

**NATIONAL GREEN TRIBUNAL  
WESTERN ZONE BENCH, PUNE**

**ORIGINAL APPLICATION NO. 76/2022**

BETWEEN

**Irba Mashnaji Konapure & Ors ..... Applicant**

VERSUS

**Union of India through ..... Respondents  
Secretary MoEFCC & Ors.**

**COMPILATION OF ORDERS AND JUDGEMNTS BY  
RESPONDENT NO. 11  
SEVEN ELEVEN HOTELS PRIVATE LIMITED.**

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Date: **22/03/2023**  
Place: **Thane**  
FILED BY:



**Adv. Raghunath Mahabal**

**BEFORE THE NATIONAL GREEN TRIBUNAL  
WESTERN ZONE BENCH, PUNE****Ax.A**

(By Video Conferencing)

Original Application No. 63/2019(WZ)  
(I.A. No. 100/2019 & I.A. No. 86/2021)

Mr. Ajay Jayvantrao Bhosale

.....Applicant

Versus

Union of India through MoEF&amp;CC &amp; Ors.

....Respondent(s)

Date of hearing: 01.12.2022

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER  
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicant : Mr. Nitin Lonkar, Advocate  
Respondent(s) : Ms. Manasi Joshi, Advocate for R-1, 6 & 7  
Mr. Aniruddha Kulkarni, Advocate for R-3 to 5  
Mr. S. Swaminathan, Advocate for R-8 & 9/PCMC  
Mr. Saket Mone along-with Mr. Abhishek Salian,  
Advocates for R-11/PP

**ORDER**

1. Today this matter is listed on the issue of limitation against which objection has been filed by the learned Counsel for the Applicant.

2. Heard the arguments of learned Counsel for the Applicant Mr. Nitin Lonkar and learned Counsel for Respondent No. 11/Project Proponent-Mr. Saket Mone along-with learned Counsel Mr. Abhishek Salian.

**I.A. No. 86/2021(WZ)**

3. This I.A. has been filed by the Respondent No. 11/Project Proponent (PP), praying for dismissal of the Original Application No. 63/2019(WZ). The main ground which has been set up in this application is that Original Application is time barred, therefore, it requires to be dismissed at the threshold itself. The core issue raised by the Applicant is

that the Respondent No. 11 did not obtain prior Environmental Clearance (EC) with respect to the project in question.

4. As per the Project Proponent (PP), he commenced the construction and excavation in the year, 2012, therefore, the cause of action in respect of the alleged construction first arose in the year, 2012 which is well over 07 years from the date of the filing of the present Original Application.

5. The Sections 14 and 15 of the National Green Tribunal Act, 2010 provide for 06 months from the date when the cause of action first arose within which the Original Application ought to have filed. Therefore, if the 06 months period is calculated from the year 2012, it would expire in the year 2013 and as regards Section 15, it provides for 05 years period from the date of cause of action first arose, which too would expire in the year, 2017, while the Original Application has been filed on 14.08.2019.

6. The learned Counsel for the Respondent No. 11 has drawn our attention to para no. 40 of the main petition, where-in it is stated by the Applicant that the Project Proponent carried out illegal construction on 0 sq. mtrs. to 18500 sq. mtrs. vide sanction dated 24.11.2016.

7. As per the Applicant in O.A., the Project Proponent had intention to go on beyond 36,500 sq. mtrs. vide sanction dated 31.03.2018. The civil construction activity is recurring process. The Project Proponent/Respondent No. 11 has increased the project capacity from 0 sq. mtrs to 18500 sq. mtrs. from 2011 to 19.05.2018, therefore, it is nothing but a recurring cause of action for building construction activity.

8. The Applicant in Original Application had obtained information through online search and under RTI Act from 2017 to 18.05.2018 and thereafter had sent legal notice through Counsel to the Respondents inviting their attention towards the violations committed by the Project

Proponent. Therefore, the cause of action first arose on 15.06.2019 when SEIAA issued a Show Cause Notice to the Project Proponent.

9. Therefore, 06 months period from 15.06.2019 should be counted, which would end on 14.12.2019, while the present application has been filed on 14.08.2019, therefore, it is within time.

10. As per Respondent No. 11/Project Proponent (PP), the above contention of the Applicant in Original Application is absolutely false because the Applicant is trying to establish the date 19.05.2019 as the date, when the first cause of action arose on the basis of his having obtained information under RTI. It is further argued by the learned Counsel for the Respondent No. 11 that any person may move an RTI application on a particular date of his choice in order to create cause of action so as to bring it within the period of limitation in order to initiate legal proceedings, which cannot be allowed to happen because that is not the intent of law.

11. The learned Counsel for the Respondent No. 11 has placed reliance of the Judgment *Jai Javan Jai Kisan and ors. v. Vidarbha Cricket Association and Ors.* [MANU/GT/0006/2017], where-in relevant para no. 11 is as follows:-

*“11. Conjoint reading of Section 14 and 15 of the National Green Tribunal Act reveals that essentially any application moved for claiming reliefs there-under must necessarily present a Civil case wherein substantial question relating to environment or environmental damage arising under the enactments specified in the Schedule-I of the Act (including accident occurring while handling any hazardous substance) is involved. We are, therefore, of the considered opinion that it is the substantial question relating to the environment or environmental damage as aforesaid which gives rise to the cause for an action under the provisions of National Green Tribunal Act, 2010. In the present case, the question raised is about restoration of the environmental damage on account of injury to it as a result of raising VCA Stadium without EC or consent to operate under the provisions of Schedule-I Acts viz Environment (Protection) Act, 1986, the Air (Prevention and*

*Control of Pollution) Act 1981 and Water (Prevention and Control of Pollution) Act 1974. As stated herein above, the causes of injury are insufficiency of Effluent Treatment Plant (ETP), open spaces, parking spaces and tree cover. These facts were very much manifest when the VCA stadium became functional in the year 2008. In our opinion, therefore, the cause of action for the present Application arose first when the VCA stadium became functional. There is nothing in the Application to state that these injuries stood compounded further to actuate the Applicants to initiate the action in the present case as framed.”*

12. Thereafter, the learned Counsel for the Respondent No. 11 has placed reliance on *Graminee Environment Development Foundation v. Balaji Infrastructure Ltd. & Ors.* [(2017) SCC Online NGT 1098], where-in relevant para nos. 11 to 13 are as follows:-

**“11.** *Section 15 (3) of the NGT Act, 2010 in clear terms requires the Application for restitution of the property damaged to be made within the period of five (5) years from the date on which cause for such relief first arose, and provides for discretion to the Tribunal to condone delay for ‘sufficient cause’ if the application is filed within further period of sixty (60) days and no further. In the present case, the Applicant avers that the cause of action first arose on 24.2.2015, when the letter was addressed by the Member Secretary, Maharashtra Coastal Zone Management Authority (MCZMA) to the Collector, Raigad to take action in respect of the grievance made by the Applicant and yet no action was taken by the authorities. The Applicant has further revealed in her Application that she has been making several complaints to the Authorities about the said grievance, first such complaint being made on 15.9.2014 to the Divisional Commissioner, Konkan Division, Navi Mumbai. Reading of the letter dated 24.2.2015, Annexure ‘I to the Application (Pg.81) reveals the nature of grievance made by the Applicant. In short, the Applicant was aggrieved by the alleged illegal blasting work, storage of minerals and reclamation by Dighi Port Ltd. Similarly, the grievance made with complaint dated 15.9.2014 is regarding alleged illegal work of reclamation of seashore and filling rocks at village Nanavali and intertidal land encroachment without EC by Dighi Port Ltd, and Balaji Infrastructure Ltd.*

**12.** *In our considered opinion, making of grievance of the kind in the present case by writing a letter cannot be constituted as ‘cause of action’ but the actual act or its consequence constitutes ‘cause of action’ in any case. In the present case, cause of action has arisen as a result of blasting work as well as dumping of rocks etc. by Dighi Port Ltd and its holding Company Balaji Infrastructure Ltd in the said land.*

**13.** *A perusal of the Application gives some clue as to when such acts of blasting of hills and dumping of material excavated started. The Applicant has pleaded in her Application that Respondent No.1 encroached upon 3km of seashore of village Nanavali and without permission of any Govt. Authority dumped soil and rocks there. It is further pleaded that Respondent No.1 has been doing illegal activities of levelling, blasting, excavation of land, filling of land space with soil, dumping huge rocks and artificial land spaces without any permission; and in spite of such illegalities going on, Respondent Nos. 2 to 7- Govt. Authorities did nothing. The Applicant in her pleadings referred to EC granted in the name of Dighi Port Ltd on 30th September, 2005 for construction of Port at village Dighi, Taluka Shrivardhan, District Raigad and states that she does not challenge or dispute anything about such EC or any work at Dighi Port and her only grievance is that Respondent No.1 has encroached upon the property and extended various kinds of constructions beyond consented area. These facts as pleaded if read in conjunction with the plaint in Regular Civil Suit No.4 of 2009 filed by the Applicant in the Court of Civil Judge, Junior Division, Shrivardhan, do make sense as to when alleged activity had started. At para-7 of the said plaint, the Applicant has categorically stated that on 26.12.2008 the defendant (therein) i.e. Dighi Port Ltd came at the land adjacent to the house of the Applicant in order to make encroachment and reclaimed the land, and this highhanded activity of Dighi Port Ltd was resisted by the Applicant with objection that they cannot reclaim land by blasting the hills and dumping rocks at the said land. A clear fact emerges that the act of blasting the hill sides, dumping materials illegally and reclamation of land, first started in or about December, 2008. Thus, cause of action for the present Application clearly arose in or about December, 2008.”*

13. Based on the above provisions of law, it is vehemently argued by the learned Counsel for the Respondent No. 11/Project Proponent that the present application is time barred and needs to be dismissed on that ground alone.

14. During argument, the learned Counsel for the Applicant in Original Application has pointed out that he is relying on para no. 18.25 & 18.26 of the reply affidavit dated 26.10.2021, mentioned at page nos. 981 to 986 of the paper book, which are as follows:-

**“18.25.** *I state that, this Hon-ble Tribunal in the matter of "Forward Foundation, A Charitable Trust and Ors. Vs. State of Karnataka and Ors. (OA No. 222/2014) Judgment dated*

7<sup>th</sup> May, 2015”, reported in 2015 SCC Online NGT 5 in dealing with the issue of limitation and cause of action has specifically held as follows-

“24. The expression 'cause of action' as normally understood in civil jurisprudence has to be examined with some distinction, while construing it in relation to the provisions of the NGT Act. Such 'cause of action' should essentially have nexus with the matters relating to environment. It should raise a substantial question of environment relating to the implementation of the statutes specified in Schedule I of the NGT Act. A 'cause of action' might arise during the chain of events, in establishment of a project but would not be construed as a 'cause of action' under the provisions of the Section 14 of the NGT Act, 2010 unless it has a direct nexus to environment or it gives rise to a substantial environmental dispute. For example, acquisition of land simplicitor or issuance of notification under the provisions of the land acquisition laws, would not be an event that would trigger the period of limitation under the provisions of the NGT Act, 'being cause of action first arose'. A dispute giving rise to a 'cause of action' must essentially be an environmental dispute and should relate to either one or more of the Acts stated in Schedule I to the NGT Act, 2010. If such dispute leading to 'cause of action' is alien to the question of environment or does not raise substantial question relating of environment, it would be incapable of triggering prescribed period of limitation under the NGT Act, 2010. [Ref Liverpool and London S.P. and I Asson. Ltd: v. M.V. Sea Success I and Anr., (2004) 9 SCC 512, J. Mehta v. Union of India, 2013 ALL (I) NGT REPORTER (2) Delhi, 106, Kehar Singh v. State of Haryana, 2013 ALL (I) NGT REPORTER (DELHI) 556, Goa Foundation v. Union of India, 2013 ALL (I) NGT REPORTER DELHI 234].

25. In contradistinction to 'cause of action first arose', there could be 'continuing cause of action', 'recurring cause of action' or 'successive cause of action'. These diverse connotations with reference to cause of action are not synonymous. They certainly have a distinct and different meaning in law, 'Cause of action first arose' would refer to a definite point of time when requisite ingredients constituting that 'cause of action' were complete, providing applicant right to invoke the jurisdiction of the Court or the Tribunal. The Right to Sue' or 'right to take action' would be subsequent to an accrual of such right. The concept of continuing wrong which would be the foundation of continuous cause of action has been accepted by the Hon'ble Supreme Court in the case of Bal Krishna Savalram Pujari & Ors. v. Sh. Dayaneshwar Maharaj Sansthan & Ors., AIR 1959 SC 798.

**18.26** Further I state that, the **Forward Foundation** Judgment was challenged before the Hon'ble Supreme Court in the matter of **Mantri Technoze Pvt. Ltd. Vs. Forward Foundation, Civil Appeal No. 5016/2016 reported in (2019) 18 SCC 494** has specifically held vide judgment dated 5<sup>th</sup> March, 2019 and has confirmed the said judgment

of Forward Foundation and even the Review petition of the same has been dismissed vide order dated 06/08/2019 and has thus become final and binding.

*"In fact, in the original application before the Tribunal there was no mention of the provision under which it was being filed. It is well settled principal of law that non-mention of or erroneous mention of the provision of law would not be of any relevance, if the Court had the requisite jurisdiction to pass an order. It would be mere irregularity and would not vitiate the application or the judicial order of the Tribunal"*

*The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See Kishore Lal v. Chairman, Employees' State Insurance Corpn. (2007) 4 SCC 579, para 17). The existence of the Tribunal without its broad restorative powers under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with Experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment"*

*"The Tribunal has also jurisdiction under Section 15(1)(a) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, under Section 15(1)(b) and 15(1)(c) the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment."*

*"Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment."*

15. The Applicant in Original Application has also placed reliance upon the important dates and events, which have been quoted by him in para

14 of the reply affidavit, mentioned at page nos. 926 to 928 of the paper book, which are as follows:-

**“14. IMPORTANT DATES AND EVENTS:**

*I state that, the following events and dates are very important to understand the collusion between the Government Authorities and Respondent No. 11-PP and tactics, favouring practices adopted by the Joint Committee Members and Respondent No. 11-PP;*

Sr. No.	Events	Date
1.	<u>1<sup>st</sup> Application for EC</u>	<u>07.09.2013</u>
2.	<u>1<sup>st</sup> Show Cause Notice by SEIAA &amp; PS- DoE</u>	<u>30.08.2014</u>
3.	<u>1<sup>st</sup> Withdrawal Communication for SCN</u>	<u>10.03.2015</u>
4.	<u>1<sup>st</sup> Consent to Establish</u>	<u>10.03.2015</u>
5.	<u>2<sup>nd</sup> Application for EC</u>	<u>30.06.2016</u>
6.	<u>2<sup>nd</sup> Consent to Establish</u>	<u>12.10.2017</u>
7.	<u>3<sup>rd</sup> Application for EC</u>	<u>06.10.2018</u>
8.	<u>Notice/ Complaint of Original Applicant</u>	<u>19.05.2019</u>
9.	<u>MPCB 1<sup>st</sup> Site Visit by Field Officer</u>	<u>10.06.2019</u>
10.	<u>2<sup>nd</sup> Show Cause Notice by SEIAA &amp; PS- DoE</u>	<u>15.06.2019</u>
11.	<u>MPCB 2<sup>nd</sup> Site Visit by SRO-2</u>	<u>27.06.2019</u>
12.	<u>Filing of OA</u>	<u>14.08.2019</u>
13.	<u>First Order of NGT</u>	<u>22.10.2019</u>
14.	<u>Service to Joint Committee of SEIAA &amp; MPCB</u>	<u>02.11.2019</u>
15.	<u>Personal hearing given to PP by PS-DoE</u>	<u>11.11.2019</u>
16.	<u>2<sup>nd</sup> Withdrawal Communication for SCN</u>	<u>16.11.2019</u>
17.	<u>Second Order of NGT</u>	<u>10.12.2019</u>
18.	<u>Joint Committee Visit to project site</u>	<u>15.12.2019</u>
19.	<u>Architect Certificates prepared on</u>	<u>20.12.2019</u>
20.	<u>Joint Committee Report filed to NGT</u>	<u>07.01.2020</u>
21.	<u>Third Order of NGT issuing Notice 86 Show cause to PP</u>	<u>05.02.2020</u>
22.	<u>Service to the Respondent No. 11-PP</u>	<u>15.02.2020</u>
23.	<u>Grant of ex-post facto EC</u>	<u>18.02.2020</u>
24.	<u>Appeal No. 26/2020 filed on</u>	<u>19.03.2020</u>
25.	<u>Fourth Order of NGT</u>	<u>13.07.2020</u>
26.	<u>Respondent No. 11-PP Reply Affidavit Sworn on</u>	<u>24.09.2020</u>
27.	<u>Respondent No. 11-PP filed</u>	<u>24.09.2020</u>
28.	<u>Fifth Order of NGT</u>	<u>03.09.2021</u>
29.	<u>Respondent No. 11-PP filed 86/2020 filed on</u>	<u>06.10.2021</u>
30.	<u>Respondent No. 11-PP Corrected Reply Affidavit served on Original</u>	<u>09.10.2021</u>

16. He has argued that in this case, there is recurring cause of action and therefore, the date which has stated in his application i.e. 15.06.2019, when the SEIAA issued a Show Cause Notice to the Project Proponent, should be treated to be the date of cause of action.

17. We have heard the arguments of the parties and perused the record and also have gone through the Judgments, which have been relied upon by both the parties, we find that as far as legal position is concerned, Sections 14 & 15 of the National Green Tribunal Act, 2010 provide as follows:-

*“Section 14:- Tribunal to settle disputes.-*

- (1) .....*
- (2) .....*
- (3) No application for adjudication of dispute under this Section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:*

*Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.”*

*Section 15:- Relief, compensation and restitution –*

- (1) .....*
- (2) .....*
- (3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:*

*Provided that the Tribunal, may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.”*

18. According to the Applicant in Original Application, as per his own pleadings which are stated in para no. 40, it is clear that construction of the project by the Project Proponent was started in the year 2011 and continued till 19.05.2018. He states that he had obtained information

through online search and under RTI from 2017 to 18.05.2018. Thereafter, he had sent legal notice through Counsel on 19.05.2019. According to him, the SEIAA had issued first Show Cause Notice on 15.06.2019. Therefore, that date should be taken to be the date of cause of action, which first arose.

19. We are not inclined to accept this argument because according to his pleading, he had full knowledge in the year 2011 itself when the construction had started. The pretext of having come to know about this project being constructed through RTI on a later date as stated above appears to be only in order to bring the present Original Application within limitation period. We agree with the learned Counsel for the Project Proponent (PP) that it is very easy for any person to use RTI to seek information for any project on any date chosen by him. We are of the considered opinion that such kind of practice cannot be allowed. We are not inclined to accept the argument made by the learned Counsel for the Applicant in Original Application and are convinced with the argument raised by the learned Counsel for the Respondent No. 11/Project Proponent. We find that this Original Application is time barred, hence this Original Application stands dismissed as time barred.

20. All connected I.A.s also stand disposed of.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

**S U P R E M E C O U R T O F I N D I A**  
**RECORD OF PROCEEDINGS****Ax.B**Civil Appeal No. 456/2023

AJAY JAYVANTRAO BHOSALE

Appellant(s)

VERSUS

UNION OF INDIA &amp; ORS.

Respondent(s)

( IA No.15239/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED  
JUDGMENT and IA No.15243/2023-STAY APPLICATION and IA  
No.15242/2023-EXEMPTION FROM FILING O.T. )

Date : 03-02-2023 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE M.M. SUNDRESH

For Appellant(s)

Mr. Mukesh Verma, Adv.  
Mr. Kamal Kumar Pandey, Adv.  
Mr. Pankaj Kumar Singh, Adv.  
Mr. Pawan Kumar Shukla, Adv.  
Mr. Yash Pal Dhingra, AOR  
Mr. Pulkit Agarwal, AOR

For Respondent(s)

Mr. Saket Mone, Adv.  
Ms. Anshula Vijay Kumar Grover, AOR

UPON hearing the counsel the Court made the following  
O R D E R

In view of the letter circulated by the learned counsel for  
the appellant seeking adjournment, re-list after two weeks.

(ARUSHI SUNEJA)  
SENIOR PERSONAL ASSISTANT

(R.S. NARAYANAN)  
COURT MASTER (NSH)

Diary No.- 137 - 2023

AJAY JAYVANTRAO BHOSALE vs. UNION OF INDIA

Case Details	
Diary No.	<b>137/2023</b> Filed on 02-01-2023 12:00 AM <b>DISPOSED</b> <b>[SECTION: XVII]</b>
Case No.	C.A. No. 000456 - / 2023 Registered on 20-01-2023 (Verified On 27-01-2023)
Present/Last Listed On	<b>21-03-2023 [HON'BLE MR. JUSTICE SANJIV KHANNA and HON'BLE MR. JUSTICE M.M. SUNDRESH] [CL.NO. : 10]</b>
Status/Stage	DISPOSED (Motion Hearing [FRESH (FOR ADMISSION) - CIVIL CASES]) Dismissed-Ord dt:21-03-2023 (Disposal Date: 21-03-2023, Month: 3, Year: 2023) JUDGES: HON'BLE MR. JUSTICE SANJIV KHANNA, HON'BLE MR. JUSTICE M.M. SUNDRESH
Disp.Type	Dismissed
Category	1503-Appeal Against Orders Of Statutory Bodies : Tribunals
Act	
Petitioner(s)	1 AJAY JAYVANTRAO BHOSALE SELF-EMPLOYED R/O: 25B, CYCLE SOCIETY, NANA PETH, NEAR Y. M. C. CLUB, PUNE ,PUNE , MAHARASHTRA
Respondent(s)	1 UNION OF INDIA THROUGH SECRETARY MINISTRY OF ENVIRONMENT AND FOREST PARYAVARAN BHAWAN, CGO COMPLEX, LODHI ROAD, NEW DELHI ,NEW DELHI , DELHI  2 CHIEF SECRETARY chief secretary ANNEX BUILDING, MANTRALAYA, MUMBAI, MAHARASHTRA 400032 ,MUMBAI , MAHARASHTRA  3 THE PRINCIPAL SECRETARY THE PRINCIPAL SECRETARY GOVERNMENT OF MAHARASHTRA, ROOM NO. 217, 2ND FLOOR, ANNEX BUILDING, MANTRALAYA, MUMBAI, 400032 ,MUMBAI , MAHARASHTRA  4 STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY MAHARASHTRA (SEIAA) THROUGH MEMBER SECRETARY 15TH FLOOR, NEW ADMINISTRATIVE

BUILDING, MANTRALAYA, MUMBAI, 400032 ,MUMBAI , MAHARASHTRA

5 STATE EXPERT APPRAISAL COMMITTEE (III) MAHARASHTRA (SEAC III)

THROUGH MEMBER SECRETARY 15TH FLOOR, NEW ADMINISTRATIVE BUILDING, MANTRALAYA, MUMBAI 400032 ,MUMBAI , MAHARASHTRA

6 MAHARASHTRA POLLUTION CONTROL BOARD

through member secretary KALPATRU POINT, 3RD FLOOR, NEAR SION CIRCLE, OPP. CINE PLANET CINEMA SION (E) MUMBAI 400022 ,MUMBAI , MAHARASHTRA

7 MAHARASHTRA POLLUTION CONTROL BOARD

through regional officer JOG CENTRE, 3RD FLOOR, MUMBAI PUNE OLD HIGHWAY, WAKADEWADI, PUNE, 411003 ,PUNE , MAHARASHTRA

8 MUNICIPAL COMMISSIONER PCMC

PIMPRI CHINCHWAD MUNICIPAL CORPORATION, PCMS BUILDING, OLD MUMBAI PUNE HIGHWAY, PIMPRI PUNE MAHARASHTRA 411018 ,PUNE , MAHARASHTRA

9 CITY ENGINEER PCMC

PIMPRI CHINCHWAD MUNICIPAL CORPORATION, PCMS BUILDING, OLD MUMBAI PUNE HIGHWAY, PIMPRI PUNE MAHARASHTRA 411018 ,PUNE , MAHARASHTRA

10 COLLECTOR OF PUNE

collector of pune AS COLLECTOR AND PRESIDENT OF DISTRICT ENVIRONMENT PROTECTION COMMITTEE PUNE COLLECTOR OFFICE, BUND GARDEN, PUNE, 411001 ,PUNE , MAHARASHTRA

11 M/S. BRAMHA LEISURES PRIVATE LIMITED

through its directors 11a. surendrakumar bramhadutta agrawal BRAMHA HOUSE 250/251 M.G. ROAD, CAMP, PUNE, MAHARASHTRA 411001 ,PUNE , MAHARASHTRA

Pet. Advocate(s)

PULKIT AGARWAL

Resp. Advocate(s)

ANSHULA VIJAY KUMAR GROVER[caveat]

U/Section

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POPAT BAHIRU GOVARDHANE v. LAND ACQUISITION OFFICER 765

a was homicidal. In view thereof, both the courts below were of the considered opinion that the appellant was responsible for causing the death of Guddi, the deceased.

b 16. The defence taken by the appellant that she had gone out of her house to provide water to the buffalo has been disbelieved by the court. As the incident occurred in the house of the appellant, and she was present therein at the relevant time, she could have furnished the explanation as to how and under what circumstances Guddi died. The matter was within her special knowledge.

17. In view of the above, the appeal lacks merit and is accordingly dismissed.

(2013) 10 Supreme Court Cases 765

c (BEFORE DR B.S. CHAUHAN AND S.A. BOBDE, JJ.)  
POPAT BAHIRU GOVARDHANE AND OTHERS .. Appellants;

*Versus*

SPECIAL LAND ACQUISITION OFFICER  
AND ANOTHER .. Respondents.

d Civil Appeal No. 6976-80 of 2013<sup>†</sup>, decided on August 22, 2013

e A. Land Acquisition Act, 1894 — Ss. 28-A and 18 — Re-determination of compensation by Collector under S. 28-A — Whether barred by limitation — Limitation for filing application under S. 28-A being 3 months from date of award — Party applying for certified copies and certified copies being ready for delivery in 12 days — But party filing application under S. 28-A after 3 months 15 days from date of award (if 13 days time is excluded as per S. 28-A(1) proviso, then the delay was of 2 days) — Considering: (a) that land Acquisition Collector is not a court but a quasi-judicial body, and (b) that the principle of limitation starting from date of knowledge of award being applicable only to S. 18 and not to S. 28-A and that there were no precedents which directly applied the said principle to S. 28-A — Appellants were claiming this benefit as they were not parties to the reference in which the award concerned was made — Held, appellants barred by limitation from applying under S. 28-A — Therefore, the order of Collector not interfered with

g B. Limitation Act, 1963 — S. 5 — Applicability to proceedings before Collector under S. 28-A, LA Act — Reiterated, Limitation Act applies to courts and not to quasi-judicial authorities — Administrative Law — Administrative Action — Quasi-Judicial Function — Limitation

h C. Limitation — Condonation of delay — Need for strict compliance with statutory scheme — Not permissible to extend period of limitation on equitable grounds if statute does not permit the same — Doctrines and

<sup>†</sup> From the Judgment and Order dated 25-1-2012 of the High Court of Bombay in WPs Nos. 2140-44 of 2009

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**Maxims — *Dura lex sed lex* (the law is hard but it is the law) — Limitation Act, 1963 — S. 5 — When not applicable — Land Acquisition Act, 1894, S. 28-A**

The reference under Section 18, LA Act to which appellant landowners were not parties was decided by award dated 3-4-2006. The appellants applied for certified copies of the abovesaid award on 17-5-2006 and the same were ready for delivery on 29-5-2006. The application for redetermination of compensation was filed on 18-7-2006. The Land Acquisition Collector rejected it on ground of limitation. The High Court by the impugned judgment upheld the decision of the Land Acquisition Collector.

The appellant landowners argued that Section 28-A, LA Act is a beneficial legislation and that limitation should begin from date of knowledge of the award by Reference Court under Section 18, LA Act. And that as they were not parties to the reference under Section 18, the limitation under Section 28-A should not begin from date of award by Reference Court.

Dismissing the appeals, the Supreme Court

*Held :*

The law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means “the law is hard but it is the law”, stands attracted in such a situation. It has consistently been held that, “inconvenience is not” a decisive factor to be considered while interpreting a statute. (Paras 16 and 17)

*Martin Burn Ltd. v. Corpn. of Calcutta*, AIR 1966 SC 529; *Rohitash Kumar v. Om Prakash Sharma*, (2012) 13 SCC 792, *relied on*

*Popat Bahiru Govardhane v. Land Acquisition Officer*, (2012) 3 Mah LJ 390 : (2012) 2 Bom LR 955, *affirmed*

As the Land Acquisition Collector is not a court and acts as a quasi-judicial authority while making the award, the provisions of the Limitation Act, 1963 would not apply and, therefore, the application under Section 28-A, LA Act, has to be filed within the period of limitation as prescribed under Section 28-A, LA Act. The said provisions require that an application for redetermination is to be filed within 3 months from the date of the award of the court. The proviso further provides that the period of limitation is to be calculated excluding the date on which the award is made and the time requisite for obtaining the copy of the award. (Paras 13 to 15 and 5)

*State of A.P. v. Marri Venkaiah*, (2003) 7 SCC 280, *followed*

*Tota Ram v. State of U.P.*, (1997) 6 SCC 280; *Union of India v. Mangatu Ram*, (1997) 6 SCC 59; *Des Raj v. Union of India*, (2004) 7 SCC 753; *State of Orissa v. Chitrasen Bhoi*, (2009) 17 SCC 74, *relied on*

*Bhagwan Das v. State of U.P.*, (2010) 3 SCC 545 : (2010) 1 SCC (Civ) 776; *Premji Nathu v. State of Gujarat*, (2012) 5 SCC 250 : (2012) 3 SCC (Civ) 52; *Harish Chandra Raj Singh v. Land Acquisition Officer*, AIR 1961 SC 1500, *distinguished*

SS-D/52311/CV

POPAT BAHIRU GOVARDHANE v. LAND ACQUISITION OFFICER 767  
(Dr Chauhan, J.)

Advocates who appeared in this case :

- a Gaurav Agrawal and Shankar Narayanan, Advocates, for the Appellants;  
Ms Madhavi Divan, Sanjay Kharde and Ms Asha Gopalan Nair, Advocates, for the Respondents.

**Chronological list of cases cited** **on page(s)**

- |   |                                                                                                          |                          |
|---|----------------------------------------------------------------------------------------------------------|--------------------------|
|   | 1. (2012) 13 SCC 792, <i>Rohitash Kumar v. Om Prakash Sharma</i>                                         | 771g                     |
|   | 2. (2012) 5 SCC 250 : (2012) 3 SCC (Civ) 52, <i>Premji Nathu v. State of Gujarat</i>                     | 768c                     |
| b | 3. (2012) 3 Mah LJ 390 : (2012) 2 Bom LR 955, <i>Popat Bahiru Govardhane v. Land Acquisition Officer</i> | 767d-e, 768a             |
|   | 4. (2010) 3 SCC 545 : (2010) 1 SCC (Civ) 776, <i>Bhagwan Das v. State of U.P.</i>                        | 768c                     |
|   | 5. (2009) 17 SCC 74, <i>State of Orissa v. Chitrasen Bhoi</i>                                            | 768d-e, 771c-d           |
|   | 6. (2004) 7 SCC 753, <i>Des Raj v. Union of India</i>                                                    | 768d-e, 771c-d           |
|   | 7. (2003) 7 SCC 280, <i>State of A.P. v. Marri Venkaiah</i>                                              | 768d-e, 770b, 770e, 771e |
| c | 8. (1997) 6 SCC 280, <i>Tota Ram v. State of U.P.</i>                                                    | 768d-e, 769g-h           |
|   | 9. (1997) 6 SCC 59, <i>Union of India v. Mangatu Ram</i>                                                 | 768d-e, 769g-h           |
|   | 10. AIR 1966 SC 529, <i>Martin Burn Ltd. v. Corpn. of Calcutta</i>                                       | 771g                     |
|   | 11. AIR 1961 SC 1500, <i>Harish Chandra Raj Singh v. Land Acquisition Officer</i>                        | 769d-e, 770b-c, 770e     |

d The Judgment of the Court was delivered by

**DR B.S. CHAUHAN, J.**— These appeals have been preferred against the judgment and order dated 25-1-2012 passed by the High Court of Judicature of Bombay in *Popat Bahiru Govardhane v. Land Acquisition Officer*<sup>1</sup>, wherein the High Court has upheld the judgment of the Land Acquisition Collector rejecting the application under Section 28-A of the Land Acquisition Act, 1894 (hereinafter referred to as “the Act”) on the ground of limitation.

f 2. The facts and circumstances giving rise to these appeals are that: the land of the appellants stood notified under Sections 4 and 6 of the Act in 1994-1995. The award in respect of the said land was also made on 14-12-1995. The appellants did not file applications under Section 18 of the Act rather some other “interested persons” whose land was also covered by the same notification under Section 4 of the Act filed references and one such reference i.e. LAR No. 314 of 1999 was decided on 3-4-2006.

g 3. For the purpose of filing application under Section 28-A of the Act, the counsel for the appellants applied for a certified copy of the court award on 17-5-2006, and though the copy of the said award was ready for delivery on 29-5-2006, it was obtained by the learned counsel for the appellants only on 3-6-2006. The application for redetermination of the amount of compensation was filed on 18-7-2006 by the appellants, on the basis of the said court’s award. The Special Land Acquisition Collector vide order dated 22-9-2008, rejected the said application on the ground that the same was filed with a delay of 4 days.

h

1 (2012) 3 Mah LJ 390 : (2012) 2 Bom LR 955

4. Aggrieved, the appellants challenged the said order before the High Court. The same stood dismissed vide impugned judgment and order dated 25-1-2012<sup>1</sup>. Hence, these appeals.

5. Shri Gaurav Agarwal, learned counsel appearing on behalf of the appellants has submitted that Section 28-A of the Act was inserted by amendment in 1987 and being a beneficial legislation it should be interpreted liberally and period of limitation should be considered and determined on all equitable grounds. It is well-nigh impossible for any person to file an appeal without having knowledge of the order/award and therefore, the limitation should be counted from the date of acquisition of knowledge of the court award. More so, the delay was only of two days and certainly not of four days. In order to fortify his case Shri Gaurav Agarwal has placed reliance upon the judgments of this Court in *Bhagwan Das v. State of U.P.*<sup>2</sup> and *Premji Nathu v. State of Gujarat*<sup>3</sup>.

6. Ms Madhavi Divan, learned counsel appearing on behalf of the respondents, has opposed the appeal contending that personal inconvenience or hardship of an individual cannot be a consideration for interpreting statutory provisions in case the language of the statute is plain and unambiguous. It is to be given only strict literal interpretation. In the instant case, there is no ambiguity so far as the statutory provisions are concerned. Therefore, limitation is to be taken as prescribed under the statute. In support of her case Ms Madhavi Divan has placed reliance upon the judgments of this Court in *Tota Ram v. State of U.P.*<sup>4</sup>, *Union of India v. Mangatu Ram*<sup>5</sup>, *State of A.P. v. Marri Venkaiah*<sup>6</sup>, *Des Raj v. Union of India*<sup>7</sup> and *State of Orissa v. Chitrasen Bhoi*<sup>8</sup>.

7. We have considered the rival submissions made by the learned counsel for the parties and perused the records.

8. The sole question for the consideration of the Court is whether limitation for filing the application for redetermination of the compensation under Section 28-A of the Act would commence from the date of the award or from the date of knowledge of the court's award on the basis of which such application is being filed?

9. Though, there is nothing on record to substantiate the appellants' claim that they could acquire the knowledge of the court's award only on 17-7-2006 and immediately took steps to file application for redetermination under Section 28-A of the Act.

1 *Popat Bahiru Govardhane v. Land Acquisition Officer*, (2012) 3 Mah LJ 390 : (2012) 2 Bom LR 955

2 (2010) 3 SCC 545 : (2010) 1 SCC (Civ) 776 : AIR 2010 SC 1532

3 (2012) 5 SCC 250 : (2012) 3 SCC (Civ) 52 : AIR 2012 SC 1624

4 (1997) 6 SCC 280

5 (1997) 6 SCC 59 : AIR 1997 SC 2704

6 (2003) 7 SCC 280 : AIR 2003 SC 2949

7 (2004) 7 SCC 753 : AIR 2004 SC 5003

8 (2009) 17 SCC 74

**10.** The issue involved herein is no more *res integra*. The appellants' case before the High Court as well as before us has been that the limitation would commence from the date of acquisition of knowledge and not from the date of award. Though, Shri Gaurav Agarwal, learned counsel for the appellants, has fairly conceded that there is no occasion for this Court to consider the application of the provisions of the Limitation Act, 1963 (hereinafter called "the 1963 Act") inasmuch as the provisions of Section 5 of the said Act.

**11.** Section 28-A of the Act reads as under:

**"28-A. Redetermination of the amount of compensation on the basis of the award of the court.**—(1) Where in an award under this Part, the court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11, the persons interested in all the other land covered by the same notification under Section 4 sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under Section 18, by written application to the Collector *within three months from the date of the award of the court* require that the amount of compensation payable to them may be redetermined on the basis of the amount of compensation awarded by the court:

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, *the day on which the award was pronounced and the time requisite for obtaining a copy of the award* shall be excluded." (emphasis added)

**12.** In *Harish Chandra Raj Singh v. Land Acquisition Officer*<sup>9</sup>, this Court dealt with the issue of limitation while dealing with an application under Section 18 of the Act, and it was observed therein that unless a party had knowledge of the order, the question of approaching the appropriate forum challenging the order, does not arise. Therefore, it is the date of the knowledge from which the limitation would start. The Court observed: (AIR pp. 1504-05, paras 6 & 11)

"6. ... The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fair play and natural justice the expression ... In our opinion, therefore, it would be unreasonable...."

\* \* \*

**11.** ... where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the said order, the making of the order must mean either actual or constructive communication of the said order to the party concerned."

**13.** This Court in *Union of India v. Mangatu Ram*<sup>5</sup> and *Tota Ram v. State of U.P.*<sup>4</sup> dealt with the issue involved herein and held that as the Land

<sup>9</sup> AIR 1961 SC 1500  
<sup>5</sup> (1997) 6 SCC 59  
<sup>4</sup> (1997) 6 SCC 280

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Acquisition Collector is not a court and acts as a quasi-judicial authority while making the award, the provisions of the 1963 Act would not apply and, therefore, the application under Section 28-A of the Act, has to be filed within the period of limitation as prescribed under Section 28-A of the Act. The said provisions require that an application for redetermination is to be filed within 3 months from the date of the award of the court. The proviso further provides that the period of limitation is to be calculated excluding the date on which the award is made and the time requisite for obtaining the copy of the award.

14. In *State of A.P. v. Marri Venkaiah*<sup>6</sup>, this Court reconsidered the aforesaid judgments including the judgment in *Harish Chandra Raj Singh*<sup>9</sup> and held that the statute provides limitation of 3 months from the date of award by the court excluding the time required for obtaining the copy from the date of award. *It has no relevance so far as the date of acquisition of knowledge by the applicant is concerned.* In view of the express language of the statute, the question of knowledge did not arise and, therefore, the plea of the applicants that limitation of 3 months would begin from the date of knowledge, was clearly unsustainable and could not be accepted. The Court also rejected the contention of the applicants that a beneficial legislation should be given a liberal interpretation observing that whosoever wants to take advantage of the beneficial legislation has to be vigilant and has to take appropriate action within the time-limit prescribed under the statute. Such an applicant must at least be vigilant in making efforts to find out whether the other landowners have filed any reference application and if so, what is the result thereof. If that is not done then the law cannot help him. The ratio of the judgment in *Harish Chandra Raj Singh*<sup>9</sup> was held to be non-applicable in case of Section 28-A of the Act. The Court observed: (*Marri Venkaiah case*<sup>6</sup>, SCC pp. 284-85, paras 11-12)

“II. ... In that case, the Court interpreted the proviso to Section 18 of the Act and held that clause (a) of the proviso was not applicable in the said case because the person making the application was not present or was not represented before the Collector at the time when he made his award. The Court also held that notice from the Collector under Section 12(2) was also not issued, therefore, that part of clause (b) of the proviso would not be applicable. The Court, therefore, referred to the second part of the proviso which provides that such application can be made within six months from the date of the Collector’s award. In the context of the scheme of Section 18 of the Act, the Court held that the award by the Land Acquisition Officer is an offer of market price by the State for purchase of the property. *Hence, for the said offer, knowledge, actual or constructive, of the party affected by the award was an essential requirement of fair play and natural justice.* Therefore, the second part of the proviso must mean the date when either the award was

<sup>6</sup> (2003) 7 SCC 280

<sup>9</sup> *Harish Chandra Raj Singh v. Land Acquisition Officer*, AIR 1961 SC 1500

a communicated to the party or was known by him either actually or constructively.

12. The aforesaid reasoning would not be applicable for interpretation of Section 28-A because there is no question of issuing notice to such an applicant as he is not a party to the reference proceeding before the court. The award passed by the court cannot be termed as an offer for market price for purchase of the land. There is no duty cast upon the court to issue notice to the landowners who have not initiated proceedings for enhancement of compensation by filing reference applications; maybe, that their lands are acquired by a common notification issued under Section 4 of the Act. As against this, under Section 18 it is the duty of the Collector to issue notice either under Section 12(2) of the Act at the time of passing of the award or in any case the date to be pronounced before passing of the award and if this is not done then the period prescribed for filing application under Section 18 is six months from the date of the Collector's award." (emphasis added)

c A similar view has been reiterated by this Court in *Des Raj*<sup>7</sup> and *Chitrasen Bhoi*<sup>8</sup>.

d 15. In view of the above, there is no occasion for us to consider the judgments cited at the Bar on behalf of the appellants in support of its case. More so, the said judgments have been delivered by this Court while dealing with the applications under Section 18 of the Act. If there are directly applicable precedents on the issue, the same have to be followed rather than to search for a new interpretation unless it is established that the earlier judgments require reconsideration. The suggestion of reconsideration has specifically been rejected by this Court in *Marri Venkaiah*<sup>6</sup>.

e 16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation."

g (See *Martin Burn Ltd. v. Corpn. of Calcutta*<sup>10</sup>, AIR p. 535, para 14 and *Rohitash Kumar v. Om Prakash Sharma*<sup>11</sup>.)

7 *Des Raj v. Union of India*, (2004) 7 SCC 753

8 *State of Orissa v. Chitrasen Bhoi*, (2009) 17 SCC 74

h 6 *State of A.P. v. Marri Venkaiah*, (2003) 7 SCC 280

10 AIR 1966 SC 529

11 (2012) 13 SCC 792 : AIR 2013 SC 30

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(2013) 10 SCC

17. In view of the above, we are of the candid view that none of the submissions advanced on behalf of the appellants is tenable. As the matters are squarely covered by the aboveresferred to judgments, these appeals are devoid of any merit. The cases do not warrant any interference. The appeals are, accordingly, dismissed.

**(2013) 10 Supreme Court Cases 772**

(BEFORE P. SATHASIVAM, C.J. AND RANJANA P. DESAI  
AND RANJAN GOGOI, JJ.)

UNION OF INDIA AND ANOTHER .. Appellants;

*Versus*

NATIONAL FEDERATION OF THE BLIND  
AND OTHERS .. Respondents.

Civil Appeal No. 9096 of 2013<sup>†</sup>, decided on October 8, 2013

**A. Human and Civil Rights — Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Ss. 33 and 32 — Reservation of posts for persons with disabilities — Computation of — Held, computation of 3% reservation is based on total number of vacancies in cadre strength and not on basis of vacancies available in identified posts — In unequivocal terms, the reservation policy stipulated in the 1995 Act is vacancy-based reservation — Further held, such computation should be identical for Group A, B, C and D posts**

**B. Human and Civil Rights — Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Ss. 33, 32 and 41 — Reservation of posts for persons with disabilities — Computation of — Held, not dependant upon identification of posts as stipulated by S. 32 — Held, S. 32 is not a precondition for computation of reservation of 3% vacancies for persons with disabilities out of which 1% each is reserved for persons suffering from blindness/low vision, persons suffering from hearing impairment and persons suffering from locomotor disability or cerebral palsy — Scope of identification comes into picture only at the time of appointment in post identified for disabled person and is not necessarily relevant at the time of computing 3% reservation under S. 33**

**C. Human and Civil Rights — Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Ss. 32 and 33 — Appointment of person with disability against vacancy in identified post — Contention that post of driver is not suitable to be manned by blind person — Held, a given post may not be identified as suitable for one category of disability, but same could be identified as suitable for another category entitled to benefit of reservation**

<sup>†</sup> Arising out of SLP (C) No. 7541 of 2009. From the Judgment and Order dated 19-12-2008 of the High Court of Delhi at New Delhi in WP (C) No. 15828 of 2006

[2022 LiveLaw \(SC\) 227](#)

**IN THE SUPREME COURT OF INDIA  
EXTRA-ORDINARY APPELLATE JURISDICTION  
*M.R. SHAH; B.V. NAGARATHNA, JJ.***

SPECIAL LEAVE TO APPEAL (C) NOS.2054-2055/2022; FEBRUARY 25, 2022

**LINGESWARAN ETC. *VERSUS* THIRUNAGALINGAM**

**Limitation Act, 1963 - Section 5 - Delay Condonation - When it is found that the delay is not properly explained, the application to condone delay is required to be dismissed - he Court has no power to extend the period of limitation on equitable grounds - Still to condone the delay would be giving a premium to a person who fails to explain the delay and who is guilty of delay and laches. (Para 5)**

**Summary: SLP Against High Court order which set aside the Trial Court order condoning delay of 465 days even after finding that delay has not been properly explained - Dismissed - Once it was found even by the trial Court that delay has not been properly explained and even there are no merits in the application for condonation of delay, thereafter, the matter should rest there and the condonation of delay application was required to be dismissed.**

(Arising out of impugned final judgment and order dated 09-11-2021 in CRPMD No. 1688/2019 09-11-2021 in CRPMD No. 1689/2019 passed by the High Court Of Judicature At Madras At Madurai)

For Petitioner(s) Mr. K.V. Sriwas Narayanan, Adv. Mr. K.V. Vijayakumar, AOR

**ORDER**

**1.** Feeling aggrieved and dissatisfied with the impugned judgment and order dated 09.11.2021 passed by the High Court of Judicature at Madras, Bench at Madurai in C.R.P. (MD) Nos. 1688 & 1689 of 2019, by which the High Court has set aside the order passed by the learned trial Court condoning the huge delay of 467 days in preferring the application for setting aside the ex-parte decree, the original defendants have preferred the present special leave petitions.

**2.** We have heard Mr. K.V. Vijayakumar, learned counsel appearing on behalf of the petitioners at length.

**3.** We have gone through the impugned judgment and order passed by the High Court as well as the order passed by the learned trial Court by which the learned trial Court condoned the huge delay of 467 days.

**4.** Having gone through the order passed by the learned trial Court, even the learned trial Court also specifically observed that, in the absence of material evidence, it cannot be said that the delay has been explained. The trial Court has also observed

that the Court feels that there are no merits in the application. Still the trial Court condoned the delay by observing that an opportunity of fair trial should be given to both the parties to put-forth their case on merits. The trial Court also observed that, on allowing the application for condonation of delay, no prejudice will be caused to the plaintiff and, therefore, the delay can be condoned by compensating the plaintiff by way of heavy costs. The said order has been set aside by the High Court by the impugned judgment and order.

5. We are in complete agreement with the view taken by the High Court. Once it was found even by the learned trial Court that delay has not been properly explained and even there are no merits in the application for condonation of delay, thereafter, the matter should rest there and the condonation of delay application was required to be dismissed. The approach adopted by the learned trial Court that, even after finding that, in absence of any material evidence it cannot be said that the delay has been explained and that there are no merits in the application, still to condone the delay would be giving a premium to a person who fails to explain the delay and who is guilty of delay and laches. At this stage, the decision of this Court in the case of **Popat Bahiru Goverdhane v. Land Acquisition Officer**, reported in **(2013) 10 SCC 765** is required to be referred to. In the said decision, it is observed and held that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same.

5.1 In the case of **Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai**, **(2012) 5 SCC 157**, in paragraph 14, it is observed and held as under:

“The law of limitation is founded on public policy. The limitation Act, 1963 has not been enacted with the object of destroying the rights of the parties but to ensure that they approach the court for vindication of their rights without unreasonable delay. The idea underlying the concept of limitation is that every remedy should remain alive only till the expiry of the period fixed by the legislature. At the same time, the courts are empowered to condone the delay provided that sufficient cause is shown by the applicant for not availing the remedy within the prescribed period of limitation.”

6. In view of the above and for the reasons stated above, we are in complete agreement with the view taken by the High Court. The Special 4 Leave Petitions stand dismissed. Pending application, if any, also stands disposed of.

2022 SCC OnLine SC 1635

In the Supreme Court of India  
(BEFORE M.R. SHAH AND M.M. SUNDRESH, JJ.)

Sansera Engineering Limited ... Appellant;

*Versus*

Deputy Commissioner, Large Tax Payer Unit,  
Bengaluru ... Respondent.

Civil Appeal No. 8717 of 2022

Decided on November 29, 2022

The Judgment of the Court was delivered by

M.R. SHAH, J.:— Feeling aggrieved and dissatisfied with the impugned judgment and order dated 23.07.2021 passed by the High Court of Karnataka at Bengaluru in Writ Appeal No. 249/2020, whereby the Division Bench of the High Court has dismissed the said appeal preferred by the appellant herein and has confirmed the common judgment and order dated 22.11.2019 passed by the learned Single Judge dismissing the writ petitions, upholding the order passed by the respondent rejecting the claim of the appellant for rebate on the ground that the claim was barred by time/limitation prescribed under Section 11B of the Central Excise Act, 1944 (hereinafter referred to as the 'Act'), the original writ petitioner/appellant herein has preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under:

That the appellant herein - M/s. Sansera Engineering Limited is a manufacturer of excisable goods. It exported goods on payment of excise duty between August, 2015 and October, 2015 and filed claims for rebate of duty paid on the goods exported on 10.02.2017 to the tune of Rs. 29,47,996/- and Rs. 42,27,928/- under Rule 18 of Central Excise Rules, 2002 (hereinafter referred to as the '2002 Rules') in respect of these exports. Subsequently on 14.02.2017, for the period October 2015 to March 2016, the appellant claimed rebate of Rs. 1,47,27,766/-.

3. The original authority rejected the above-mentioned rebate claims as barred by time prescribed under Section 11B of the Act *vide* three different Orders-in-Original. Aggrieved by the respective Orders-in-Original rejected the respective claims as barred by time prescribed under Section 11B of the Act, the appellant preferred writ petitions before the learned Single Judge. The learned Single Judge *vide* common order dated 22.11.2019 dismissed the said writ petitions holding that the claims for rebate were made beyond the period of one

year prescribed under Section 11B of the Act. The judgment and order passed by the learned Single Judge has been confirmed by the Division Bench of the High Court by the impugned judgment and order in Writ Appeal No. 249/2020. Hence, the present appeal.

4. Shri Arvind P. Datar, learned Senior Advocate appearing on behalf of the appellant has made the following contentions in support of his submission that for rebate claim, the period prescribed under Section 11B of the Act shall not be applicable:

- i) that the grant of rebate of duty paid on excisable goods or duty paid as provided under Rule 18 of the 2002 Rules is different than that of refund of duty entitled under Section 11B of the Act;
- ii) that the rebate of duty is on export of the goods and is in the form of an incentive and on furnishing the form R within six months from the date of export, the exporter is entitled to the rebate of duty on fulfilling the relevant conditions as mentioned in the notification No. 19/2004 dated 6.9.2004;
- iii) that neither Rule 18 nor notification dated 6.9.2004 specifically provided for the applicability of Section 11B of the Act for the period between 2000 to 2016;
- iv) that by notification dated 1.3.2016, notification dated 6.9.2004 came to be amended under heading "(3) Procedures" and the words "before the expiry of the period specified in Section 11B of the Act" came to be inserted. Therefore, a conscious decision was taken that for the period between 2000 to 2016, the period prescribed under Section 11B of the Act shall not be applicable;
- v) that in absence of specific provision either in Rule 18 or in notification dated 6.9.2004 which came to be issued in exercise of powers under Section 37 of the Act specifically making Section 11B of the Act applicable which provides for the limitation to make an application within six months/one year applicable, subject to fulfilling of all conditions mentioned in the notification dated 6.9.2004, the exporter shall be entitled to the rebate of duty paid on excisable goods exported;
- vi) that as per notification dated 6.9.2004 on fulfilling of such procedure and the conditions as specified in the notification, there shall be granted rebate of the whole of the duty paid on the excisable goods falling under the First Schedule to the Central Excise Tariff Act, 1985 exported to any country other than Nepal and Bhutan. As it was found that the exporters were causing great hardship in getting the remittance certificates within six months, a conscious decision was taken at the time when Rule 18 of the 2002 Rules was enacted and when notification dated 6.9.2004 was issued excluding the applicability of Section 11B. As

subsequently the period of six months was increased to one year, it appears that thereafter vide notification dated 1.3.2016, again the applicability of Section 11B of the Act was introduced;

vii) that there is a vast difference and distinction between the refund of duty and the rebate claim; and

viii) that as Rule 18 is a special provision for the grant of rebate of duty, general provision of Section 11B of the Act which is for refund of duty shall not be applicable. Reliance is placed on the decision of this Court in the case of *Collector of Central Excise, Jaipur v. Raghuvir (India) Limited*, (2000) 5 SCC 299 : (2000) 118 ELT 311 (SC).

5. Shri Arvind P. Datar, learned Senior Advocate appearing on behalf of the appellant has heavily relied upon the observations made in paragraphs 13, 14 & 17 of the decision in the case of *Raghuvir (India) Limited* (supra), in support of his submission that Section 11B of the Act shall not be applicable while considering the claim for rebate of duty.

6. Shri Datar, learned Senior Advocate has also relied upon the following decisions of the High Courts of Madras, Allahabad, Punjab & Haryana and Rajasthan taking the view, after following the decision of this Court in the case of *Raghuvir (India) Limited* (supra), that the claim for rebate of duty under Rule 18 of the 2002 Rules is different and distinct than the claim for refund under Section 11B of the Act and therefore the limitation prescribed under Section 11B of the Act shall not be applicable with respect to claim for rebate of duty paid:

1. *Deputy Commissioner of Central Excise v. Dorcas Market Makers Pvt. Ltd.*, 2015 SCC OnLine Mad 8492 : (2015) 321 ELT 45 (Madras);
2. *Camphor and Allied Products Ltd. v. Union of India*, 2019 SCC OnLine All 4705 : (2019) 368 ELT 865 (Allahabad);
3. *JSL Lifestyle Ltd. v. Union of India*, 2015 SCC OnLine P&H 13023 : (2015) 326 ELT 265 (P&H) (paragraphs 14, 15, 16 & 17); and
4. *Gravita India Ltd. v. Union of India*, (2016) 334 ELT 321 (Rajasthan) (Paragraphs 12, 14 & 16).

7. Shri Arvind P. Datar, Learned Senior Advocate appearing on behalf of the appellant has further submitted that the decision of this Court in the case of *Union of India v. Uttam Steel Limited*, (2015) 13 SCC 209 : (2015) 319 ELT 598 (SC) is distinguishable and shall not be applicable while considering the claim for rebate of duty payable under Rule 18 r/w notification dated 6.9.2004. It is submitted that in the case before this Court, this Court was considering Rule 12 of the 2002 Rules, which subsequently came to be deleted by insertion of Rule 18.

8. Learned senior counsel appearing on behalf of the appellant has

also relied upon the decision of the Gujarat High Court in the case of *Cosmonaut Chemicals v. Union of India*, (2009) 233 ELT 46 (Gujarat) in support of his submission that as observed and held by the Gujarat High Court mitigating circumstances and when the assessee is not in a position to get the necessary documents within the prescribed period of limitation, the refund under Section 11B of the Act cannot be denied. It is submitted that it is observed and held by the Gujarat High Court in the aforesaid decision that any procedure prescribed by a subordinate legislation has to be in aid of justice and procedural requirements cannot be read so as to defeat the cause of justice. It is submitted that applying the same to the rebate claim, many a times the exporters were facing the difficulty in getting the requisite remittance certificates and therefore in such a situation the exporter who has in fact exported the goods and earned the foreign remittance cannot be denied the rebate claim.

9. Shri Arvind P. Datar, learned Senior Advocate appearing on behalf of the appellant has submitted that the object and purpose of the rebate of duty on export of goods can be termed as "incentive" to boost the export and earn foreign remittance. It is submitted that therefore if such a claim for rebate of duty is denied despite earning foreign remittance on the goods exported on such technical grounds, it may defeat the object and purpose for grant of rebate.

10. Making the above submissions and relying upon the aforesaid decisions, it is prayed to allow the present appeal.

11. The present appeal is vehemently opposed by Shri Siddhant Kohli, learned Advocate appearing on behalf of the revenue.

12. It is vehemently submitted by the learned counsel appearing on behalf of the revenue that as such the issue involved in the present case is squarely covered by the decision of this Court in the case of *Uttam Steel Ltd.* (supra). It is submitted that in the case of *Uttam Steel Ltd.* (supra), it is specifically observed and held by this Court that the period of limitation prescribed under Section 11B of the Act shall be applicable with respect to rebate of duty. It is submitted that after considering the decision of this Court in the case of *Mafatlal Industries Ltd. v. Union of India*, (1997) 5 SCC 536 : (1997) 89 ELT 247 (SC), it is observed and held that the claim for rebate can only be made under Section 11B of the Act within the period of limitation stated therefor.

13. It is further submitted that the decision of this Court in the case of *Raghuvar (India) Ltd.* (supra), which has been relied upon on behalf of the appellant, shall not be applicable at all and/or the same shall not be of any assistance to the appellant. It is submitted that in the case before this Court, this Court was considering Section 11A of the Act, vis-à-vis Rule 57-I. It is submitted that as it was found that Section 11A of the Act is a general provision for recovery of duties not levied or not

paid or short-levied or short-paid or erroneously refunded, the same shall not be made applicable with respect to recovery of credit wrongly availed of or utilized in an irregular manner under Rule 57-I. It is submitted that there is a vast difference and distinction between Section 11A and Section 11B of the Act. It is submitted that as per Explanation (A) to Section 11B of the Act, for the purpose of Section 11B, "refund" includes rebate of duty of excise... It is submitted that therefore the period of limitation of one year prescribed under Section 11B of the Act shall be applicable with respect to the rebate of duty.

14. It is further submitted that as per Section 11B (1) of the Act, an application for rebate of duty has to be made before the expiry of one year from the "relevant date". It is submitted that as per Explanation (B) to Section 11B of the Act, "relevant date" means in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods. It is submitted that therefore in Section 11B of the Act, there is a specific reference to the rebate of duty and such claim of rebate of duty shall have to be made before the expiry of one year from the relevant date. It is submitted that therefore the period of limitation prescribed under Section 11B of the Act shall be applicable with respect to claim for rebate of duty also.

15. It is further submitted by the learned counsel appearing on behalf of the revenue that Section 11B of the Act can be said to be a parent statute and Rule 18 and notification dated 6.9.2004 can be said to be a subordinate legislation. Notification dated 6.9.2004 which has been issued in exercise of powers under Section 37 of the Act provides for "procedure". It is submitted that as per Section 37(xxiii) of the Act, the Central Government may make rules to specify the form and manner in which application for refund shall be made under Section 11B of the Act. It is submitted that in exercise of such powers, notification dated 6.9.2004 has been issued in exercise of powers conferred under Rule 18 of the 2002 Rules.

16. It is further submitted that Rule 18 cannot be read in isolation. It is further submitted that Rule 18 being subordinate legislation cannot override the main statute. It is submitted that notification dated 6.9.2004 cannot be read *de hors* the statute and Section 11B of the Act.

17. It is further submitted that the rebate of duty is an export incentive benefit granted under the subordinate legislation and any such benefit has to be governed by the statute.

18. It is further submitted by the learned counsel appearing on behalf of the revenue that the decision of this Court in the case of *Raghuvar (India) Ltd.* (supra), which has been relied upon by the

Allahabad High Court in the case of *Camphor & Allied Products Ltd.* (supra), shall not be applicable to the facts of the case on hand, while considering the rebate claim. It is submitted that the question involved in the case of *Raghuvar (India) Ltd.* (supra) was with respect to recovery of Modvat credit wrongly availed of. In the said case, it was the manufacturer who claimed the benefit of Section 11A of the Act by stating that no recovery could be made from him during the period of limitation of one year under Section 11A of the Act. It is submitted that this Court negated the said claim on the reasoning that recovery contemplated under Section 11A of the Act is different and distinct from recovery of Modvat wrongly claimed. It is submitted that for reaching that conclusion this Court considered the separate nature of duties contemplated under Section 11A of the Act and the Modvat Scheme envisaged by Rule 57A to 57P of the Rules prevalent at the relevant time. It is submitted that in the present case the rebate claim shall be governed by Section 11B of the Act. It is submitted that by virtue of Explanation (A) appended to Section 11B of the Act, the claims of rebate of excise duty have been specifically included in the statutory definition of claims for refund.

19. Learned counsel appearing on behalf of the revenue has also relied upon the subsequent decision of the Madras High Court in the case of *Hyundai Motors India Limited v. Department of Revenue*, (2017) 355 ELT 342 (Madras) (paras 24 & 25) as well as the decision of the Bombay High Court in the case of *Everest Flavours Ltd. v. Union of India*, (2012) 282 ELT 481 (Bombay) (paras 10, 11 & 12).

20. Learned counsel appearing on behalf of the Revenue has further submitted that if the submission on behalf of the appellant that the period of limitation of one year prescribed under Section 11B of the Act shall not be applicable with respect to claim for rebate is accepted, in that case, there shall not be any limitation at all and at any time, exporter can make an application for rebate claim. It is submitted that therefore Rule 18 and notification dated 6.9.2004 are to be read harmoniously with the parent statute - Section 11B of the Act.

21. Making above submissions and relying upon the decision of this Court in the case of *Uttam Steel Ltd.* (supra) and the decision of the Madras High Court in the case of *Hyundai Motors India Ltd.* (supra) and the decision of the Bombay High Court in the case of *Everest Flavours Ltd.* (supra), it is prayed to dismiss the present appeal.

22. In rejoinder, Shri Arvind P. Datar, learned Senior Advocate appearing on behalf of the appellant has submitted that if the contention on behalf of the appellant that the period of limitation of one year prescribed under Section 11B of the Act shall not be applicable with respect to rebate claim is accepted, in that case also, the exporter has to make an application within a reasonable time.

23. We have heard Shri Arvind P. Datar, learned Senior Advocate appearing on behalf of the appellant and Shri Siddhant Kohli, learned Advocate appearing on behalf of the Revenue at length.

24. The short question which is posed for consideration of this Court is, "whether the claim for rebate of duty provided under Rule 18 of the Central Excise Rules, 2002, the period of limitation prescribed under Section 11B of the Central Excise Act, 1994 shall be applicable or not?"

25. It is the case on behalf of the appellant that as in Rule 18 of the 2002 Rules and notification dated 6.9.2004, there is no mention to the applicability of Section 11B of the Act and that the claim for rebate of duty under Rule 18 is different and distinct than that of the claim for refund of duty under Section 11B of the Act, the period of limitation prescribed under Section 11B of the Act shall not be applicable, while considering the claim for rebate of duty under Rule 18 of the 2002 Rules.

26. While considering the aforesaid issue, first of all, relevant provisions of Section 11B of the Act are required to be referred to and considered. Section 11B of the Act is as under:

"11-B. Claim for refund of [duty and interest, if any, paid on such duty].— (1) Any person claiming refund of any [duty of excise and interest, if any, paid on such duty] may make an application for refund of such [duty and interest, if any, paid on such duty] to the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] before the expiry of [one year] [from the relevant date] [in such form and manner] as may be prescribed and

Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991 (40 of 1991), such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) as substituted by that Act : ]

Provided further that the limitation of [one year] shall not apply where any [duty and interest, if any, paid on such duty] has been paid under protest.

[\* \* \*]

[(2) If, on receipt of any such application, the [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] is satisfied that the whole or any part of the [duty of excise and interest, if any, paid on such duty] paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund:

Provided that the amount of [duty of excise and interest, if any, paid on such duty] as determined by the [Assistant Commissioner of

Central Excise or Deputy Commissioner of Central Excise] under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—

- (a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;
- (b) unspent advance deposits lying in balance in the applicant's account current maintained with the [Principal Commissioner of Central Excise or Commissioner of Central Excise];
- (c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act;
- (d) the [duty of excise and interest, if any paid on such duty] paid by the manufacturer, if he had not passed on the incidence of such [duty and interest, if any, paid on such duty] to any other person;
- (e) the [duty of excise and interest, if any paid on such duty] borne by the buyer, if he had not passed on the incidence of such [duty and interest, if any, paid on such duty] to any other person;
- (f) the [duty of excise and interest, if any paid on such duty] borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify:

Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of [duty and interest, if any, paid on such duty] has not been passed on by the persons concerned to any other person.

(3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder or any other law for the time being in force, no refund shall be made except as provided in sub-section (2).

(4) Every notification under clause (f) of the first proviso to sub-section (2) shall be laid before each House of Parliament, if it is sitting, as soon as may be after the issue of the notification, and, if it is not sitting, within seven days of its reassembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People and if Parliament makes any modification in the notification or

directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.

(5) For the removal of doubts, it is hereby declared that any notification issued under clause (f) of the first proviso to sub-section (2), including any such notification approved or modified under sub-section (4), may be rescinded by the Central Government at any time by notification in the Official Gazette.]

[*Explanation.* — For the purposes of this section, —

(A) “refund” includes rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(B) “relevant date” means, —

(a) in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of such goods, —

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India, or

(ii) if the goods are exported by land, the date on which such goods pass the frontier, or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of goods returned for being remade, refined, reconditioned, or subjected to any other similar process, in any factory, the date of entry into the factory for the purposes aforesaid;

(c) in the case of goods to which banderols are required to be affixed if removed for home consumption but not so required when exported outside India, if returned to a factory after having been removed from such factory for export out of India, the date of entry into the factory;

(d) in a case where a manufacturer is required to pay a sum, for a certain period, on the basis of the rate fixed by the Central Government by notification in the Official Gazette in full discharge of his liability for the duty leviable on his production of certain goods, if after the manufacturer has made the payment on the basis of such rate for any period but before the expiry of that period such rate is reduced, the date of such reduction;

[(e) in the case of a person, other than the manufacturer, the date of purchase of the goods by such person;]

[(ea) in the case of goods which are exempt from payment of duty by a special order issued under sub-section (2) of Section 5-A, the date of issue of such order;]

[(eb) in case where duty of excise is paid provisionally under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof;]

[(ec) in case where the duty becomes refundable as a consequence of judgment, decree, order or direction of appellate authority, Appellate Tribunal or any court, the date of such judgment, decree, order or direction;]

[(f) in any other case, the date of payment of duty.]”

27. On a fair reading of Section 11B of the Act, it can safely be said that Section 11B of the Act shall be applicable with respect to claim for rebate of duty also. As per Explanation (A) to Section 11B, “refund” includes “rebate of duty” of excise. As per Section 11B(1) of the Act, any person claiming refund of any duty of excise (including the rebate of duty as defined in Explanation (A) to Section 11B of the Act) has to make an application for refund of such duty to the appropriate authority before the expiry of one year from the relevant date and only in the form and manner as may be prescribed. The “relevant date” is defined under Explanation (B) to Section 11B of the Act, which means in the case of goods exported out of India where a refund of excise duty paid is available in respect of the goods themselves or, as the case may be, the excisable materials used in the manufacture of goods..... Thus, the “relevant date” is relatable to the goods exported. Therefore, the application for rebate of duty shall be governed by Section 11B of the Act and therefore shall have to be made before the expiry of one year from the “relevant date” and in such form and manner as may be prescribed. The form and manner are prescribed in the notification dated 6.9.2004. Merely because in Rule 18 of the 2002 Rules, which is an enabling provision for grant of rebate of duty, there is no reference to Section 11B of the Act and/or in the notification dated 6.9.2004 issued in exercise of powers conferred by Rule 18, there is no reference to the applicability of Section 11B of the Act, it cannot be said that the provision contained in the parent statute, namely, Section 11B of the Act shall not be applicable, which otherwise as observed hereinabove shall be applicable in respect of the claim of rebate of duty.

28. At this stage, it is to be noted that Section 11B of the Act is a substantive provision in the parent statute and Rule 18 of the 2002 Rules and notification dated 6.9.2004 can be said to be a subordinate legislation. The subordinate legislation cannot override the parent

statute. Subordinate legislation can always be in aid of the parent statute. At the cost of repetition, it is observed that subordinate legislation cannot override the parent statute. Subordinate legislation which is in aid of the parent statute has to be read in harmony with the parent statute. Subordinate legislation cannot be interpreted in such a manner that parent statute may become otiose or nugatory. If the submission on behalf of the appellant that as there is no mention/reference to Section 11B of the Act either in Rule 18 or in the notification dated 6.9.2004 and therefore the period of limitation prescribed under Section 11B of the Act shall not be applicable with respect to claim for rebate of duty is accepted, in that case, the substantive provision - Section 11B of the Act would become otiose, redundant and/or nugatory. If the submission on behalf of the appellant is accepted, in that case, there shall not be any period of limitation for making an application for rebate of duty. Even the submission on behalf of the appellant that in such a case the claim has to be made within a reasonable time cannot be accepted. When the statute specifically prescribes the period of limitation, it has to be adhered to.

29. It is required to be noted that Rule 18 of the 2002 Rules has been enacted in exercise of rule making powers under Section 37(xvi) of the Act. Section 37(xxiii) of the Act also provides that the Central Government may make the rules specifying the form and manner in which application for refund shall be made under section 11B of the Act. In exercise of the aforesaid powers, Rule 18 has been made and notification dated 6.9.2004 has been issued. At this stage, it is required to be noted that as per Section 11B of the Act, an application has to be made in such form and manner as may be prescribed. Therefore, the application for rebate of duty has to be made in such form and manner as prescribed in notification dated 6.9.2004. However, that does not mean that period of limitation prescribed under Section 11B of the Act shall not be applicable at all as contended on behalf of the appellant. Merely because there is no reference of Section 11B of the Act either in Rule 18 or in the notification dated 6.9.2004 on the applicability of Section 11B of the Act, it cannot be said that the parent statute - Section 11B of the Act shall not be applicable at all, which otherwise as observed hereinabove shall be applicable with respect to rebate of duty claim.

30. As such, the issue involved in the present appeal is squarely covered by the decision of this Court in the cases of *Mafatlal Industries Ltd.* (supra) and *Uttam Steel Limited* (supra). After taking into consideration Section 11B of the Act and the notification and procedure under Rule 12, it is specifically observed and held that rebate of duty of excise on excisable goods exported out of India would be covered under

Section 11B of the Act. After referring to the decision of this Court in the case of *Mafatlal Industries Ltd.* (supra), it is further observed in the case of *Uttam Steel Limited* (supra) that such claims for rebate can only be made under Section 11B within the period of limitation stated therefor. On the argument based on Rule 12, this Court has specifically observed that such argument has to be discarded as it is not open to subordinate legislation to dispense with the requirements of Section 11B. The aforesaid observations made by this Court in the case of *Uttam Steel Limited* (supra) clinches the issue. The said decision has been subsequently rightly followed by the Madras High Court in the case of *Hyundai Motors India Limited* (supra).

31. Now so far as the reliance placed upon the decision of this Court in the case of *Raghuvar (India) Ltd.* (supra), relied upon by the learned senior counsel on behalf of the appellant is concerned, on considering the relevant provisions of Central Excise Act, namely, Sections 11A & 11B of the Act, we are of the opinion that the said decision shall not be applicable with respect to the period of limitation prescribed under Section 11B of the Act with respect to claim for rebate of duty. The question involved in the *Raghuvar (India) Ltd.* (supra) was with respect to recovery of Modvat wrongly availed. In that case, it was the manufacturer who claimed the benefit under Section 11A of the Act by stating that no recovery could be made beyond the period of one year limitation under Section 11A of the Act. This Court negated that claim by observing that recovery contemplated under Section 11A is different and distinct from the Modvat wrongly availed. For reaching that conclusion, this Court considered that the recovery of Modvat would be governed by a special provision contained in Rule 57-I and therefore the provision of Section 11A of the Act, which is a general provision, shall not be applicable. In the present case, as observed hereinabove, section 11B of the Act shall be specifically applicable with respect to claim for rebate of duty. Therefore, as such, section 11B of the Act cannot be said to be a general provision. Therefore, the period of limitation prescribed under Section 11B of the Act shall have to be made applicable with respect to claim for rebate of duty.

32. The decision of the Allahabad High Court in the case of *Camphor and Allied Products Ltd.* (supra) and other decisions of the Madras High Court, Punjab & Haryana High Court and Rajasthan High Court taking a contrary view, relying upon the decision of this Court in the case of *Raghuvar (India) Ltd.* (supra), are not a good law and shall not be of any assistance to the appellant.

33. At this stage, the decision of the Bombay High Court in the case of *Everest Flavours Ltd.* (supra) is required to be referred to. In the said case, the Bombay High Court was considering the limitation prescribed under Section 11B of the Act with respect to rebate of excise duty. In

the said decision, it is specifically observed that since statutory provision for refund in Section 11B ibid brings within its purview, a rebate of excise duty, Rule 18 of the 2002 Rules cannot be read independent of requirement of limitation prescribed in Section 11B. Before the Bombay High Court, the decision of the Madras High Court in the case of *Dorcas Market Makers Pvt. Ltd.* (supra), which is relied upon on behalf of the appellant was also pressed into service by the assessee. However, the Bombay High Court did not agree with the said decision. The Bombay High Court also distinguished the decision of this Court in the case of *Raghuvar (India) Ltd.* (supra). In paragraphs 7 to 10, it is observed and held as under:

"7. Counsel appearing on behalf of the petitioner sought to place reliance on a decision of the Supreme Court in *Collector of Central Excise v. Raghuvar (India) Ltd.* - (2000) 5 SCC 299. The issue which fell for determination before the Supreme Court, inter alia, was whether action for the recovery of MODVAT credit wrongly availed of or utilised in an irregular manner under Rule 57-I would be governed by the period of limitation of six months (at the relevant time) prescribed in Section 11A. The Supreme Court noted that Section 11A is not an omnibus provision which provides any period of limitation for all or any and every kind of action to be taken under the Act or the Rules but would be attracted only to cases where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded. The judgment of the Supreme Court holds that Rule 57-I envisages disallowance of the credit and consequential adjustment in the credit account or the account current maintained by the manufacturer and it is only if such adjustments are not possible, that an amount equivalent to the credit illegally availed of could be recovered. Consequently Rule 57-I, it was held, could not involve a case of manufacture and removal of excisable goods without subjecting such goods to levy or payment in the various circumstances enumerated in Section 11-A. Hence, on its own terms, it was held that Section 11A will have no application or operation to cases covered under Rule 57-I. The Supreme Court ruled that the situation on hand and the one which is to be dealt with under Rule 57-I as it stood prior to amendment, did not fall under any of those contingencies provided in Section 11A.

8. In contrast, in so far as Section 11B is concerned, the provision categorically comprehends a rebate of excise duty on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India. Since the statutory provision for refund in Section 11B brings within its purview, a rebate of excise duty on goods exported out of India or materials used in the manufacture of such goods, Rule 18 cannot be

read independent of the requirement of limitation prescribed in Section 11B. The Judgment of the Supreme Court in *Raghuvar* dealt with a situation where Section 11A did not bring within its purview an action for the recovery of MODVAT credit wrongly availed of which formed the subject matter of Rule 57-I. It was in this view of the matter that the Supreme Court held that the period of limitation prescribed under Section 11A would not apply to an action for recovery of MODVAT credit under Rule 57-I. This can have no application in the present situation which is clearly distinctive, in the sense that Section 11B specifically comprehends an application for rebate of excise duty on goods exported or materials used in their manufacture.

9. A judgment of the Madras High Court in *Dorcas Market Makers Private Limited, Chennai v. CIT (Appeals) (2012) 281 ELT 227 (Mad.)* was sought to be relied upon to submit that Section 11B of the Central Excise Act would not operate in respect of an application under Rule 18 of the Central Excise Rules, 2002. The learned Single Judge of the Madras High Court held that when a statutory Notification which was issued under Rule 18 does not prescribe any time limit, Section 11B would not be attracted. With respect, the learned Single Judge of the Madras High Court has not had due regard to the specific provision of Explanation (A) to Section 11B of the Act under which the expression "refund" is defined to include rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of such goods. The judgment of the Supreme Court in *Raghuvar* which has been relied upon by the learned Single Judge of the Madras High Court has already been considered hereinabove.

10. In exercise of the powers conferred by Rule 18, the Central Government has issued a Notification<sup>3</sup>. The Notification prescribes the conditions and limitations upon which a claim for rebate can be granted. Among the conditions and limitations under Clause (2) of the Notification is the requirement that the excisable goods shall be exported within six months from the date on which they were cleared from the factory of manufacture or warehouse. The procedures are stipulated in Clause (3). Sub-clause (iv) provides for the sealing of goods intended for export, at the place of dispatch and the exporter shall present goods along with four copies of an application in Form ARE-I specified in the Annexure to the Notification to the Superintendent or Inspector of Central Excise having jurisdiction over the factory of production or manufacture or warehouse. Sub-clause (v) then stipulates that the Superintendent or Inspector shall verify the identity of goods mentioned in the application, the particulars of the duty paid or payable and if found

in order, shall seal each package or the container and endorse each copy of the application in token of having carried out the examination. The original and duplicate copies of the application are returned to the exporter. The triplicate copy of the application is to be sent to the Officer with whom a rebate claim is to be filed either by post or by handing over to the exporter in a sealed cover after posting the particulars in the official record or to be sent to the Excise Rebate Audit Section at the place of export in case rebate is to be claimed by electronic declaration. Sub-clause (b) of Clause (3) of the Notification makes a provision for presenting a claim for rebate of Central Excise duty in the following terms:

“(b) Presentation of claim for rebate to Central Excise:—

- (i) Claim of the rebate of duty paid on all excisable goods shall be lodged along with original copy of the application to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, the Maritime Commissioner;
- (ii) The Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse or, as the case may be, Maritime Commissioner of Central Excise shall compare the duplicate copy of the application received from the officer of customs with the original copy received from the exporter and with the triplicate copy received from the Central Excise Officer and if satisfied that the claim is in order, he shall sanction the rebate either in whole or in part.”

The provisions of the Notification thus make it abundantly clear that a mere submission of the ARE-I form does not constitute the presentation of a claim for rebate of Central Excise. Form ARE-1 in turn has various parts including Part A which deals with the certification by Central Excise Officer, Part B which deals with certification by the Officer of Customs and Part D which is the actual Rebate Sanction Order. Moreover, it would be necessary to take note of the fact that under Section 11BB of the Act, interest is liable to be paid if any duty which is ordered to be refunded under sub-section (2) of Section 11B to any applicant is not refunded within three months from the date of receipt of application under subsection (1) of Section 11B. For the purpose of Section 11BB, presentation of the application is the relevant date from which the period of three months has to be reckoned. If the submission of the petitioner were to be accepted, viz. that the mere presentation of the ARE-1 form would constitute an application for rebate of Central Excise Duty, that would defeat the whole scheme that has been enunciated in

Section 11B and Section 11BB. Before the application for rebate can be allowed, an exporter has to furnish various documents including a request on the letterhead of the exporter containing a claim for rebate, the ARE-1 numbers and dates, corresponding invoice numbers and dates, the original copy of the ARE-1, invoice issued under Rule 11, self-attested copy of shipping bill and self-attested copy of bill of lading together with a Disclaimer Certificate in case where a claimant is other than the exporter. These requirements have been spelt out in para 8.3 of the CBEC Excise Manual. The mere presentation of an ARE-1 form does not, therefore, constitute the filing of a valid application for rebate. An application for refund has to be filed, together with documentary material as required. We, therefore, do not accept the second submission which has been urged on behalf of the petitioner.”

34. We are in complete agreement with the view taken by the Bombay High Court in the case of *Everest Flavours Ltd.* (supra). Contrary decisions of Madras High Court, Allahabad High Court, Punjab & Haryana High Court and Rajasthan High Court, referred to hereinabove, are hereby overruled.

35. In view of the above and for the reasons stated above, it is observed and held that while making claim for rebate of duty under Rule 18 of the Central Excise Rules, 2002, the period of limitation prescribed under Section 11B of the Central Excise Act, 1944 shall have to be applied and applicable. In the present case, as the respective claims were beyond the period of limitation of one year from the relevant date, the same are rightly rejected by the appropriate authority and the same are rightly confirmed by the High Court. We see no reason to interfere with the impugned judgment and order passed by the High Court. Under the circumstances, the present appeal fails and deserves to be dismissed and is accordingly dismissed. However, there shall be no order as to costs.

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2022 SCC OnLine SC 1707

In the Supreme Court of India  
(BEFORE M.R. SHAH AND C.T. RAVIKUMAR, JJ.)

Manharlal Shivlal Panchal and Others ... Appellants;

*Versus*

Deputy Collector & Special Land Acquisition Officer  
and Others ... Respondents.

Civil Appeal No. 9004 of 2022 (Arising from SLP (Civil) No.  
19053/2022)

Decided on December 12, 2022

The Judgment of the Court was delivered by

M.R. SHAH, J.:— Feeling aggrieved and dissatisfied with the impugned judgment and order dated 10.03.2022 passed by the High Court of Gujarat at Ahmedabad in Regular First Appeal No. 492/2022, by which the High Court has dismissed the said appeal preferred by the appellants herein and has confirmed the order dated 20.10.2021 passed by the Reference Court, rejecting the reference under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act, 1894') as barred by limitation, the original claimants have preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under:

That a notification under Section 4 of the Act, 1894 came to be issued for acquiring the lands in question for the construction of Gas Compressor Station and necessary facilities under the Reliance Gas Transportation, Surat on 30.07.2008. Declaration under Section 6 of the Act, 1894 was issued on 1.6.2009. The Land Acquisition Officer/Collector declared the award under Section 11 of the Act, 1894 awarding compensation @ Rs. 69/- per square meter, *vide* award dated 6.4.2011. Notice under Section 12(2) of the Act, 1894 with a copy of the award was issued to the landowners/appellants on 25.04.2011. The appellants filed Special Civil Application No. 1428/2012 before the High Court challenging notifications under Sections 4 & 6 of the Act, 1894 as well as award dated 6.4.2011. The Division Bench of the High Court *vide* judgment and order dated 7.8.2012 dismissed the said writ petition. However, while dismissing the writ petition, the Division Bench reserved liberty with the appellants to pursue such remedy as may be available to them for enhancement of the compensation or any other relief to which they may be legally entitled.

3. Feeling aggrieved and dissatisfied with the judgment and order

dated 7.8.2012 passed by the High Court dismissing the writ petition, the appellants approached this Court by way of Special Leave Petition (Civil) No. CC 7382/2013. This Court *vide* order dated 11.04.2013 dismissed the special leave petition on the ground of delay as well as on merits. That thereafter considering the liberty reserved in favour of the appellants reserved by the High Court while dismissing writ petition No. 1428/2012, the appellants filed reference under Section 18 of the Act, 1894. The Reference Court dismissed the reference as barred by limitation, having been filed beyond the period specified in Section 18 (2) of the Act, 1894. The appellants preferred First Appeal No. 492/2022 before the High Court. By the impugned judgment and order, the High Court has dismissed the said first appeal by observing that the Reference Court has rightly dismissed the reference as barred by limitation. The impugned judgment and order passed by the High Court is the subject matter of the present appeal.

4. Learned counsel appearing on behalf of the appellants has vehemently submitted that in the facts and circumstances of the case and more particularly when the appellants challenged the acquisition proceedings which ended in 2013 when this Court dismissed the special leave petition and thereafter within a period of six months from the date of dismissal of the special leave petition, the appellants filed reference under Section 18 of the Act, 1894, the Reference Court ought to have entertained the same and ought to have considered the reference on merits.

5. It is submitted that as such while dismissing Writ Petition No. 1428/2012, the Division Bench of the High Court specifically reserved liberty in favour of the appellants to pursue such remedy as may be available to them for enhancement of compensation and thereafter when the appellants filed reference for enhancement of the compensation, the same could not have been dismissed on the ground of limitation.

6. It is submitted that therefore in the peculiar facts and circumstances of the case, narrated hereinabove, the time taken by the appellants in pursuing the writ petition before the High Court and thereafter before this Court challenging the acquisition proceedings is required to be excluded.

7. It is submitted that the valuable lands of the appellants have been acquired compulsorily under the provisions of the Act, 1894 and the Land Acquisition Officer awarded compensation @ Rs. 69/- per square meter only. It is submitted that the lands acquired have been situated in Surat and were very valuable lands. It is submitted that the landowners are entitled to just compensation for the acquired lands.

8. Making above submissions, it is prayed to allow the present appeal.

9. The present appeal is vehemently opposed by Shri Shyam Divan, learned Senior Advocate appearing on behalf of respondent No. 3.

10. Shri Shyam Divan, learned senior counsel appearing on behalf of respondent No. 3 has vehemently submitted that the time limit to file reference under Section 18 of the Act, 1894 for enhancement of the compensation would be six months from the date of receipt of the award under Section 12(2) of the Act, 1894. It is submitted that in the present case the appellants were served notice under Section 12(2) of the Act with a copy of the award on 25.4.2011. It is submitted that therefore the period of six months for making reference expired on 6.10.2011. It is submitted that therefore the Reference Court rightly dismissed the reference as barred by limitation.

11. It is further submitted by Shri Shyam Divan, learned senior counsel appearing on behalf of respondent No. 3 that even otherwise while preferring Special Civil Application No. 1428/2012, the appellants did challenge the award also contending *inter alia* that the amount of compensation awarded is on a lower side. It is submitted that while dismissing the writ petition, the Division Bench specifically observed that the objections raised by the appellants before making of the award were mainly related to the amount of compensation and they are not stated to have applied for reference under Section 18 of the Act, leading to the inference that either they were satisfied with the award of compensation or have missed the time limit for applying for reference under Section 18 of the Act, 1894. It is submitted that the Division Bench has further observed that therefore the petition and the prayers made therein are found to be an afterthought and not a bona fide grievance about any injustice. It is submitted that therefore also no interference of this Court is called for.

12. Making above submissions and relying upon the decisions of this Court in the case of *Officer on Special Duty (Land Acquisition) v. Shah Manilal Chandulal*, (1996) 9 SCC 414 and *Mahadeo Bajirao Patil v. State of Maharashtra*, (2005) 7 SCC 440, it is prayed to dismiss the present appeal.

13. Ms. Deepanwita Priyanka, learned counsel appearing on behalf of the state has supported the impugned judgment and order passed by the High Court.

14. Heard.

15. The reference under Section 18 of the Act, 1894 has been dismissed as barred by limitation having been filed beyond the period of six months, specified in Section 18(2) of the Act, 1894. The same has been confirmed by the High Court. However, it is required to be noted that the respective appellants - original landowners, as such, challenged the acquisition proceedings as well as the award under

Section 12(2) of the Act, 1894, which ended in dismissal of the special leave petition by this Court *vide* order dated 11.4.2013. The reference applications were filed on 1.7.2013. At this stage, it is required to be noted that though in the writ petition being SCA No. 1428/2012, the award under Section 12(2) of the Act was challenged on the ground of inadequacy of the amount of compensation and though the Division Bench of the High Court dismissed the said writ petition, however thereafter reserved liberty in favour of the appellants - original landowners to pursue such remedy as may be available to them for enhancement of compensation or any other relief to which they may be legally entitled. In view of that liberty, the appellants - original landowners thereafter and after dismissal of the special leave petition by this Court filed reference. Therefore, in view of the liberty reserved by the High Court in favour of the appellants to pursue such remedy as may be available to them for enhancement of compensation, the reference application could not have been dismissed as barred by limitation under Section 18(2) of the Act, 1894. Within a period of six months from the date of dismissal of the special leave petition, the reference was filed. In the special leave petition, which was dismissed by this Court on 11.4.2013, the original landowners whose valuable lands had been acquired challenged the acquisition proceedings. At this stage, it is required to be noted that though in the writ petition before the High Court (in the earlier round of litigation) they challenged the award under Section 12(2) of the Act and the High Court observed that it is too late to make any grievance, still the High Court while dismissing the writ petition reserved liberty in favour of the appellants to initiate appropriate proceedings for enhancement of the compensation.

16. As such, on a fair reading of the entire judgment and order passed by the High Court, the observations made that it is too late to make the grievance with respect to the inadequacy of the compensation, those observations are to be read while considering the prayer of the appellants challenging the acquisition proceedings. It appears that the acquisition was also challenged on the ground that the amount awarded is inadequate. To that, the observations were made by the High Court that it is too late to raise such a dispute. Therefore, the High Court ought to have interfered with the decision of the reference Court dismissing the reference on the ground of limitation and ought to have remitted the matter to the reference Court to decide the reference on merits.

17. Now so far as the reliance placed upon the decisions of this Court in the cases of *Shah Manilal Chandulal* (supra) and *Mahadeo Bajirao Patil* (supra) are concerned, there cannot be any dispute on the proposition of law laid down by this Court that the limitation for making

reference under Section 18 of the Act, 1894 cannot be extended and that Section 5 of the Limitation Act shall not be applicable. However, in the present case, it is not the case of condoning the delay in exercise of powers under Section 5 of the Limitation Act. As observed hereinabove, in the present case, the appellants challenged the acquisition proceedings which ended on the dismissal of the special leave petition by this Court *vide* order dated 11.4.2013 and thereafter pursuant to the liberty reserved by the High Court, reserved while dismissing Writ Petition No. 1428/2012, within a period of six months from the date of dismissal of the special leave petition, i.e., on 1.7.2013, the original landowners filed reference application under Section 18 of the Act, 1894. In the aforesaid two decisions before this Court, there were no such facts. Therefore, on facts, the aforesaid two decisions shall not be applicable to the facts of the case on hand.

18. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order passed by the High Court as well as the order passed by the reference court dismissing the writ petition/reference under Section 18 of the Act, 1894 as barred by limitation are hereby quashed and set aside. The matter is remitted to the reference court to decide the reference on merits. We direct the reference court to finally decide and dispose of the reference within a period of nine months from the date of receipt of the present order.

19. The present appeal is accordingly allowed. However, there shall be no order as to costs.

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