

**SUPREME COURT OF INDIA**

Suryachakra Power Corporation Limited

Vs.

Electricity Department, Rep. By Its Superintending Engineer, Port Blair & Anr.

C.A.No.5958 of 2015

(Kurian Joseph and R.F.Nariman,JJ.,)

22.089.2016

**JUDGMENT**

**Kurian Joseph.J.,**

1. This appeal is filed under Section 125 of the Electricity Act, 2003. Interlocutory Application No. 1 of 2015 is for condonation of 161 days' delay in filing the appeal. The main ground in the application is that the delay occurred on account of the time taken by the appellant in prosecuting a review petition before the Appellate Tribunal for Electricity.

2. It is seen from the application for condonation of delay that the original order of the Appellate Tribunal was passed on 28.11.2014. A certified copy of the order was obtained on 17.12.2014. Review petition was filed on 25.02.2015 beyond the period of limitation of 30 days. We are informed that the Appellate Tribunal had condoned the delay and entertained the review petition.

3. Be that as it may, on 07.05.2015, the review petition was dismissed as withdrawn. According to the appellant and as stated in the application for condonation of delay before this Court, the review petition was withdrawn with a view to filing the present appeal before this Court. After the dismissal of the review petition on 07.05.2015, the present appeal is filed before this Court on 07.07.2015. It is stated in the application that the delay occurred on account of the summer vacations, and thus, there is a total delay of 161 days.

4. Section 125 of the Electricity Act, 2003 provides for appeals to the Supreme Court of India. The provision reads as follows:

"125. Appeal to Supreme Court.-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 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): 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. The appeal under Section 125 of the Electricity Act, 2003 in Supreme Court has to be filed within 60 days from the date of communication of the decision or order of the Appellate Tribunal. However, the Supreme Court, if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the said period of 60 days, may allow it to be filed within a further period not exceeding 60 days. Thus, the maximum period within which an appeal can be filed under Section 125 is 120 days which includes the discretion granted to the Supreme Court to condone the delay limited to 60 days. The Supreme Court cannot condone the delay beyond 60 days by invoking Section 5 of the Limitation Act, 1963 and ignoring the special limitation prescribed under the Electricity Act, 2003. This Court, in *Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission and others*<sup>1</sup>, at paragraph-32, has settled this issue:

"32. In view of the above discussion, we hold that Section 5 of the Limitation Act cannot be invoked by this Court for entertaining an appeal filed against the decision or order of the Tribunal beyond the period of 120 days specified in Section 125 of the Electricity Act and its proviso. Any interpretation of Section 125 of the Electricity Act which may attract the 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."

6. Learned Senior Counsel at this juncture prays that the application may be considered in terms of the principles under Section 14 of the Limitation Act, 1963. Section 14 of the Limitation Act, 1963 reads as follows:

"14. Exclusion of time of proceeding bona fide in court without jurisdiction.— (1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation

to a fresh suit instituted on permission granted by the court under rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature. Explanation. For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction."

7. That the principles under Section 14 of the Limitation Act, 1963 can be applied even when Section 5 of the Act is not applicable, is no more res integra, in view of *M.P. Steel Corporation v. Commissioner of Central Excise*<sup>2</sup>.

8. The two main ingredients required for attracting the principles under Section 14 of the Limitation Act, 1963 are that the party should be prosecuting another civil proceedings with due diligence and that the prosecution should be in good faith. It is not enough that one part is satisfied. Both due diligence and good faith must be established.

9. In the case before us, after obtaining the certified copy of the order on 17.12.2014, the review petition was filed only on 25.02.2015, delayed by 37 days. Even after withdrawal of the review petition on 07.05.2015, the appeal was filed before this Court only on 07.07.2015. This Court closed for summer vacations in the year 2015 only on 16.05.2015 and reopened on 01.07.2015. Thus, there were few days left, before the closing of the Court for summer vacations, for the appellant to file the appeal after withdrawal of the review petition. The appeal was filed only after a few days of the reopening of the Court on 01.07.2015. Therefore, the appellant is not entitled even to the benefit of the principles under Section 4 of the Limitation Act, 1963 for exclusion of the period when court is closed. Merely because the Tribunal condoned the delay in filing the review petition, for the purpose of application of Section 14 before this Court for exclusion of the period, in the facts of the present case, it cannot be said that there was due diligence. Under Section 2(h) of the Limitation Act, 1963, nothing shall be deemed to be done in good faith which is not done with due care and attention. The facts as narrated above would also show lack of good faith on the part of the appellant in conducting its case. Thus, the appellant having not prosecuted his case with due diligence and good faith is not entitled for the application of the principles under Section 14 of the Limitation Act, 1963.

10. By order dated 03.08.2015, it is seen that this Court had condoned the delay without noticing the bar under Section 125 of the Electricity Act, 2003 for condoning delay beyond 60 days after expiry of the limitation period. Therefore, the order dated 03.08.2015

condoning the delay of 161 days in filing the appeal is recalled. Since, the Supreme Court cannot condone the delay beyond 60 days under Section 125 of the Electricity Act, 2003, and in the facts of the present case, since the principles of Section 14 of the Limitation Act, 1963 are not attracted, Interlocutory Application No.1 of 2015 for condonation of delay is dismissed. Consequently, the appeal is also dismissed on the ground of delay.

11. There shall be no order as to costs.

<sup>1</sup>(2010) 5 SCC 0023

<sup>2</sup>(2015) INSC 0347