SUPREME COURT OF INDIA

Amina Bi Kaskar

Vs.

Union of India

C.A.No.4252 of 2018

(R.K.Agrawal and Abhay Manohar Sapre,JJ.,)

20.04.2018

JUDGMENT

Abhay Manohar Sapre,J.,

SLP(Civil)No.34261 of 2012

1. Leave granted.

2. These appeals have been filed against the final judgment and order dated 27.09.2012 passed by the High Court of Delhi at New Delhi in L.P.A. Nos.656 and 657 of 2011 whereby the Division Bench of the High Court dismissed the appeals filed by the appellants herein and upheld the order dated 14.07.2011 passed by the Single Judge in W.P. [C] 1426 & 1439/1999.

3. The issue involved in these appeals is short and it relates to the question as to whether the Tribunal was justified in dismissing the appellants' appeals as being barred by time and was justified in holding that there was no sufficient cause for condoning the delay in filing the appeals and secondly, whether the High Court was justified in upholding the order of the Tribunal.

4. Few relevant facts need to be mentioned to appreciate the short controversy.

5. An order was passed by the Competent Authority under Section 7 of the Smugglers and Foreign Exchange Manipulators (forfeiture of Property) Act, 1976 (hereinafter referred to as "SAFEMA") against the appellants on 14.07.1998 and 14.10.1998 in relation to their properties.

6. The appellants felt aggrieved of the aforementioned orders and filed appeals on 20.10.1998 under Section 12(4) of SAFEMA before the Appellate Tribunal for Forfeited Property, New Delhi (hereinafter referred to as "the Tribunal").

7. The limitation to file an appeal before the Tribunal is 45 days from the date of the service of the order as prescribed under SAFEMA. However, if the appeal is filed beyond the period of 45 days then on sufficient cause being shown, the Appellate Authority is empowered to condone the delay in filing the appeal only up to 60 days but not beyond the period of 60 days.

8. In this case, the appeals were filed beyond the period of 60 days, i.e., the appeals were filed on 81st day after the service of the order. The appellants, therefore, filed application for condonation of delay in the appeals alleging therein that there was a sufficient cause in filing the appeals beyond the period of limitation.

9. The Tribunal dismissed the appeals as being barred by time. In other words, the Tribunal was of the view that even, according to the appellants' own version mentioned in the appeals' memo, there was no sufficient cause made out for condoning the delay. It was also held that since the appeals were filed beyond 60 days, the Tribunal had no jurisdiction to condone such delay.

10. In other words, it was held that the power to condone the delay in filing the appeal is only when the appeal is filed beyond 45 days but not beyond 60 days. Since in this case, the appeals were filed on 81st day, the Tribunal had no jurisdiction to condone the delay beyond the period of 60th day. The Tribunal, therefore, did not find any apparent error to review their order in the absence of any power to review and further any error to rectify such order.

11. The appellants, felt aggrieved by the order of the Tribunal, filed writ petition under Article 226/227 of the Constitution before the High Court. By order dated 14.07.2011/27.07.2011, Single Judge of the High Court dismissed the petitions.

12. Against the order of the Single Judge, the appellants filed intra court appeals. By impugned judgment, the Division Bench of the High Court dismissed the appeals and affirmed the order passed by the Single Judge which has given rise to filing of the present appeals by way of special leave in this Court.

13. Heard Dr. Rajeev Dhavan, learned senior counsel for the appellants and Mr. K. Radhakrishnan, learned senior counsel for the respondents.

14. Having heard the learned counsel for the parties at length and on perusal of the record of the case, we find no merit in the appeals.

15. In our opinion, when even according to the appellants, the orders impugned in the appeals before the Tribunal were served on them on 29/30th July 1998, then in such event, the question as to the manner in which the service was effected and whether it was in accordance with the procedure prescribed under Section 22 of SAFEMA has no significance and really does not arise for consideration.

16. We, however, consider it apposite to reproduce Para 3 of the impugned judgment for perusal:

> "Some facts would be necessary to decide these appeals. The competent authority under SAFEMA passed an order dated 14.07.1998 for forfeiture of several properties under Section 7 of SAFEMA. The common appeal filed on behalf of the appellants was beyond the period of 60 days from the passing of the order dated14.07.1998 by the competent authority. We may point out, at this stage, that the appellants had admitted in their said appeal before the Tribunal that the order dated 14.07.1998 was served upon them on 29/30th July, 1998. This admission has clearly been made in paragraph 3 as well as paragraph 8 of the appeal. The clear admission was to the following effect: 'that the said order dated 14.07.1998 was received by the appellant sometime around 29-30th of July, 1998'. A condonation of delay application was also filed alongwith the said appeal before the said Tribunal. Paragraph 4 of the said condonation of delay application reads as under:
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> "The impugned order dated 14.07.1998, was served on the appellant on 29/30th July, 1998, and the appellant should have preferred an appeal within 45 days therefrom. The appellants are illiterate and paradanashini widows and the appellant No. 1 has the duty of bringing up for minor children and an ailing aged mother who is appellant No. 2 in addition to other social obligations."

17. In the light of the aforementioned finding of fact recorded by the Tribunal and affirmed by the High Court, we do not consider it necessary to examine the question though vehemently argued by Dr. Rajeev Dhavan, learned senior counsel for the appellants, namely, whether in a given case service of the order on the appellants' lawyer is proper or not and whether the service on the appellants' minor daughter was in accordance with the procedure prescribed under Section 22 of SAFEMA or not.

18. If the appellants had the knowledge of the order passed against them and which they admit to have as per their own admission mentioned above, pursuant to which they filed appeals, then in our opinion, so called irregularity in the manner of effecting the service of the order on them etc. was of no consequence and cannot be termed as illegal per se (if found to exist though denied by the Revenue).

19. In the light of the foregoing discussion, the decisions cited by learned senior counsel in *Kuntesh Gupta Dr.(Smt.) vs. Management of Hindu Kanya Mahavidyalaya, Sitapur(U.P.) & Ors*[1]*., Yakub Abdul Razak Memon vs. Competent Authority*[2]*, Chingleput Bottlers vs. Majestic Bottling Co.*[3]*, and Attorney General For India & Ors. vs. Amartlal Prajivandas & Ors*[4]*.,* are distinguishable on facts.

20. In view of the foregoing discussion, we are of the considered view that the Tribunal, Single Judge and Division Bench of the High Court were right in dismissing the appeals as being barred by limitation holding that there was no sufficient cause in filing the appeals

beyond the period of limitation and that the Tribunal did not have power to condone the delay beyond 60 days.

21. This being a finding of fact in a given case and apart from it, neither being illegal and nor perverse, we do not find any good ground to interfere in such finding and accordingly uphold the same.

22. The appeals thus fail and are accordingly dismissed.

Judgment Referred.

1(1987) 4 SCC 0525
[2](1997) 11 SCC 0421
[3]AIR 1984 SC1030
[4](1994) 5 SCC 0054