dictum will have no application to the case in hand on the question whether the judgment of this Court in Civil Appeal No. 398 of 1972 can be held to be a law declared under Article 141.

Thereafter, Their Lordships proceeded to state as follows:

15. Bearing in mind the host of decisions cited by Mr. Rao and on examining the judgment of this Court dated 6-2-1986 in Civil Appeal No. 398 of 1972 we have no doubt in our mind that the conclusion of the Court that the amendments are constitutionally valid and the view expressed by the Andhra Pradesh High Court is erroneous is a conscious decision of the Court itself on application of mind of the provisions of the Act. It is no doubt true that the Counsel for respondent Venkatagiri had indicated that the respondent will have no objection to the judgments and orders of the High Court under appeal, being set aside. But that by itself would not tantamount to hold that the judgment is a judgment on concession. Even after recording the stand of the Counsel appearing for Venkatagiri when the Court observed 'we are also of the view that the two amendments referred to above, are constitutionally valid', the same is unequivocal determination of the constitutional validity of the amended Act, it cannot be dubbed as a conclusion on concession, nor can it be held to be a conclusion without application of mind, particularly when the very constitutionality of the Amendment Act was the core question before the Court. It is also apparent from the further direction when the Court holds:

we further make it clear that the period during which interim payments are payable under the abovesaid Act ends with the date of the original determination by the Director under Section 39(1) thereof. This conclusion is possible only after application of mind to the provisions of Section 39 as well as other provisions and the amendment that was brought into the statute book. In the aforesaid premises,

our answer to the first question is that the decision of this Court dated 6-2-1986 must be held to be a 'law declared' within the ambit of Article 141 of the Constitution and the constitutional validity of the amendment Act, 1971 is not open to be reagitated and that the judgment of the Andhra Pradesh High Court holding the amendment Act to be constitutionally invalid had been set aside by this Court.

16. In view of the aforesaid we have no scintilla of doubt that the opinion expressed by the Full Bench in Pandey Construction Co. (supra), with regard to precedential value of the decision rendered by the Apex Court in Nagar Palika Parishad, Morena (supra), is correct inasmuch as the Apex Court in clear cut terms has ruled that the decision of the Apex Court had been correctly followed. That being the position there is no scope for probing whether the decision rendered in Nasiruddin and Ors. (supra) and Popular Constructions (supra), are applicable to the provisions of 1983 Act. That is not and cannot be within the domain of the High Court Ergo, we conclude and hold that the decisions rendered in Pandey Construction Co. (supra), holding that the provisions of Limitation Act do not apply to a revision preferred under Section 19 of the 1983 Act is correct. Once it is so held, the question whether the Full Bench in Pandey Construction Co. (supra), should have considered the decision rendered in Mohd. Sagir (supra), pales into insignificance. We may put it on record that the decision in Mohd. Sagir (supra), was rendered in the context of M.P. Industrial Relations Act, 1960 and the said view in relation to the said statute will hold the field.

17. Be it placed on record in the case of Pandey Construction Co. (supra), the Full Bench has expressed the opinion that the High Court can exercise the power of revision suo motu and call for the records and award from the Tribunal and a such a power can be exercised within a reasonable period of time considering the facts and circumstances of the case and the nature of the order which is being revised. The said view is in accord with the language employed under Section 19 of the 1983 Act and hence, we concur with the same.

18. The reference is answered accordingly. Let the matter be listed before the appropriate Division Bench.

