Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1315 OF 2010

OIL & NATURAL GAS CORP.LTD. ... Appellant

VERSUS

GUJARAT ENERGY TRANSMISSION CORPORATION. LTD. & ORS ... Respondents

J U D G M E N T

Dipak Misra, J.

The present appeal preferred under Section 125 of the Electricity Act, 2003 (for brevity, 'the Act') assails the correctness of the judgment rendered by the Appellate Tribunal for Electricity (for short, 'the tribunal') in Appeal No. 276 of 2006 whereunder the order dated 10.10.2006 passed in Application No.812 of 2004 filed by the Oil and Natural Gas Corporation Ltd. (ONGC), the appellant herein, before the Gujarat Electricity Regulatory Commission (for short, 'the Commission') seeking a refund of

Rs.1,22,27,225/-. The tribunal, as is perceivable, stated the facts in detail, noted the arguments advanced before it, analysed the order passed by the Commission and came to hold that the ONGC was not entitled to refund and the claim was wholly unsustainable.

2. The present appeal was presented before the Registry of this Court on 7.2.2008. An office note recorded that the appeal was barred by 71 days. The appeal was listed before the Bench on 29.1.2010 on which date this Court condoned the delay and admitted the appeal. When the matter was taken up for hearing today, Ms. Ranjeeta Ramachandran, learned counsel appearing for the 1st respondent raised a preliminary objection that this Court could not have condoned the delay of 71 days in view of the language employed in Section 125 of the Act and further the condonation of delay by this Court was done without notice to the respondent and hence, deserves to be recalled and as a sequitor, the appeal has to be dismissed without any adverting to the same on merits. For the aforesaid purpose, she has placed reliance on the authority in ***M/s. Suryachakra Power Corporation Ltd.*** vs. ***Electricity***

Department, Rep. By its Superintending Engineer, Port Blair & Ors.[1]

3. Mr. Saurav Agrawal, learned counsel appearing for the appellant would contend that it had applied for the certified copy of the order which was made available on 9.10.2007 and, therefore, the said period has to be excluded. Additionally, it is urged by him that after the main order was pronounced by the tribunal, as there were manifest errors, Review Petition No. 4 of 2008 was filed and the said petition was dismissed on 7.3.2008 and in such a situation, the delay, if any, has been correctly condoned and does not require to be dwelt upon and the preliminary objection is without any merit. In essence, the submission is that the application preferred for review of the principal order and the time consumed therein should be excluded by taking recourse to Section 14 of the Limitation Act, 1963 (for short, 'the Limitation Act').

4. Section 125 of the Act reads as follows:-

> "**125. Appeal to Supreme Court.--**(1) Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the Supreme Court within sixty days from the date of communication of the decision or

1 2016 (10) SCALE 46

> order of the Appellate Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure,1908 (5 of 1908):
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> Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days."

5. On a plain reading of the aforesaid provision, it is clear as crystal that this Court, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the period of 60 days from the date of communication of the decision or order of the appellate tribunal to him, may allow the same to be filed within a further period not exceeding 60 days. It is quite clear that this Court has the jurisdiction to condone the delay but a limit has been fixed by the legislature, that is, 60 days.

6. In ***Chhattisgarh State Electricity Board*** vs. ***Central Electricity Regulatory Commission & Ors.***[2], the issue that arose before this Court was whether Section 5 of the Limitation Act can be invoked for allowing the aggrieved person to file an appeal under Section 125 of the Act after more than 120 days from the date of communication of the

2 (2010) 5 SCC 23

decision of the tribunal. It adverted to the anatomy of Section 125 and the Appellate Tribunal for Electricity (Procedure, Form, Fee and Record of Proceedings) Rules, 2007 and opined thus:-

> "25. Section 125 lays down that any person aggrieved by any decision or order of the Tribunal can file an appeal to this Court within 60 days from the date of communication of the decision or order of the Tribunal. Proviso to Section 125 empowers this Court to entertain an appeal filed within a further period of 60 days if it is satisfied that there was sufficient cause for not filing appeal within the initial period of 60 days. This shows that the period of limitation prescribed for filing appeals under Sections 111(2) and 125 is substantially different from the period prescribed under the Limitation Act for filing suits etc. The use of the expression `within a further period of not exceeding 60 days' in Proviso to Section 125 makes it clear that the outer limit for filing an appeal is 120 days. There is no provision in the Act under which this Court can entertain an appeal filed against the decision or order of the Tribunal after more than 120 days."

7. The two-Judge Bench placed reliance on ***Singh Enterprises*** vs. **C.C.E., Jamshedpur & Ors.**[3] and ***Commissioner of Customs and Central Excise*** v. ***Hongo India Private Limited & Ar.***[4] and came to hold that Section 5 of the Limitation Act cannot be invoked by this

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3 (2008) 3 SCC 70
4 (2009) 5 SCC 79

Court for maintaining an appeal filed against the decision or order of the tribunal beyond the period of 120 days in view of the prescription under Section 125 of the Act and the proviso appended thereto. In that context, the Court held:-

> "Any interpretation of Section 125 of the Electricity Act which may attract applicability of Section 5 of the Limitation Act read with Section 29(2) thereof will defeat the object of the legislation, namely, to provide special limitation for filing an appeal against the decision or order of the Tribunal and proviso to Section 125 will become nugatory."

8. After so stating, as we find, the Court adverted to the concept of communication and eventually opined:-

> "37. The issue deserves to be considered from another angle. As mentioned above, Rule 94(2) requires that when the order is reserved, the date of pronouncement shall be notified in the cause list and that shall be a valid notice of pronouncement of the order. The counsel appearing for the parties are supposed to take cognizance of the cause list in which the case is shown for pronouncement. If title of the case and name of the counsel is printed in the cause list, the same will be deemed as a notice regarding pronouncement of order. Once the order is pronounced after being shown in the cause list with the title of the case and name of the counsel, the same will be deemed to have been communicated to the parties and they can obtain copy through e-mail or by filing an application for certified copy."

9. The eventual conclusion that was arrived at by the Court was that there is no escape from the conclusion that the appeal, in the said case, had been filed for more than 120 days from the date of communication of the tribunal's order and, therefore, as such the same could not be entertained.

10. In ***M/s. Suryachankra Power Corporation Ltd.*** (supra) the case at hand, the Court referred to the earlier decisions and also deliberated upon application of Section 14 of the Limitation Act relying on the pronouncement in ***M.P. Steel Corporation Ltd.*** *vs.* ***Commissioner of Central Excise***[5], and ruled that principles under Section 14 of the Act can be applied even when Section 5 of the Act is not applicable. In the said case, the Court has emphasised that Section 14 would be applicable when there is pursuing of a remedy with due diligence and good faith. We shall advert to the said facet at the later part of our deliberation.

11. In the instant case, as is noticeable, the judgment was reserved on 18.9.2007 and pronounced in open court on 28.9.2007. Therefore, the date of communication would be 28.9.2007 as per the principle laid down in ***Chhattisgarh***

5 (2015) 7 SCC 58

State Electricity Board (supra). We entirely concur with the said view. In the case at hand, the certified copy was applied through email on 9.10.2007 and delivered on the same date. Be that as it may, the date of communication is 28.9.2007 and, therefore, the appeal preferred under Section 125 of the Act should have been filed within 60 days, i.e., 27.11.2007, to come within the period of limitation and further to be entitled to get the benefit of Section 5 of the Limitation Act, he should have filed the appeal within a further period of 60 days, i.e., 26.9.2008. Thus calculated, there is total delay of 71 days and 11 days beyond the expiry of 60 days the limit that is stipulated under Section 125 of the Act.

12. At this juncture, a submission has been advanced by Mr. Agrawal that in such a situation, this Court must exercise its jurisdiction under Article 142 of the Constitution of India so that complete justice can be done. Article 142 of the Constitution reads as follows:-

> "**142. Enforcement of decrees and orders of Supreme Court and unless as to discovery, etc.--** (1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before

> it, and any decree so passed or orders so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.
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> (2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself."

13. In ***A.R. Antulay v. R.S. Nayak & another***[6], while explicating and elaborating the principles under Article 142, Sabyasachi Mukharji, J. (as His Lordship then was) opined thus:-

> "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 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

6 (1988) 2 SCC 602

> right. At page 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* (emphasis supplied). 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."

14. The said decision has been clarified by a Constitution Bench in ***Union Carbide Corporation etc.*** vs. ***Union of India etc. etc.***[7] wherein M.N. Vekatachaliah, J. (as His Lordship then was) speaking for the majority, ruled that:-

> "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 apex Court under Article 142(1) is unsound and erroneous. In both *Garg* as well as *Antulay cases* the point was one of violation of constitutional provisions and constitutional

7 1991 Supp.(1) SCR 251

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. Sri Sorabjee, learned Attorney General, referring to *Garg case*, 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 apex 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".
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> [Emphasis supplied]"

15. In this regard, another Constitution Bench in ***Supreme Court Bar Association*** vs. ***Union of India and Anr.***[8] opined:-

> "56. As a matter of fact, the observations on which emphasis has been placed by us from the *Union Carbide case*, *A.R. Antulay case* and *Delhi Judicial Service Assn. case* go to show that they do not strictly speaking come into any conflict with the observations of the majority made in *Prem Chand Garg case*. 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

8 (1998) 4 SCC 409

> say so in *Union Carbide case (supra)* either expressly or by implication and on the contrary it has been held that the Apex Court *will take note of the express provisions of any* substantive statutory law and regulate the exercise of its power and discretion accordingly. …
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> *[emphasis added]"*

16. From the aforesaid decisions, it is clear as crystal that the Constitution Bench in ***Supreme Court Bar Association*** (supra) has ruled that there is no conflict of opinion in ***Antulay's*** case or in ***Union Carbide Corporation's*** case with the principle set down in ***Prem Chand Garg & another*** vs. ***Excise Commr.***[9]. 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 Corporation's*** case. As the pronouncement in ***Chhattisgarh State Electricity Board*** (supra) lays down quite clearly that the policy behind the Act emphasizing on the constitution of a special adjudicatory forum, is meant to expeditiously decide the

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9 AIR 1963 SC 996

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.

17. We had stated earlier that we will be adverting to the passage in ***M/s. Suryachakra Power Corporation Ltd.*** (supra). There, the Court had referred to Section 14 of the Limitation Act. It fundamentally relied on ***M.P. Steel Corporation Ltd.*** (supra) wherein the Court after referring to certain authorities, analysed thus:-

> "....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."

The controversy in the case at hand has to be viewed regard being had to the ratio laid down in the aforesaid authority.

18. In the instant case, as is noticeable, the application for review was filed after expiry of 30 days. Learned counsel for the respondent would contend that for filing of review, no time limit is prescribed. *Per contra*, Ms. Ranjeeta Ramachandran has drawn our attention to Section 120F which confers the jurisdiction on the tribunal and sub-section (2) of Section 120 clearly prescribes that the tribunal for the purpose of discharging its functions under this Act can exercise the powers vested in a civil court under the Code of Civil Procedure, 1908 and that in the sub-section the review jurisdiction is included. The Review Application was presented before the tribunal on 10.01.2008. The main order as has been stated earlier was

passed on 28.9.2007. Thus, the application for review was filed after expiry of 60 days, that is to say, the limitation that is prescribed for filing of an appeal before this Court. In such a situation it cannot be said that there has been any kind of due diligence on the part of the appellant. Therefore, the observations made in paragraph 9 of ***M/s. Suryachakra Power Corporation Ltd.*** (supra) does not assist the respondent.

19. Another aspect needs to be adverted to. Mr. Agrawal submits that when the delay in review was condoned by this Court, the appellant should not be permitted to raise a preliminary objection. Suffice it to say, it is not an application under Section 5 of the Limitation Act which is to be entertained by the Court. We are singularly concerned with entertaining of an application for condonation. If the delay is statutorily not condonable, the delay cannot be condoned. There is no impediment to consider the preliminary objection at a later stage. That will be in consonance with the statutory provision. Needless to say, the order passed by this Court condoning the delay has to be ignored and we do so.

20. Thus analysed, we find immense force in the preliminary objection raised by the learned counsel for the 1st respondent and accepting the same, we are inclined to dismiss the appeal and accordingly it is so ordered. There shall be no order as to costs.

.....J.
(Dipak Misra)

.....J.
(A.M. Khanwilkar)

.....J.
(Mohan M. Shantanagoudar)

New Delhi;
March 1, 2017.