

SUPREME COURT OF INDIA

Kalpataru Agroforest Enterprises

Vs.

Union of India

C.A.Nos.1901 to 1906 of 2002

(S. S. M. Quadri and R. P. Sethi JJ.)

05.03.2002

ORDER

1. Issue notice in S.L.P. (C). CC Nos. 1911 and 2228/2002. Mr. P. S. Narasimha, Advocate, on behalf of Ms. Anil Katiyar, Advocate, accepts notice for the Union of India.

2. Delay is condoned.

3. Leave is granted in all the S.LPs.

4. These five appeals arise out of the orders of the High Court of Madhya Pradesh at Jabalpur passed in different Misc. Appeals on October 30, 2000. The claimant before the Railway Claims Tribunal (for short 'the Tribunal') is the appellant.

5. The common question to be considered by us relates to maintainability of a review petition before the Tribunal against an appealable order passed by it.

6. To appreciate the issue involved it would suffice to refer to the facts in appeal arising out of S.L.P. (C) No. 4413/2001. The appellant transported bamboo chips through Indian Railways to different mills in India. It is alleged that higher freight was paid by it to the Railways on the basis of rationalisation of the fares on the ground that transportation would be by a longer route than the direct route. In fact for the transportation of goods a direct shorter route was adopted by the Railways. Accordingly, it made a claim for refund of Rs. 54,123/-, being the excess amount paid to the railways, by filing O.A. No. 391 of 1995 in the Tribunal under S. 16 of the *Railway Claims Tribunal Act, 1987* (hereinafter referred to as 'the Act'). The Tribunal dismissed the refund claim on December 10, 1997. The appellant filed a review petition against that order before the Tribunal. The review petition was dismissed on October 27, 1998. Dissatisfied with the order passed on the review petition, the appellant filed Misc. Appeal No. 160/99 in the High Court of Madhya Pradesh at Jabalpur under S. 23 of the Act. On October 30, 2000, the learned single Judge of the High Court, who decided the appeal, took the view that the review petition itself was not maintainable in view of R. 32

of the Railway Claims Tribunal (Procedure) Rules, 1989 (hereinafter referred to as 'the Rules') so no relief could be granted to the appellant against the order of the Tribunal passed on the review petition.

7. Mr. Vibhu Bakhru, the learned counsel for the appellant in all the appeals, contends that S. 18(3)(f) of the Act specifically provides that the Tribunal shall have the same power as are vested in a Civil Court under the Code of Civil Procedure in regard to reviewing of its decision, therefore, R. 32 is contrary to the Act as such the learned Judge ought not to have dismissed the appeal on the ground that the review petition was not maintainable. Mr. P. S. Narasimha, the learned counsel for the Union of India, contends that though R. 32 of the Rules appears to be in conflict with the statutory provision it was intended to confine the power of review to orders against which no appeal is provided under S. 23 of the Act.

8. To examine the rival contentions and to ascertain the scope of the power of the Claims Tribunal to entertain a review petition, it will be useful to refer to the relevant provisions of the Act and the Rules. The provision of the Act dealing with power of review of the Tribunal is Cl. (f) of sub-section (3) of S. 18 which reads as follows:-

"18. Procedure and powers of Claims Tribunal-

(1) The Claims Tribunal shall not be bound by the procedure laid down by the Code of *Civil Procedure, 1908* (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Claims Tribunal shall have powers to regulate its own procedure including the fixing of places and times of its enquiry.

(2) *** **

(3) The Claims 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) *** **

9. From the perusal of sub-section (1) of S. 18 it is evident that in deciding the claims, the Tribunal is not bound by the procedure laid down in Code of Civil Procedure (for short 'CPC'), but it shall be guided by the principles of natural justice and subject to other provisions of the Act and the rules it may regulate its own procedure including the fixation of places and time of its enquiry. However, sub-section (3) specifically provides that in respect of the matter enumerated in Cls. (a) to (i) the Tribunal shall have the same powers as are

reviewed. It follows that against the appealable orders of the Tribunal from which an appeal lies but no appeal is filed, the review petition is maintainable before the Tribunal. In the instant case, admittedly, no appeal was filed against the order in question though under S. 23 it is appealable, consequently the review petition is maintainable before the Tribunal.

13. It would be necessary to refer R. 32 of the Rules on which the High Court has placed reliance. It is in the following terms:-

"32. Review of decision- (1) Any person considering himself aggrieved by any order of the Tribunal from which no appeal is allowed and who 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 order made against him, may apply for review of a final order not being an interlocutory order, to the Tribunal."

14. This rule says that any person considering himself aggrieved by any order of the Tribunal from which no appeal is allowed and who 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 order made against him, may apply for review of a final order not being an interlocutory order, to the Tribunal.

15. It is thus apparent that R. 32 restricts the scope of power of review vested under S. 18(3)(f) of the Act to non-appealable orders and leaves out from its ambit orders which are appealable under S. 23 of the Act though such orders could be reviewed in view of S. 114 and R. 1 of O. XLVII of C.P.C. To the extent indicated above. Rule 32 runs counter to S. 18(3)(f) of the Act. As R. 32 is repugnant to the statutory provision of Cl. (f) of sub-section (3) of S. 18, it is certainly bad and in no case can it be allowed to override the specific provision of the Act. In this view of the matter, the High Court erred in not considering the appeal of the appellant on merits on the ground that the review petition was not maintainable under R. 32.

16. For these reasons, we set aside the orders under challenge in these appeals, restore the appeals to the file of the High Court and remit the cases to the High Court to decide them on merits in accordance with law.

17. The appeals are allowed in the above terms. No costs.
Appeals allowed.