State Of M.P. & Anr vs Anshuman Shukla on 12 May, 2008

Equivalent citations: AIR 2008 SUPREME COURT 2454, 2008 (7) SCC 487, 2008 AIR SCW 3760, 2008 (8) SCALE 425, 2008 (2) ARBI LR 485, (2008) 67 ALLINDCAS 23 (SC), 2008 (67) ALLINDCAS 23, (2008) 2 ARBILR 485, (2009) 1 CIVILCOURTC 634, (2008) 2 JAB LJ 364, (2008) 8 SCALE 425, (2008) 72 ALL LR 498

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Bench: S.B. Sinha, V.S. Sirpurkar

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIAL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3498 OF 2008
(Arising out of SLP (C) No.12778 of 2007)

State of M.P. and another .... Appellants

Versus

Anshuman Shukla .... Respondent

JUDGMENT

S.B. SINHA, J.

1. Leave granted.

2. Applicability of Section 5 of the Limitation Act, 1963 (for short the 1963 Act) in the matter of entertaining a revision application before the High Court in terms of Section 19 of the Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 (for short the Act) is involved in this appeal which arises out of a judgment and order dated 30th June, 2005 passed by a Full Bench of Madhya Pradesh High Court at Jabalpur in Civil Revision No.1330 of 2003.

3. Before embarking on the said question we may notice the statutory provisions of the Act for resolution of the legal issue.

The Act came into force with effect from 1st March, 1985. It was enacted to provide for the establishment of a Tribunal to arbitrate on disputes to which the State Government or a Public Undertaking (wholly or substantially owned or controlled by the State Government), is a party, and for matters incidental thereto or connected therewith.

The Arbitral Tribunal is constituted in terms of Section 3 of the Act for resolving all disputes and differences pertaining to works contract or arising out of or connected with execution, discharge or satisfaction of any such works contract.

Section 7 provides for reference to Tribunal. Such reference may be made irrespective of the fact as to whether the agreement contains an arbitration clause or not. Section 7-A provides for the particulars on the basis whereof the reference petition is to be filed.

Section 7-B provides for limitation for filing an application, which is in the following terms :-

> "7-B. Limitation.- (1) The Tribunal shall not admit a reference petition unless -
>
> (a) the dispute is first referred for the decision of the final authority under the terms of the works contract; and
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> (b) the petition to the Tribunal is made within one year from the date of communication of the decision of the final authority :
>
> Provided that if the final authority fails to decide the dispute within a period of six months from the date of reference to it, the petition to the Tribunal shall be made within one year of the expiry of the said period six months.
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> (2) Notwithstanding anything contained in sub-

section (1), where no proceeding has been commenced at all before any Court proceeding the date of commencement of this Act or after such commencement but before the commencement of the Madhya Pradesh Madhyastham Adhikaran (Sanshodhan) Adhiniyam, 1990, a reference petition shall be entertained within one year of the date of commencement of Madhya pradesh Madhyastham Adhikarn (Sanshodhan) Adhiniyam, 1990 irrespective of the fact whether a decision has or has not been made by the final authority under the agreement. (2-A) Notwithstanding anything contained in sub- section (1), the Tribunal shall not admit a reference petition unless it is made within three years from the date on which the works contract is terminated, foreclosed , abandoned or comes to an end in any other manner or when a dispute arises during the pendency of the works contract :

> Provided that if a reference petition is filed by the State Government, such period shall be thirty years."

4. Chapter IV of the Act contains Sections 16 to 18. Section 16 deals with passing of an award by the Tribunal and/or its Benches. Section 17 gives finality to the award made thereunder. Such awards made, in terms of Section 18 would be deemed to be a decree within the meaning of Section 2 of the Code of Civil Procedure, 1908. Section 19 confers a power of revision on the High Court, sub-section (1) whereof reads as under :-

> "19. High Court's power of revision. - (1) The High Court may suo motu at any time or on an application for revision made to it within three months of the award by an aggrieved party, call for the record of any case in which an award has been made under this Act by issuing a requisition to the Tribunal and upon receipt of such requisition, the Tribunal shall send or cause to be sent to that Court the concerned award and record thereof :
>
> Provided that any application for revision may be admitted after the prescribed period of three months, if the applicant satisfies the High Court that he had sufficient cause for not preferring the revision with such period.
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> Explanation. - the fact that the applicant was misled by any order, practice or judgment or the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this sub-section."

5. We may notice that the proviso thereto had been appended by the M.P. Act No. 19 of 2005.

6. The State of M.P. filed a revision application before the High Court. It was barred by 80 days.

7. A question as to whether the High Court could have condoned the delay or not came up for consideration before a Division Bench of the said Court in Nagarpalika Parishad, Morena vs. Agrawal Construction Co. : 2004 (II) MPJR 374. It was held therein that the provisions of Section 5 of the 1963 Act being not available, the delay cannot be condoned.

8. Reference was thereafter made to a Full Bench in the light of the decision rendered by this Court in Mukri Gopalan vs. Cheppilat Puthanpurayil Aboobacker (1995) 5 SCC 5. In the meantime the decision in Nagar Palika Parishad, Morena (supra) came up for consideration before this Court. The decision of the Division Bench was affirmed by this Court stating :-

> "Heard Mr. Sushil Kumar Jain, learned counsel for the petitioner at length.
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> In our view there is no infirmity in the impugned judgment. The authority in the case of Nasiruddin and others vs. Sita Ram Agarwal reported in (2003) 2 SCC 577 has been correctly followed. Same view has also been taken by this Court in the case of Union of India vs. Popular Construction Co. reported in (2001) 8 SCC 470.

The Special Leave Petition stands dismissed with no order as to costs."

9. In the meanwhile the matter was referred again for consideration by a larger Bench which included the question as to whether the decision of this Court in regard to the dismissal of the special leave petition constitutes a binding precedent. The questions referred for decisions of the larger Bench were :-

> "(a) Whether the power of High Court for exercise of revisional jurisdiction under Section 19 of M.P. Madhyasthm Adhikaran Adhiniyam, 1983 is totally constricted and restricted to a period of three months of the passing of the award which is the limitation prescribed for an aggrieved party or it can exercise such power of revision suo motu within a reasonable period of time that can travel beyond here months?
>
> (b) Whether the decision tendered in the case of Nagarpalika Parishad vs. Agrawal Construction Co.

2004 (2) MPJR 374 would be a binding precedent?"

10. The Constitution Bench found that the decision of this Court in Nagarpalika Parishad (supra) constitutes a binding precedent and it was bound thereby.

It was held that Section 5 of the Limitation Act has no application to a revision application filed before the High Court under Section 19 of the Act.

11. Mr. S.K. Dubey, learned senior counsel appearing on behalf of the appellants, would submit that the Arbitration Tribunal being a Court, in view of the provisions contained in sub-section (2) of Section 29 of the Limitation Act, the High Court committed a serious error in opining that it did not have any power to condone the delay.

12. The Act is a special Act. It provided for compulsory arbitration. It provides for a reference. The Tribunal has the power of rejecting the reference at the threshold.

It provides for a special limitation. It fixes a time limit for passing an Award. Section 14 of the Act provides that proceeding and the award can be challenged under special circumstances. Section 17, as noticed hereinbefore, provides for finality of the award, notwithstanding anything to the contrary contained in any other law relating to arbitration.

13. The High Court exercises a limited power. The revisional power conferred upon the High Court is akin to Section 115 of the Code of Civil Procedure. It has the power to decide as to whether the Tribunal has misconducted itself or the proceedings or has made an award which is invalid in law or has been improperly procured by any party to the proceedings.

14. As noticed heretobefore the proviso appended to Section 19 was added by M.P. Act No.19 of 2005. Prior thereto the High Court, even at the instance of a party, despite expiry of the period of limitation could have exercised its suo motu jurisdiction.

15. It is a trite law that provisions of the Limitation Act, 1963 shall apply to a Court. It has no application in regard to a Tribunal or personal designata. There exists a distinction between a Court and the Tribunal.

16. The very fact that the authorities under the Act are empowered to examine witnesses after administering oath to them clearly shows that they are 'Court' within the meaning of the Evidence Act. It is relevant to refer to the definition of 'Court' as contained in Section 3 of the Indian Evidence Act which reads as follows :-

> 'Court' includes all Judges and Magistrates, and all persons, except arbitrators, legally authorised to take evidence.
>
> The Tribunal has been confirmed various powers.
>
> There, therefore, in our opinion, cannot be any doubt whatsoever that the authorities under the Act are also 'courts' within the meaning of the provisions of the Indian Evidence Act.

17. The definition of 'Courts' under the Indian Evidence Act is not exhaustive (See The Empress vs. Ashootosh Chuckerbutty and others :

> ILR (4) Cal. (15) 483 (FB). Although the said definition is for the purpose of the said Act alone, all authorities must be held to be courts within the meaning of the said provision who are legally authorised to take evidence. The word 'Court' under the said Act has come up for consideration at different times under the different statutes.

18. The Commissioner who has been authorised to take evidence of the witnesses has been held to be a court (See Jyoti Narayan vs. Brijnandan Sinha : AIR 1954 Patna 289). The Rent Controller has been held to be a court (See G. Bulliswamy vs. Smt. C. Annapurnamma :

> AIR 1976 Andhra Pradesh 270. The Election Tribunals have been held to be courts (See Prem Chand vs. Sri O.P. Trivedi and others : AIR 1967 All. L.J. 5 at page 7). Coroners before whom evidence can be adduced have been held to be courts (See Tanajirao Martinrao Kadambande vs. H.J. Chinoy : 71 Bombay Law Reporter 732.
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> In Brijnandan Sinha vs. Jyoti Narain : AIR 1956 SC 66 it has been held that any Tribunal or authority whose decision is final and binding between the parties is a court. In the said decision, the Supreme Court, while deciding a case under Court of Enquiry Act held that a court of enquiry is not a court as its decision is neither final nor binding upon the parties. In Vindar Kumar Satya vs. State of Punjab : AIR 1956 SC 153 the Supreme Court has made a broad distinction of a court and quasi judicial Tribunal. In the Sitamathi Central Co-operative Bank Ltd. vs. Jugal Kishore Sinha : AIR 1965 Pat 227 a Division Bench of the Patna High Court has held that Assistant Registrars appointed under the Bihar and Orissa Cooperative Societies Act to be

courts. In the said decision, this Court has held that, when a question arises as to whether the authority constituted under a particular Act exercising judicial or quasi judicial power is a court or not, then the following tests must be fulfilled before the said authority can be termed as a court :

"(a) the dispute which is to be decided by him must be in the nature of a civil suit :

(b) the procedure for determination of such dispute must be judicial procedure ; and

(c) the decision must be a binding nature."

The aforementioned judgment has been affirmed by the Supreme Court in the case of Thakur Jugal Kishore Sinha vs. Sitamarhi Central Coop. Bank Ltd. : AIR 1967 SC 1494 In Chandra Kishore Jha vs. State of Bihar : 1975 BBCJ 656, a Division Bench of the Patna High Court has held the the Compensation Officer acting under the Bihar Land Reforms Act, 1950, to be a court as the said officer exercises judicial power deciding civil dispute and pass an order which is final and binding between the parties. In S.K. Sarkar, Member, Board of Revenue, U. P., Lucknow vs. Vinoy Chandra Misra :

(1981) 1 SCC 436 the Board of Revenue has been held to be a court subordinate to the High Court for the purpose of the provisions of the Contempt of Court Act.

19. However, in The Bharat Bank Ltd., Delhi vs. The Employees of the Bharat Bank Ltd., Delhi AIR 1950 (SC) 188 it has been held that a 'Labour Court' although has all the trappings of the Court but still is not a court in technical sense. In Sakuru vs. Tanaji : (1985) 3 SCC 590, the Supreme Court has held that the statutory authorities did not come within the purview of the definition of courts for the purpose of Section 5 of the Limitation Act.

20. In K.P. Verma vs. State of Bihar : 1988 PLJR 1036, which arose out of a case under the Bihar Administrative Tribunal Act, a Division Bench of the Patna High Court held as under :-

"32. The modern sociological condition as also the needs of the time have necessitated growth of administrative law and administrative law tribunal. Executive functions of the State calls for exercise of discretion and judgment also and not a mere dumb obedience of the orders so that the executive also forms quasi-judicial and quasi legislative functions and, in this view of the matter, the administrative adjudication has become as indispensable part of the modern state activity. However, judicial process differs from administrative adjudicative process. Sometime administrative adjudication is understood as the same thing as administration of justice, though both the terms relate to deciding upon disputes yet over the years a great many difference have been noticed in them which may be placed in the table as under :-

Judicial Adjudication

1. In this the disputes are decided by the persons specially trained in law.

2. The Courts normally cannot move a matter by themselves, eg. suo moto.

3. The Courts are bound by earlier precedents and settled principles of Law.

4. The Courts decisions are objective.

5. Normally only the parties directly interested ino the lis take part in it.

6. The Law provides many safeguards against the arbitrary decisions of the Courts in the shape of procedures , appeals, revisions, reviews, etc. etc.,

7. The judgments must be given with detailed reasons by the Courts.

8. Judges enjoy a legal immunity from responsibility of acts done in discharge of their duties and their conduct cannot be a subject of discussion in any form, even in Parliament.

9. The Laws of evidence and other principles of Common Law are fully applicable to the Courts.

10. The justice in courts is without `biss' or `affection or ill will."

Administrative Adjudication In this the disputes are decided by the persons having administrative experience.

The administrators may initiate action by themselves.

The administrators may decide each case on its merits.

The decisions of administrators are usually subjective.

In this even other citizens may appear in the interest of public.

In administrative adjudication, normally the decisions are final and there is a much greater scope for arbitrary decisions of the adjudicators.

The administrative adjudicators may pass even cryptic non speaking orders.

This is not so normally in case of Tribunals unless the law incorporating them may provide.

The Tribunals are not bound by any such law and need to follow only the principles of Natural Justice.

These have to apply the special policy and thus cannot view things with that `Cold neutrality of the impartial judge' (Schwarts in American Administrative Law. P. 61) "

> Dr. Durga Das Basu in his Administrative Law, Second Edition, at page 280 has also given broad features which characterise a `Court'.
>
> However, this broad distinction may not be held to be applicable as how in India apart from the Administrative Tribunals pure and simple as in the United Kingdom or the United States of America, various special Tribunals are being constituted, and that although they are not regular `courts' and have judicial authorities but have all the trappings of the Court. The number of such Tribunals is on the increase owing to the welfare role taken up by the State under our Constitution, as such so that "the number of Indian statutes which constitute administrative authorities, purely administrative and quasi judicial, is legion." (See Durga Das Basu, Administrative Law, 2nd Edition at page 285).
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> "Although in its constitution, it is a Tribunal as the source of authority is by reason of a statutory provision and it is empowered by the statutory provisions to exercise any adjudicating power of the State. (See A.P.H.L. Conf. vs. Sangma, A. 1977 S.C. 2155 (2163), e.g. the Election Commission, deciding disputes as to Party Symbols (ibid); the settlement Commision under s. 2451 of the Income-tax Act (C.I.T. v. Bhattacharya, A. 1979 S.C. 1724); Arbitrator appointed under s. 10A of the Industrial Disputes Act (Gujarat Steel Tubes vs. Mazdoor Union, A. 1980 S.C. 1896) ; The Central Government, exercising powers under s. 111 (3) of the Companies Act (Harinagar Sugar Mills vs. Shyam Sundar, A. 1961 S.C. 1669 (1679)."

In this connection, it may further be necessary to bear in mind that the root of the word "Tribunal" is Tribunal which is a Latin word meaning a raised platform on which the seats of the tribunes or the magistrates are placed. Thus, all courts are tribunals but all tribunals are not courts.

However, there cannot be any doubt that these administrative tribunals or the administrative tribunals or the administrative courts are authorities outside the ordinary Court system which interpret and apply the laws when acts of public administration are attacked in formal suits or by other established methods. In essence the Administrative Tribunals may be called a specialized court of law, although it does not fulfil the criteria of a law court as is understood inasmuch as it cannot like an ordinary law court entertain suits on various matters, including the matter relating to the vires of legislation. However, such a Tribunal like ordinary law courts, as found hereinbefore, are bound by the rules of evidence and procedure as laid down under the law and are required to decide strictly, as per the law.

O. Hood Phillips and Paul Jackson in O. Hood Phillips' Constitutional and Administrative Law, Sixth Edition, at page 575 observed as follows. -

"Administrative Jurisdiction" or "Administrative Justice" is a name given to various ways of deciding disputes outside the ordinary courts. It is not possible to define precisely what bodies constitute the "ordinary courts" although this expression was used in the Tribunals and Inquiries Acts 1958 and 1971. There are some bodies that might be placed under the heading either of ordinary courts or of special tribunals. Guidance cannot be found in the name of a body; the Employment Appeal Tribunal, for example, is a superior court of record."

At page 576 under the Chapter "Special Tribunals" the author has stated as follows:-

> `These are independent statutory tribunals whose function is judicial. They are often called "administrative tribunals" especially those more closely related by appointment or policy to the Minister concerned, because the reasons for creating them are administrative. The tribunals are so varied in composition, method of appointment, functions and procedure, and in their relation to Ministers on the one hand and the ordinary courts on the other, that a satisfactory formal classification is impossible.' It, therefore, in my opinion, logically follows that the tribunal, although not a law court in its true sense but is a court in a limited sense and is bound to act independently and impartially and exercise judicial authority without any fear or favour from any person and, thus, would be a court within the meaning of the provisions of the Evidence Act and the Contempt of Courts Act."

21. A Court for the purpose of application of the Limitation Act should ordinarily be subordinate to the High Court. The High Court exercises its jurisdiction over the subordinate courts inter alia in terms of Section 115 of the Code of Civil Procedure. While the High Court exercises its revisional jurisdiction, it for all intent and purport exercises an appellate jurisdiction. [See - Shankar Ramchandra Abhyankar vs. Krishnaji Dattatreya Bapat : AIR 1970 SC 1].

22. The provisions of the Act referred to hereinbefore clearly postulate that the State of Madhya Pradesh has created a separate forum for the purpose of determination of disputes arising inter alia out of the works contract. The Tribunal is not one which can be said to be a Domestic Tribunal. The Members of the Tribunal are not nominated by the parties. The disputants do not have any control over their appointment. The Tribunal may reject a reference at the threshold. It has the power to summon records. It has the power to record evidence. Its functions are not limited to one Bench. The Chairman of the Tribunal can refer the disputes to another Bench. Its decision is final. It can award costs. It can award interests. The finality of the decision is fortified by a legal fiction created by making an Award a decree of a Civil Court. It is executable as a decree of a Civil Court. The Award of the Arbitral Tribunal is not subject to the provisions of the Arbitration Act, 1940 and the Arbitration and Conciliation Act, 1944. The provisions of the said Acts have no application.

23. We are, therefore, of the opinion that the Tribunal for all intent and purport is a Court. The Tribunal has to determine a lis. There are two parties before it. It proceedings are judicial proceeding subject to the revisional order which may be passed by the High Court.

24. In Hukumdev Narain Yadav vs. Lalit Narain Mishra : (1974) 2 SCC 133 this Court was considering a question whether an Election Tribunal while sitting on a Saturday, which is not a usual working day, would function as Court. It was opined :-

> "10. Now that we have held that the Court is not closed and the petition could have been presented to the Registrar on Saturday, March 18, 1972, the question would be, does Section 5 of the Limitation Act apply to enable the petitioner to show sufficient cause for not filing it on the last day of limitation, but on a subsequent day? Whether Section 5 is applicable to election petitions filed under Section 81 of the Act will depend upon the terms of Section 29(2) of the Limitation Act. Whether Section 5 could be invoked would also depend on the applicability of sub-section (2) of Section 29 of the Limitation Act to election petitions. Under this sub-section where a special or local law provides for any suit, appeal or application a period different from the period prescribed therefor by the Schedule, the provisions specified therein will apply only insofar as and to the extent to which they are expressly excluded by such special or local law.

Under Section 29(2) of the Limitation Act of 1908 as amended in 1922, only Section 4, Sections 9 to 18 and Section 22 of that Act applied ordinarily unless excluded by a special or local law. Thus unless Section 5 was made applicable by or under any enactment the discretion of the Court to extend time thereunder would not be available. Similarly Sections 6 to 8 would not apply and neither acknowledgment nor payment (under the former Sections 19 and 20) could give a fresh starting point of limitation. Even Section 5 under the old Act was in terms inapplicable to applications unless the Section was made applicable by or under any of the enactment. The new Section 5 is now of wider applicability and as the objects and reasons state:

> "Instead of leaving it to the different States or the High Courts to extend the application of Section 5 to applications other than those enumerated in that Section as now in force, this clause provides for the automatic application of this Section to all applications, other than those arising under Order 21 of the Code of Civil Procedure, 1908, relating to the execution of decrees. In the case of special or local laws, it will be open to such laws to provide that Section 5 will not apply."

The present section incorporates two changes: (1) a uniform rule making it applicable to all applications except those mentioned therein [by defining "application" as including a "petition" in Section 2

(b)]; and (2) to all special and local enactments, unless excluded by any of them. The difference in the scheme of the provisions of sub-section (2) of Section 29 under the two Acts will be discernible if they are juxtaposed as under:

> Section 29(2) of old Act Section 29(2) of new Act Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor 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, Sections 9 to 18, and Section 22 shall apply only insofar 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. 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 insofar as, and to the extent to which, they are not expressly excluded by such special or local law.

25. There cannot, therefore, any doubt whatsoever that if the Arbitral Tribunal in question is a Court and not a personal designate, sub-section (2) of Section 29, Section 5 of the Limitation Act would apply. It is only when the limitation provided under the Special Law, is different from that prescribed in the Schedule appended to the Limitation Act, sub- section (2) of Section 29 would be attracted.

26. In Mukri Gopalan (supra) the distinction between the `Personal Designata' and `Court' was noticed. It was held that the appellate authority constituted under Section 18 of the Rent Act was a Court having all the trappings of the Courts.

27. If the Tribunal is a Court, fortiori sub-section (2) of Section 29 would apply. As it is a Court it was not necessary for the legislature to confer power under Section 5 of the 1963 Act specifically. In that view of mater an application under Section 5 of the Limitation Act would be maintainable.

28. In Mukri Gopalan (supra), this Court held :

> "15. After repealing of Indian Limitation Act, 1908 and its replacement by the present Limitation Act of 1963 a fundamental change was made in Section 29 (2). The present Section 29(2) as already extracted earlier clearly indicates that once the requisite conditions for its applicability to given proceedings under special or local law are attracted, the provisions contained in Sections 4 to 24 both inclusive would get attracted which obviously would bring in Section 5 which also shall apply to such proceedings unless applicability of any of the aforesaid sections of the Limitation Act is expressly excluded by such special or local law. By this change it is not necessary to expressly state in a special law that the provisions contained in Section 5 of the Limitation Act shall apply to the determination of the periods under it. By the general provision contained in Section 29(2) this provision is made applicable to the periods prescribed under the special laws. An express mention in the special law is necessary only for any exclusion. It is on this basis that when the new Rent Act was passed in 1965 the provision contained in old Section 31 was omitted. It becomes therefore

> apparent that on a conjoint reading of Section 29(2) of Limitation Act of 1963 and Section 18 of the Rent Act of 1965, provisions of Section 5 would automatically get attracted to those proceedings, as there is nothing in the Rent Act of 1965 expressly excluding the applicability of Section 5 of the Limitation Act to appeals under Section 18 of the Rent Act."

29. The Full Bench, however, affirmed the decision of the Division Bench of the Madhya Pradesh High Court on the authority of Nasirrudin and others vs. Sitaram and others : (2003) 2 SCC 577 and Union of India vs. Popular Construction Co. : (2001) 8 SCC 470.

30. In Popular Construction (supra) application of Arbitration and Conciliation Act, 1996 was in question. The Arbitration Act clearly provided for a limitation in the matter of exercise of discretionary jurisdiction for condoning the delay only for a period of 30 days and not thereafter. It was in the aforementioned situation this Court held that Section 5 of the Limitation Act as such will have no application, as a special limitation has been provided for.

31. In Nasirrudin (supra) this Court was considering the applicability of Section 5 of the Limitation Act in the matter of deposit of rent. The said question came up for consideration in the light of the power of the Rent Controller in terms of the Rent Control Statute in the matter of depositing the rent. In other words the question was that the provision was directory or mandatory. It was in that view of the matter this Court opined :-

> "45. On perusal of the said section it is evident that the question of application of Section 5 would arise where any appeal or any application may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not making the appeal or application within such period. Section 13(4) provides that in a suit for eviction on the ground set forth in clause (a) of sub-section (1), the tenant shall on the first date of hearing or on or before such date, the court may on the application fixed in this behalf or within such time the tenant shall deposit in court or pay to the landlord in court as determined under sub-section (3) from the date of such determination or within such further time not exceeding three months as may be extended by the court. Thus, sub-section (4) itself provides for limitation of a specific period within which the deposit has to be made, which cannot be exceeding three months as extended by the court.
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> It was furthermore observed :-
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> "47. The provisions of Section 5 of the Limitation Act must be construed having regard to Section 3 thereof. For filing an application after the expiry of the period prescribed under the Limitation Act or any other special statute, a cause of action must arise. Compliance with an order passed by a court of law in terms of a statutory provision does not give rise to a cause of action. On failure to comply with an order passed by a court of law, instant consequences are provided for under the statute. The court can condone the default only when the statute confers such a power on the

> court and not otherwise. In that view of the matter we have no other option but to hold that Section 5 of the Limitation Act, 1963 has no application in the instant case."

It was observed that for entertaining an application within the meaning of the said provision, there should be some request. Mukri Gopalan (supra) was distinguished stating :-

> "53. Mr Gupta, appearing on behalf of the respondent, however, placed reliance upon a decision of this Court in Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker. Therein this Court was concerned with extension of the period of limitation in a case wherein an appeal was to be preferred before an Appellate Authority under the Kerala Buildings (Lease and Rent Control) Act, 1965. As for preferring an appeal a period of limitation is prescribed, it was held that Section 5 of the Act was applicable and, therefore, the said decision is of no help to the respondent."

It was not dissented from.

32. We, therefore, are prima facie of the opinion that the Nagar Palika Parishad, Morena (supra) was not correctly decided and, thus, the matter requires consideration by a Larger Bench. It is ordered accordingly.

33. Let the records of the case be placed before the Hon'ble the Chief Justice of India for constituting an appropriate Bench.

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...J. (S.B. SINHA) .....J. (V.S. SIRPURKAR) New Delhi.

May 12, 2008.