

(2002) 08 AHC CK 0196

Allahabad High Court

Case No: C.M.W.P. No. 9705 of 1988

U.P. State Electricity Board and
Others

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision: Aug. 28, 2002

Acts Referred:

- Limitation Act, 1963 - Section 29, 5
- Payment of Wages Act, 1936 - Section 17

Citation: (2002) 95 FLR 583 : (2003) 1 LLJ 260 : (2002) 3 UPLBEC 2318

Hon'ble Judges: S.N. Srivastava, J

Bench: Single Bench

Advocate: Tarun Agarwala, for the Appellant; R.C. Singh, for the Respondent

Final Decision: Allowed

Judgement

S.N. Srivastava, J.

Impugned herein is the order dated November 3, 1987 passed by the District Judge Gorakhpur thereby rejecting the application preferred u/s 5 of Limitation Act, for condoning the delay in filing the appeal u/s 17 of the Payment of Wages Act, 1936 (in short the Act). The quintessence of what has been held by the District Judge is that Section 5 of the Indian Limitation Act cannot be called in aid for application to Section 17 of the Payment of Wages Act, 1936.

2. Heard Sri Tarun Verma, learned counsel for the petitioners and Sri R.C. Singh, learned counsel appearing for the Opposite Parties. The questions that loom before the Court for determination are two fold: (1) whether the Payment of Wages Act is a complete Code in itself in the matter of limitation or it is mere adjunct to supplement Section 29 of the Indian Limitation Act for purposes of limitation; and (2) whether Section 5 of the Indian Limitation Act can be called in aid to apply to proceedings u/s 17 of the Payment of Wages Act by virtue of Section 29 of the Indian

Limitation Act, 1963?

3. The learned counsel for the petitioner, to begin with, canvassed that under the old Limitation Act, Section 5 of the Indian Limitation Act was conspicuous by absence of reference in Section 29 of the self-same Act but after coming into force of the Indian Limitation Act, 1963, specific reference was made to Section 5 of the Indian Limitation Act. So far as appeal under the Payment of Wages Act is concerned, notwithstanding the fact that it is a special Act it does not expressly exclude applicability of Section 5 of the Act. He further canvassed that application u/s 5 of the Indian Limitation Act should have been entertained and the same should have been disposed of on points involving merit. In support of his submission, the learned counsel, has called in aid the decision reported as *Union of India v. Aftab Ahmad and Ors.* 1966 (13) FLR 351.

4. Sri R.C. Singh, learned counsel appearing for the opposite parties in opposition, contended that Section 5 of the Indian Limitation Act is not intended for application to proceeding u/s 17 of the Payment of Wages Act and to enforce his contention cited decision reported as *Vijai Kumar Bhalla v. District Judge Bahraich* 1978 (3) AWC 2216.

5. Before coming to grips with the contentions on merit, Section 17(1) of the Payment of Wages Act may usefully be quoted herein.

"1.Appeal.- (1) An appeal against an order dismissing either wholly or in part an application made under Sub-section (2) of Section 15, or against a direction made under Sub-section (3) or Sub-section (4) of that section may be preferred, within thirty days of the date on which the order or direction was made in a Presidency town before the Court of Small Causes and elsewhere before the District Court-

(a) by the employer or other person responsible for the payment of wages u/s 3, if the total sum directed to be paid by way of wages and compensation exceeded three hundred rupees or the other person a financial liability exceeding one thousand rupees, or

(b) by an employed person or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf or any Inspector under this Act, or any other person permitted by the authority to make an application under Sub-section (2) of Section 15, if the total amount of wages claimed to have been withheld from the employed person exceeds twenty rupees or from the unpaid group to which the employed person belongs or belonged exceeds fifty rupees, or

(c) by any person directed to pay a penalty under Sub-section (4) of Section 15."

From a perusal of Section 17 aforesaid it is abundantly clear that the Act does not specifically contemplates eschewal of application of Section 5 of the Limitation Act. For facility of appraising the controversy involved herein, Section 29(2) of the Indian Limitation Act, 1963 may also usefully be quoted below.

"29. Saving :-(1).....

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

Section 29(2) of the Indian Limitation Act contemplates in no uncertain terms that if any special or local law prescribes for any suit appeal or application, a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 would apply as if such period were the period prescribed by the schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 and 24 shall apply only in so far as and to the extent to which, they are not expressly excluded by such special or local law.

6. From a bare perusal of Section 17(1) of the Payment of Wages Act, it crystallises that there is no specific exclusion as to applicability of Section 5 of the Indian Limitation Act by virtue of Payment of Wages Act, 1936 being a Special Law. The learned counsel for the petitioner, to bolster up his submission placed credence on a decision reported in 1966 ALJ 806. The quintessence of what has been held in this decision is that the Payment of Wages Act, though it prescribes limitation for filing an appeal, is not a complete Code in the matter of limitation inasmuch as it makes no provisions such as are contained in the Indian Limitation Act. In this case, the question which cropped up for consideration was whether Section 12 of the Indian Limitation Act would be applicable or not to appeals under Payment of Wages Act. The Court held the view that Section 12 of the Limitation Act would be applicable and the time consumed in obtaining certified copy of the order was to be excluded in computing the period of limitation.

7. Before proceeding further, it would be useful to advert to the law laid down by the Apex Court in [Mangu Ram Vs. Municipal Corporation of Delhi](#). In this case, the question that fell for consideration of the Apex Court stemmed from SLP under Section 417(3) Cr.P.C. 1898. The Apex Court held that time limit of 60 days laid down in Sub-clause (4) of Section 417 Cr.P.C. is a special law of limitation and there is nothing in this special law to exclude the applicability of Section 5 of the Indian Limitation Act, 1963. The relevant part of para 7 is quoted below for ready reference.

"7. There is an important departure made by the Limitation Act, 1963 in so far as the provision contained in Section 29, Sub-section (2), is concerned. Whereas under the Indian Limitation Act, 1908 Section 29, Sub-section (2), clause (b) provided that for the purpose of determining any period of limitation prescribed for any suit, appeal

or application by any special or local law the provisions of the Indian Limitation Act, 1908, other than those contained in Sections 4 to 18 and 22, shall not apply and therefore, the applicability of Section 5 was in clear and specific terms excluded. Section 29, Sub-section (2) of the Limitation Act, 1963 enacts in so many terms that for the purpose of determining the period of limitation prescribed for any suit, appeal or application by any special or local law the provisions contained in Sections 4 to 24, which would include Section 5, shall apply in so far as and to the extent to which they are not expressly excluded by such special or local law. Section 29, sub-section 2, Clause (b) of the Indian Limitation Act, 1908 specifically excluded the applicability of Section 5, while Section 29, Sub-section (2) of the Limitation Act, 1963 in clear and unambiguous terms provided for the applicability of Section 5

The Apex Court further observed in the following terms-

"..... the time limit of sixty days laid down in Sub-section (4) of Section 417 is a special law of limitation and we do not find anything in this special law which expressly excludes the applicability of Section 5. It is true that the language of Sub-section (4) of Section 417 is mandatory and compulsive, in that it provides in no uncertain terms that no application for grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquittal. But that would be the language of every provision prescribing a period of limitation. It is because a bar against entertainment of an application beyond the period of limitation is created by a special or local law that it becomes necessary to invoke the aid of Section 5 in order that the application may be entertained despite such bar. Mere provision of a period of limitation in howsoever peremptory or imperative language is not sufficient to displace the applicability of Section 5. The conclusion is, therefore, irresistible that in a case where an application for special leave to appeal from an order of acquittal is filed after the coming into force of the Limitation Act, 1963, Section 5 would be available to the applicant and if he can show that he had sufficient cause for not preferring the application within the time limit of sixty days prescribed in Sub-section (4) of Section 417, the application would not be barred and despite the expiration of the time limit of sixty days, the High Court would have the power of entertain it.....

8. The decision relied upon by the Opposite Parties reported in [Vijai Kumar Bhalla Vs. District Judge, Bharaich and another](#), is, in my opinion, per incuriam inasmuch, as the said decision has been rendered in oblivion of the case law rendered by the Supreme Court in Mangu Ram's case (supra). The ratio decidendi flowing from the decision of the Supreme Court applies to the facts and circumstances of the present case being a direct case on the point and on the question involved in this petition.

9. The learned single Judge while adjudicating on the question that Section 5 of the Indian Limitation Act would come into play by virtue of Section 29(2) of the Indian Limitation Act to proceeding u/s 17 of the Payment of Wages Act, had profusely

relied upon a case in Hyderabad C. and F. Ltd. v. M.B. Khan, rendered by a Division Bench of Andhra Pradesh High Court. This decision revolves round Section 29(2) of the Indian Limitation Act, 1908.

10. Likewise case law reported in [Binay Kant Mani Tripathi Vs. Union of India and others](#), was a case relating to recrimination petition in the election petition arising out of section 97 of Representation of Peoples Act. In this case provisions relating to appeal under the Payment of Wages Act or any similar matter relating to appeal were not reckoned into consideration.

11. The Apex Court analytically examined the provisions of Section 97 and deduced that the intention of the Legislature while enacting Section 97 of the Representation of Peoples Act in the matter of limitation is to exalt it to the status of a complete Code and cannot serve to be supplemented by the Indian Limitation Act, 1963. In this regard Section 97 of the Representation of Peoples Act is abstracted below.

"97.Recrimination when seat claimed .-(1) When in an election petition a declaration that any candidate other than the returned candidate has been duly elected is claimed, the returned candidate or any other party may give evidence to prove that the election of such candidate would have been void if he had been the returned candidate and a petition had been presented calling in question his election;

Provided that the returned candidate or such other party, as aforesaid shall not be entitled to give such evidence unless he has, within fourteen days from the date of commencement of the trial, given notice to the High Court of his intention to do so and has also given the security and the further security referred to in Sections 117 and 118 respectively.

(2) Every notice referred to in Sub-section (1) shall be accompanied by the statement and particulars required by Section 83 in the case of an election petition and shall be signed and verified in like manner."

12. Proviso to Section 97 crystallises that Legislature while creating bar of 14 days from the date of commencement of trial has used the words "shall not be entitled" and "unless he has, within 14 days." These words were interpreted by the Apex Court to signify that the intention of Legislature was to impart the status of complete Code.

13. So far as Section 17 is concerned, the expressions employed are "may be preferred within 30 days." In the light of the discussion made above, it necessarily follows that intention of the Legislature while enacting Section 17 of the Payment of Wages Act was not to exclude the Indian Limitation Act from applicability expressly to the proceeding under the Payment of Wages Act. In view of what has been discussed above, the first question is answered in affirmative that the provisions of Payment of Wages Act is not a complete code in itself so far as Limitation Act is concerned and it is necessarily to be supplemented by Section 29(2) of the Indian

Limitation Act. The second question whether Section 5 of the Indian Limitation Act can be called in to apply to proceedings u/s 17 of the Payment of Wages Act by virtue of Section 29 of the Indian Limitation Act, 1963 is also decided in affirmative and it is held that Section 5 of the Indian Limitation Act is fully applicable in the matter of appeal to be preferred under the Payment of Wages Act.

14. For still better appreciation of the controversy it is rendered essential to excerpt below Section 29(2) of the old Act.

"29.(1).....

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefore by the first Schedule, the provisions of Section 3 shall apply, as if such period were prescribed therefore in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law-

(a) the provisions contained in Section 4, Section 9to18 and Section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and

(b) the remaining provisions of this Act shall not apply.

15. Section 29 of the Old Act does not refer to Section 5 and it simply refers to Section 4, Sections 9to18 and Section 22. In view of the law laid down by the Apex Court in Mangu Ram's case (supra), there is no exclusion of Section 5 for application to the provisions of Payment of Wages Act, 1936. The Act prescribes the period of 30 days as limitation for the purposes of filing the appeal. In view of the law laid own by the Apex Court (supra), I am of the firm opinion that the Payment of Wages Act is not a complete code in itself so far as limitation is concerned and Section 5 of the Indian Limitation Act comes into play as envisaged in Section 29(2) of the Act. From a combined reading of the relevant provisions of the Special Act i.e. Payment of Wages Act, it is indubitably clear that the provisions of Limitation Act are not excluded and therefore, the same shall be deemed to be supplementing the provisions of the Special Act i.e. Payment of Wages Act. I agree in concurrence with the law laid down by the single Judge in Union of India v. Aftab Ahmad (supra) that Payment of Wages Act though it prescribes limitation for filing the appeal, is not a complete code in the matter of limitation.

16. One very significant aspect having bearing on the present case is that the entire payment under the order of the Prescribed Authority passed u/s 15 of the Payment of Wages Act was deposited and a certificate was issued on November 13, 1996. The appeal was filed on November 16, 1996. On the date on which appeal was filed, provisions of Section 17(1)(a) of the Payment of Wages Act were thus fully complied with inasmuch as appeal was accompanied by a certificate of the Prescribed Authority and the entire deposit were already made.

17. As a result of foregoing discussion, the petition is allowed and the order impugned here thereby rejecting the application preferred u/s 5 of the Indian Limitation Act for filing appeal u/s 17(1) of the Payment of Wages Act is set aside. The matter is relegated to the District Judge, Gorakhpur for decision afresh on the application u/s 5 of the Indian Limitation Act on points involving merits.