

CASE NO.:
Appeal (civil) 1901 of 2002

PETITIONER:
KALPATARU AGROFOREST ENTERPRISES

RESPONDENT:
UNION OF INDIA

DATE OF JUDGMENT: 05/03/2002

BENCH:
SYED SHAH MOHAMMED QUADRI & R.P. SETHI

JUDGMENT:
JUDGMENT

2002 (2) SCR 298

The following Order of the Court was delivered :

ORDER

Issue notice in SLP (C) 5519, 5521 CC Nos. 1911 and 2228/2002. Mr. P.S. Narasimha, Advocate, on behalf of Ms. Anil Katiyar Advocate, accepts notice for the Union of India.

Delay is condoned.

Leave is Granted in all the SLPs.

These five appeals arise out of the orders of the High Court of Madhya Pradesh at Jabalpur passed in different Misc. Appeals on October 30, 2000. The claimant before the Railway Claims Tribunal (for short the Tribunal) is the appellant.

The common question to be considered by us relates to maintainability of a review petition before the Tribunal against an appealable order passed by it.

To appreciate the issue involved it would suffice to refer to the facts in appeal arising out of SLP (C) No. 4413/2001. The appellant transported bamboo chips through Indian Railways to different mills in India. It is alleged that higher freight was paid by it to the Railways on the basis of rationalisation of the fares, on the ground that transportation would be by a longer route than the direct route. In fact for the transportation of goods a direct shorter route was adopted by the Railways. Accordingly, it made a claim for refund of Rs. 54,123 being the excess amount paid to the railways, by filing O.A. No. 391 of 1995 in the Tribunal under Section 16 of the Railway Claims Tribunal Act, 1987 (hereinafter referred to as 'the Act'). The Tribunal dismissed the refund claim on December 10, 1997. The appellant filed a review petition against that order before the Tribunal. The review petition was dismissed on October 27, 1998. Dissatisfied with the order passed on the review petition, the appellant filed Misc. Appeal No. 160/99 in the High Court of Madhya Pradesh at Jabalpur under Section 23 of the Act. On October 30, 2000, the learned Single Judge of the High Court, who decided the appeal, took the view that the review petition itself was not maintainable in view of Rule 32 of the Railway Claims Tribunal (Procedure) Rules, 1989 (hereinafter referred to as the Rules') so no relief could be granted to the appellant against the order of the Tribunal passed on the review petition.

Mr. Vibhu Bakhru, the learned counsel for the appellant in all the appeals, contends that Section 18(3)(f) of the Act specifically provides that the Tribunal shall have the same power as are vested in a Civil Court under the

Code of Civil Procedure in regard to reviewing of its decision, therefore, Rule 32 is contrary to the Act as such the learned Judge ought not to have dismissed the appeal on the ground that the review petition was not maintainable. Mr. P.S. Narasimha, the learned counsel for the Union of India, contends that though Rule 32 of the Rules appears to be in conflict with the statutory provision it was intended to confine the power of review to orders against which no appeal is provided under Section 23 of the Act.

To examine the rival contentions and to ascertain the scope of the power of the Claims Tribunal to entertain a review petition, it will be useful to refer to the relevant provisions of the Act and the Rules. The provision of the Act dealing with power of review of the Tribunal is clause (f) of sub-section (3) of Section 18 which reads as follows :-

"18. Procedure and powers of Claims Tribunal -

(1) The Claims Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules, the Claims Tribunal shall have powers to regulate its own procedure including the fixing of places and times of its enquiry.

(2)

(3) The Claims Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely :-

(a) to (e) ***

(f) reviewing its decisions;

(g) to (i) ***

From the perusal of sub-section (1) of Section 18 it is evident that in deciding the claims, the Tribunal is not bound by the procedure laid down in Code of Civil Procedure (for short 'CPC'), but it shall be guided by the principles of natural justice and subject to other provisions of the Act and the rules it may regular its own procedure including the fixation of places and time of its enquiry. However, sub-section (3) specifically provides that in respect of the matter enumerated in clauses (a) to (i) the Tribunal shall have the same powers as are vested in a civil court under the CPC, while trying the suit, for the purposes of discharging its function under the Act. Clause (f), quoted above refers to reviewing of its own decision. It is, therefore, clear that in reviewing its decisions the Tribunal has the same power as are vested in the civil court under the CPC. Here, it would be apt to refer to the provisions of the CPC dealing with the review-Section 114 and Order XLVII, Rule 1 of the Civil Procedure Code.

Section 114 is in the following terms :-

"114. Review-Subject as aforesaid, any person considering himself aggrieved -

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed by this Court, or

(c) by a decision on a reference from a Court of Small Causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit."

Rule 1, Order XL VII which specifies the types of the orders and the conditions under which they may be reviewed, reads thus:

"1. Application for review of judgment - (1) Any person considering himself aggrieved -

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

Explanation - XXXXXX"

From a combined reading of Section 114 and Rule 1 of Order XLVII, it is clear that the decree or order from which an appeal is allowed but from which no appeal has been filed, can be reviewed. It follows that against the appealable orders of the Tribunal from which an appeal lies but no appeal is filed, the review petition is maintainable before the Tribunal. In the instant cases, admittedly, no appeal was filed against the order in question though under Section 23 it is appealable, consequently the review petition is maintainable before the Tribunal.

It would be necessary to refer Rule 32 of the Rules on which the High Court has placed reliance. It is in the following terms :

"32. Review of decision-(1) Any person considering himself aggrieved by any order of the Tribunal from which no appeal is allowed and who on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the order made against him, may apply for review of a final order not being an interlocutory order, to the Tribunal."

This rule says that any person considering himself aggrieved by any order of the Tribunal from which no appeal is allowed and who on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the order made against him, may apply for review of a final order not being an interlocutory order, to the Tribunal.

It is thus apparent that Rule 32 restricts the scope of power of review vested under Section 18(3)(f) of the Act to non-appealable orders and leaves out from its ambit orders which are appealable under Section 23 of the Act though such orders could be reviewed in view of Section 114 and Rule 1 of Order XLVII of CPC. To the extent indicated above, Rule 32 runs counter to Section 18(3)(f) of the Act. As Rule 32 is repugnant to the statutory provision of clause (f) of sub-section (3) of Section 18, it is certainly bad and in no case can it be allowed to override the specific provision of the Act. In this view of the matter, the High Court erred in not considering the appeal of the appellant on merits on the ground that the review petition was not maintainable under Rule 32.

For these reasons, we set aside the orders under challenge in these appeals, restore the appeals to the file of the High Court and remit the cases to the High Court to decide them on merits in accordance with law.

The appeals, are allowed in the above terms. No costs.

JUDIS