

Sivanandan. K.V. and Another Vs. Shaju C Maprani, Now Working as Plater (Hs), Nsry, CochIn and Others

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Court : Central Administrative Tribunal CAT Ernakulam

Decided On : Feb-22-2012

Judge : The Honourable Dr. Justice K.B.S. Rajan, Judicial Member & the Honourable Ms. Justice K. Noorjehan, Administrative Member

Appeal No. : R.A.No.15 of 2010 in O.A No. 149 of 2008

Appellant : Sivanandan. K.V. and Another

Respondent : Shaju C Maprani, Now Working as Plater (Hs), Nsry, CochIn and Others

Advocate for Pet/Ap. : For the Applicants: M.R. Hariraj, Advocate. For the Respondents: R1, CSG. Nair, Advocate, R2 and R3, Sunil Jacob Jose, SCGSC.

Judgement :

DR. K.B.S. RAJAN, JUDICIAL MEMBER

1. This Review Application has been filed by a third party seeking review of the Order dated 18-03-2009 in OA No. 149 of 2008. In their affidavit the review applicants have stated that the copy of the final order was received by the first review applicant after 12-05-2010 when he received notice in OA No. 363 of 2010 and thus, he had no notice of the final order before that. It is only from him that the second applicant came to know of the final order. Hence, the review petition is

filed within the time as provided under Rule 17 of the CAT (Procedure) Rules.

2. Applicant in the main OA, who has been impleaded as respondent in the Review Application vehemently opposed entertaining the Review Application on the ground of inordinate delay in filing the review application and that there is no application for condonation of delay.

3. Before entering into the merits of the Review application, it is to be seen whether the review applicants have the locus standi to file a review and if so, whether the same could be filed beyond the limitation period provided for in the Act or the rules.

4. In *Gopabandhu Biswal vs Krishna Chandra Mohanty* (1998) 4 SCC 447, the Apex Court had occasion to deal with the above two aspects. The Court has held as under:-

"Section 22(3) of the Administrative Tribunals Act, 1985 confers on an Administrative Tribunal discharging its functions under the Act, the same powers as are vested in a civil court under the Code of Civil Procedure while trying a suit in respect, inter alia, of reviewing its decisions. Section 22(3)(f) is as follows:

"22. (3) A Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely,--

(a) to (e) * * *

(f) reviewing its decisions;

(g) to (i) * * *

7. A civil court's power to review its own decisions under the Code of Civil Procedure is contained in Order 47 Rule 1. Order 47 Rule 1 provides as follows:

"1. Application for review of judgment.--(1) Any person considering himself aggrieved--

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order.

(2) * * *"

8. The power of review which is granted to an Administrative Tribunal is similar to the power given to a civil court under Order 47 Rule 1 of the Code of Civil Procedure. Therefore, any person (inter alia) who considers himself aggrieved by a decree or order from which an appeal is allowed, but from which no appeal has been preferred can apply for review under Order 47 Rule 1(1)(a). An appeal lies to this Court from a decision of the Administrative Tribunal. If an appeal is preferred, the power to review cannot be exercised.

9. In the case of K. Ajit Babu v. Union of India to which one of us was a party, this Court examined Section 22(3)(f) of the Administrative Tribunals Act, 1985 and held that an application for review under that section attracts the principles contained in Order 47 Rule 1 of the Code of Civil Procedure.

10.....We will assume for the time being that the applicants are persons aggrieved. Even so, the question is whether they can have a judgment which has attained finality by virtue of an order of this Court, set aside in review. There is no doubt that as between the parties to the main judgment, the judgment is final and binding. The respondents, State of Orissa and Union of India, are, therefore, bound to give effect to the judgment of the Tribunal in TA No. 1 of 1989 in the case

of Gopabandhu Biswal. If this is so, can a third party by filing a review petition get that same judgment reviewed and obtain an order that Gopabandhu Biswal is not entitled to the benefits of the directions contained in the main judgment since that judgment is now set aside? In our view this is wholly impermissible. It will lead to reopening a matter which has attained finality by virtue of an order of this Court. The applicants, even if they are persons aggrieved, do not have, in the present case, a right of review under any part of Order 47 Rule 1. Even under Order 47 Rule 1(2), the party not appealing from a decree or order can apply for review only on grounds other than the grounds of appeal which were before the appellate court, and during the pendency of the appeal.....

11. x x x x

12. Undoubtedly when the Tribunal interprets service rules and regulations, the interpretation so given may affect other members of that service -- past, present or future. One can understand a wider meaning in this context being given to the phrase "person aggrieved", thus enlarging the right of persons to intervene either at the hearing before the Tribunal, or in appeal, or for filing a review petition. Nevertheless, this right must be exercised at the appropriate time and in accordance with law. A review petition must be within the scope of Section 22(3)(f) of the Administrative Tribunals Act read with Order 47 Rule 1 and must comply with the Rules framed under the Administrative Tribunals Act. The present review applications are not within the principles laid down in Order 47 Rule 1. They also do not comply with the relevant Rules. Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987 prescribes, inter alia, that no application for review shall be entertained unless it is filed within thirty days from the date of the receipt of a copy of the order sought to be reviewed. In the present case the review petitions were filed one and a half years after the main judgment was delivered and one year after the special leave petition was dismissed. We do not find any explanation for this delay."

5. Thus, as a third party, subject to the provisions contained in the Act and the Rules, read with Order 47, Rule 1 of the CPC, the applicants have locus standi to file a review petition. However, the question in this case is whether at this distance

of time, the review application could have been entertained. The counsel for the review applicants refers to Rule 17 of the Rules to state that the copy of the order having been received on a particular date, the review application has been filed within thirty days and hence, there is no delay. We do not agree that for more than one reason. First, such an interpretation would mean that one could apply at any time at his own leisure time and file the review application, which would never allow finality to the order of the Tribunal. Secondly, the order has attained finality by way of implementation and when an order of the court has attained finality and implemented, the only course left to the aggrieved party is to file a fresh application as stated in the case of *Gopabandhu Biswal*.

6. The review applicants have failed to file any application for condonation of delay as well.

7. Though we are not going into the merit of the case, on the basis of the arguments advanced, it is felt that what the applicants wanted was one of classificatory in nature and not any review, as the respondents seem to have misunderstood and thought that the entire order dated 04-08-2006 got quashed, whereas, what was quashed was only with reference to limited applicability to two of the establishment, i.e. FOC-in-C East and FOC-in-C South. It is also stated that the erroneous interpretation by the authorities have also since been rectified.

8. In view of the above, we find no reason to entertain the review application at this belated distance of time. Hence, the same is dismissed. The review applicants are at liberty to file a fresh OA as per the provisions of and subject to limitations as contained in the Act.

9. No costs.

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