KERALA HIGH COURT

Erala State Electricity Board

Vs

Illippadical Parvathi Amma

(Ansari, C.J.)

27.09.1973

JUDGEMENT

Ansari, C.J

- (1.) THIS Civil Revision Petition has been referred to the Division Bench, as it raises a question of limitation under Article 137 of the Limitation Act, 1963. In respect of telegraph lines taken by the petitioner, the Kerala State Electricity Board, over the property of the respondent, a sum of Rs. 1708-55 was paid on 30-4-68 as compensation for the damages caused, under Section 10 (d) of the Indian telegraph Act, 1885 read with Section 51 of the Indian Electricity Act. The respondent applied on 11-6-71 to the District Judge, claiming enhanced compensation. This was under Section 16 (3) of the Telegraph Act which provides that any dispute concerning the sufficiency of the compensation to be paid under section 10 (d) shall, on application for that purpose, by either of the disputing parties, to the District Judge within whose jurisdiction the property is situate, be determined by him. Objection was raised that the application having been filed more than three years from the payment of the amount, was barred by limitation under Article 137 of the Limitation Act, 1963 which reads: "137. Any other application for which no Three When the right to period of limitation is provided years. apply accrues. " elsewhere in this Division. The objection was disallowed by the District Judge by the order sought to be revised.

(2.) IT was conceded before us that the District Judge acting under S. 16 (3) of the telegraph Act, acts as a Court. To that effect is also the decision of Viswanatha iyer. J. in C. R. Ps. 732 of 1972 Article 181 of the Indian Limitation Act, 1908 is the pre-cursor of Article 137 of th3 1963 Act. That Article read: "applications for which no Three When the period of limitation is years. right to apply provided elsewhere in this accrues. " schedule or by section 48 of the Code of Civil procedure, 1908. With respect to this Article, there was a fair consensus of judicial opinion that it contemplated only to applications made under the Civil Procedure Code to a court. This is referred to. although the point was not decided by the Privy Council in hansraj Gupta v. Official Liquidator Dehra Dun Mussoorie Electric Tramway Co. (AIR 1933 PC 63). The reason for this view was that all the applications provided under the Third Division of the First Schedule of the

1908 Act, viz. from Articles 158 to 183 dealt with applications under the Civil Procedure Code and, there fore, on the principle of ejusdem generis, Article 181 should also have a similar content and bear a similar interpretation. In 1940, after the passing of the Indian arbitration Act of that year, Articles 158 and 178 were amended providing for periods of limitation even in respect of applications under the Arbitration Act, 1940. Consequent on the amendments so introduced, it was felt that the reason for giving a restricted content to Article 181 of the Act was no longer available. The argument was advanced before the Supreme Court in *Sha Mulchand and Co. Ltd. v. Jawahar Mills Ltd*[1]. and was dealt with thus: "it does not appear to us quite convincing, without further argument, that the mere amendment of Articles 158 and -178 can 'ipso facto' alter the meaning which, as a result of a long series of judicial decisions of the different High Courts in India, came to be attached to the language used in Article 181. This long catena of decisions may well be said to have, as it were, added the words "under the Code" in the first column of that article. If those words had actually been used in that column then a subsequent amendment of Articles 158 and 178 certainly would not have affected the meaning of that Article. If, however, as a result of judicial construction, those words have come to be read into the first column as if those words actually occurred therein, We are not of opinion, as at present advised, that the subsequent amendment of Articles 158 and 178 must necessarily and automatically have the effect of altering the long acquired meaning of Article 181 on the sole and simple ground that after the amendment the reason on which the old construction was founded is no longer available. " no final opinion was, however, expressed by the Court, as it was found that even if Article 181 was attracted, the application was still within time. In *Bombay Gas co. Ltd. v. Gopal Bhiva*[2] the Supreme Court stated that it is well settled that Article 18l applied only to applications made under the Civil Procedure code. Next, we shall refer to *Prativa Bose v. Rupendra Deb*[3], The argument that Article 181 is not restricted only to applications under the Code of Civil Procedure and the principle of ejusdem generis cannot avail after the amendment to Articles 158 and 178 in 1940 was again repeated before the supreme Court. This was rejected after noticing the observations of the Supreme court in (AIR 1953 SC 98). extracted supra, recording agreement with the same, and stating that their Lordships felt no doubt that even now Article 181 has to be read as confined to applications under the Code. In this case, therefore, the supreme Court expressed a categoric and definite opinion that even after the amendments to Articles 158 and 178 of the Limitation Act, the content of Article i8l as judicially inter-preted that it applies only to applications under the Code remained unshaken. In *Wazir Chand v. Union of India*[4] the argument was again advanced before the Supreme Court and was dealt with thus: "the reason which persuaded the Courts to hold that the expression "under the Code" was deemed added to Article 181 has now disappeared, but on that account the expression "applications for which no period of limitation is provided elsewhere in this Schedule" in Article 181, cannot be given a connotation different from the one which prevailed for nearly 60 years before 1940". Next in sequence comes the decision in *Mohd. Usman v. Union of India*[5]. The question there was whether an application under Section 8 or 20 of the Arbitration Act is not governed by Article 181 of the Indian. Limitation Act, 1908. It was held that it was not. The court observed: "in amending Articles 158 and 178 the legislature acted upon the view that the references to the

Code of Civil Procedure, 1908 in the second schedule to the Limitation Act could not in the absence of the amendment be construed as references to the Arbitration Act, 1940. At the sane time the legislature refrained from amending Article 181 and providing that the Article will apply to other applications under the arbitration Act, 1940. It is manifest that the legislature intended that save as provided in Articles 158 and 178 there would not be any limitation for other applications under the Act. Take the case of an application under Section 28 of the Act for enlargement of the time for making the award. A similar application under paragraph 8 of the second schedule to the Code was governed by Article 181 but a like application under Section 12 of the Indian Arbitration Act, 1899 was not subject to any period of limitation. There is nothing to indicate that for the purpose of limitation Section 20 of the new Act should be regarded as a reenactment of the corresponding provision of the Code and not of the indian Arbitration Act. 1899. An application under Section 8 of the new act corresponding to paragraph 5 of the second schedule to the Code and Section 8 of the Indian Arbitration Act, 1899 stand on the same footing. In the circumstances, it is not possible to construe the implied reference in Article 181 to the Code of Civil Procedure as a reference to the Arbitration Act, 1940, or to hold that Article 181 applies to applications under that Act. The rule of construction given in Section 8 (1) of the General Clauses Act cannot be applied, as it appears that the legislature had a different, intention. It, follows that an application under sections 8 and 20 of the Arbitration Act, 1940 is not governed by Article 181" *Athani Municipality v. Labour Court, Hubli*[6] was a pronouncement under the Limitation Act. 1963. It was ruled that Article 137 of the schedule of the 1963 Act does not apply to applications under Section 33 (C1 (21 of the Industrial Disputes Act. The two grounds for the decision were that the article applies only to courts, and that it applies only to applications under the Civil procedure Code. It was pointed out that in considering the scope of the parallel provision contained in Article 181 of the 1908 Act, it has been held by the supreme Court that a long catena of decisions had confined the Article to applications under the Civil Procedure Code; and there was no reason to hold that the subsequent amendments to Articles 158 and 178 of the Act had the effect of altering the long acquired meaning of Article 181 on the sole and simple ground that after the amendment, the reason on which the old construction was found was no longer available. It was further held that the view expressed by the Court must be held to be applicable even when considering the scope and applicability of article 137 of the new Limitation Act. This is a direct pronouncement in regard to article 137 of the 1963 Act. The pronouncement took note of the fact that under the 1963 Act, limitation had been prescribed not only in regard to applications under the Arbitration Act, but in two cases, even in respect of applications under the Code of Criminal Procedure. It was then observed: "we think that, on the same principle, it must be held that even the further alteration made in the articles contained in the third division of the schedule to the new Limitation Act containing references to applications under the Code of Criminal Procedure cannot be held to have materially altered the scope of the residuary Article 137 which deals with other applications. It is not possible to hold that the intention of the legislature was to drastically alter the scope of this article so as to include within it all applications, irrespective of the fact whether they had any reference to the Code of Civil Procedure". We think this decision should conclude the point against the petitioner. In *Nityanand*

v. L. I. C. of India[7] the question that arose was again, whether an application under Section 33 (C) (2) of the Industrial Disputes act was governed by the period of limitation under Article 137 of 1963 Act. The supreme Court noticed the two reasons given in its earlier pronouncement in (AIR. 1969 SC 1335) to hold that the Article would not be attracted, viz. , first that irrespective of the legislative changes introduced in the 1963 Act, no drastic change was intended in the scope of Article 137 vis-a-vis its predecessor Article 181, so as to comprehend all applications whether under the Civil Procedure Code or not; and second that it is only applications to courts that are intended to be covered by Article 137 of the 1963 Act. The Supreme Court, on this occasion, endorsed the second of these reasons and on that ground, sustained the conclusion of the Bombay High Court that the application in question was not governed by Article 137. Dealing with the first ground, the court observed: "it is not necessary to express our views on the first ground given by this Court in Civil Appeals Nos 170 to 173 of 1968, D/- 20-3-1969 = (AIR 1969 SC 1335). It seems to us that it may require serious consideration whether applications to courts under other provisions, apart from Civil Procedure Code, are included within Article 137 of the limitation Act, 1963, or not" . Counsel for the petitioner stressed the above passage and contended that the question as to whether applications other than those under the Code are covered by Article 137 or not would require serious re-examination. We are afraid, this can only be by the Supreme Court and not by us. The matter has been concluded by the Supreme Court decision in (AIR 1969 SC 1335) not to refer to the earlier decisions under Article 181. In the light of the said decision, which is binding on us, till the position is reviewed by the Supreme Court, it must be held that Article 137 applies only to applications under the Civil Procedure Code.

(3.) IN the face of the decisions of the Supreme Court, it is unnecessary for us to deal with the decisions of the High Courts. Counsel for the petitioner drew our attention to Amarnath v. Union of India, (AIR 1957 All 206) where it was held that article 181 applies also to applications under the Arbitration. Act, and that after the amendments effected in 1940 to Articles 158 and 178. the view that Article 181 applies only to applications under the Code of Civil Procedure, is no longer tenable. The decision refers to a decision of the Punjab High Court in *Union of india v. Firm Kiroo Mal* [8]and of the Calcutta High Court in *shah and Co. v. Ishar Singh Kirpal Singh and Co*[9]. in support of this view. It does not, however, refer to the decision of the Supreme Court in (AIR 1953 SC 98). (The other decisions of the Supreme Court to which we have referred, were subsequent to the ruling). The decision of the Calcutta High Court in (AIR 1954 Cal 164) was by S. R. Das Gupta, J. The learned Judge delivered the judgment in a later Division Bench ruling in *Kalinath v. Nagendra Nath*[10] There the learned Judge stated that the previous decision in (AIR 1954 cal 164) was decided without reference to AIR 1953 SC 98. We think it unnecessary to refer in detail to the other decisions of the High Courts in view of the clear pronouncements of the Supreme Court noticed earlier. Counsel for the petitioner contended that by reason of Section 141 of the Code of Civil Procedure, the application must be deemed to be one under the Civil procedure Code. The contention is directly answered by the decision in (AIR 1965 sc 540) where it is observed: "it was then said that the application which the respondent Rupendra made was

under the Code because in view of Section 141 of the Code the procedure prescribed by the Code has to be followed in dealing with an application made under Section 4 of the Regulation. This is obviously fallacious. The question is not whether the procedure for an application is that prescribed by the Code but whether the application was under code. The application by the respondent Rupendra was not under the code in any sense. " ;

Cases Referred.

1(AIR 1953 SC 98)
2(AIR 1964 SC 752)
3(AIR 1965 SC 540)
4(AIR 1967 SC 990)
5(AIR 1969 sc 474)
6(AIR 1969 SC 1335)
7(AIR 1970 SC 209)
8(AIR 1952 Punj 423)
9(AIR 1954 Cal 164)
10(AIR 1959 cal 81)