

SUPREME COURT OF INDIA

Saithalavi

Vs.

Kerala State Electricity Board

C.A.No.745 of 1998

(S.B.Majmudar and S.P.Kurdukar JJ.)

09.02.1998

ORDER

1. Leave granted.

2. We have heard learned counsel for the parties. The High Court in the impugned order has taken the view in the revision filed by the respondent-Electricity Board that the trial court had no jurisdiction to entertain the claim petition under Section 16 of the Indian Telegraph Act, 1885 (for short "the Act") beyond a period of three years. The award of the authority was dated 9-8-1983 while the application was filed in 1993 before the District Court under Section 16(3) of the Act. The High Court rightly held that the said application was beyond time of three years permissible under law as held by this Court in the case of Kerala SEB v. T.P. Kunhaliumma,; [1977]1SCR996 . However, learned counsel for the appellant vehemently contended that even when such an objection was raised in the grounds of objection before the trial court by the respondent, no such objection appeared to have been canvassed ultimately nor even such an issue was struck by the trial court. Be that as it may, the question of limitation in the facts of this case being a pure question of law would assume the character of an issue of jurisdiction. However, learned counsel for the appellant was right when he contended that even if three years' period is considered as the period of limitation for entertaining application under Section 16(3) of the Act, the appellant should have been given an opportunity for condonation of delay by making an application to that effect. Learned counsel for the respondent contended that no such application was ever filed before the trial court. However, having considered rival contentions of the parties, the appellant deserves to be given an opportunity and to demonstrate whether he was having sufficient cause for getting the delay condoned for filing application under Section 16(3) of the Act before the District Court. This opportunity has to be given for the simple reason that the issue of limitation was not placed before the trial court for consideration at all. Hence, no occasion arose for the appellant to pray for condonation of delay before the District Court. Consequently, without expressing any opinion on the merits of the controversy between the parties, the order passed by the High Court is set aside. Revision Petition No. 2203 of 1996F is restored to the file of the High Court permitting the appellant before us who will be respondent before the High Court to file appropriate application under Section 5 of the Limitation Act for condonation of delay in filing the original application beyond the period of three years. As and when such application is moved, it will be open to the respondent herein and the

appellant before the High Court to controvert the same and the High Court will consider the rival contentions and take appropriate decision about condonation of delay on the part of the appellant in filing application under Section 16(3) of the Act and to decide whether the delay on the part of the present appellant deserves to be condoned on his making out sufficient cause. It is obvious, if no sufficient cause is made out for condonation of delay in filing application under Section 16(3) of the Act, the revision application will stand allowed on the ground of unexplained delay. If the delay is condoned, revision will have to be decided on merits. This will of course be subject to further remedy available to either parties. The appeal is allowed. No costs.