

# Sarabjeet Singh Alias Sarban & Ors vs Competent Authority And Administrator ... on 12 November, 2024

**Author: Yashwant Varma**

**Bench: Yashwant Varma, Dharmesh Sharma**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

MISC. APPEAL (PMLA) 35/2024

SARABJEET SINGH ALIAS SARBAN

& ORS.

.....PETITIONER

Through: Mr. Rajat Sharma, Adv.

versus

COMPETENT AUTHORITY AND ADMINISTRATOR

SMUGGLERS AND FOREIGN EXCHANGE

MANIPULATORS FORFEITURE OF

PROPERTY

.....RESPONDENT

Through: Mr. Piyush Beriwal, Adv.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% 12.11.2024

1. This writ petition is directed against the order passed by the Appellate Tribunal [„Tribunal ] under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976<sup>1</sup> on the basis of which the appeal has been dismissed on the ground of the same being barred by limitation. The appeal had laid challenge to an order dated 29 May 2023 which according to the writ petitioner was received by him on 08 June 2023. The appeal was ultimately filed on 20 October 2023.

2. The Tribunal noted that the sixty-day maximum period for the preferment of an appeal had expired on 08 August 2023 and the appeal itself coming to be instituted ninety-two days thereafter.

3. We note that Section 68O(1) of the Narcotic Drugs and This is a digitally signed order.

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"68-O. Appeals.-

(1) Any officer referred to in subsection (1) of section 68E or any person aggrieved by an order of the competent authority] made under section 68F, section 68-I, sub-section (1) of section 68K or section 68L, may, within forty-five days from the date on which the order is served on him, prefer an appeal to the Appellate Tribunal:

Provided that the Appellate Tribunal may entertain an appeal after the said period of forty-five days, but not after sixty days, from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time."

4. As is evident from the Proviso to Section 68O(1), the period of forty-five days within which an appeal may be originally filed can be condoned up to a maximum of sixty days. However, post the expiry of sixty days, the curtains are wrung down and the right to appeal terminates. This becomes evident from the statute using the phrase „but not after sixty days . The language so employed is thus framed in peremptory terms and follows a structure that is akin to that contained in Section 34(2) of the Arbitration and Conciliation Act, 1996 [„1996 Act ] and other statutes in which the period of limitation is restricted upto a certain extent only.

5. Dealing with terminal points of limitation which statutes sometimes construct, a learned Single Judge of the Court in Suman Kumar Rana-in-Jail vs. Competent Authority and Administrator & Anr. [2023 SCC OnLine Del 6789] had rendered the following pertinent observations:-

"5. The short question which arises for consideration is as to whether the Appellate Authority has the power to condone the delay in filing an appeal beyond the period prescribed in the statute. The SAFEMA This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 19/11/2024 at 21:15:54 relevant facts for the purpose of limitation are that the date of the order against which the appeal is filed is 22.11.2022 and the same was served on the Petitioner herein on 05.12.2022 and the appeal was filed on 01.05.2023.

6. If 05.12.2022 is taken as the day when the period of limitation starts then also the period of 45 days, as specified in Section 68-O (1) of the NDPS Act expires on 19.01.2023 and the 60 days period expires on 04.02.2023. In the present case the appeal was filed on 01.05.2023, i.e. with a delay of 178 days. As per Section 68-O of the NDPS Act, an Appeal has to be filed within 45 days from the date of service of the Order. Section 68-O of the NDPS Act further provides that the Appellate Tribunal may entertain an appeal after forty-five days, but not after sixty days, from the date of service of the order, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. There is no provision under the Act to entertain an appeal beyond the period of 60 days.

7. Section 29(2) of the Limitation Act, 1963 reads as under:

"29(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."

8. The question as to whether the Courts have the power to condone the delay in case of special Acts, which provides for a separate period of limitation, has been succinctly explained in a number of judgments. While considering an appeal which is filed beyond the period of limitation under Section 125 of the Electricity Act, 2003, the Apex Court in *Chhattisgarh SEB v. Central Electricity Regulatory Commission*, (2010) 5 SCC 23, has held as under:

"25. Section 125 lays down that any person aggrieved by any decision or order of the Tribunal can file an appeal to this Court within 60 days from the date of communication of the decision or order of the Tribunal. Proviso to Section 125 empowers this Court to entertain an appeal filed within a further period of 60 days if it is satisfied that there was sufficient cause for not filing appeal within the initial period of 60 days. This shows that the period of limitation This is a digitally signed order.

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26. The object underlying establishment of a special adjudicatory forum i.e. the Tribunal to deal with the grievance of any person who may be aggrieved by an order of an adjudicating officer or by an appropriate Commission with a provision for further appeal to this Court and prescription of special limitation for filing appeals under Sections 111 and 125 is to ensure that disputes emanating from the operation and implementation of different provisions of the Electricity Act are expeditiously decided by an expert body and no court, except this Court, may entertain challenge to the decision or order of the Tribunal. The exclusion of the jurisdiction of the civil courts (Section 145) qua an order made by an adjudicating officer is also a pointer in that direction.

27. It is thus evident that the Electricity Act is a special legislation within the meaning of Section 29(2) of the Limitation Act, which lays down that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the one prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and provisions contained in Sections 4 to 24 (inclusive) shall apply for the purpose of determining any period of limitation prescribed for any suit, appeal or application unless they are not expressly excluded by the special or local law.

28. In *Hukumdev Narain Yadav v. Lalit Narain Mishra* [(1974) 2 SCC 133] this Court interpreted Section 29(2) of the Limitation Act in the backdrop of the plea that the provisions of that Act are not applicable to the proceedings under the Representation of the People Act, 1951. It was argued that the words "expressly excluded" appearing in Section 29(2) would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. While rejecting the argument, the three-Judge Bench observed: (SCC p. 146, para 17) This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 19/11/2024 at 21:15:55 "17. ... what we have to see is whether the scheme of the special law, that is in this case the Act, and the nature of the remedy provided therein are such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation."

(emphasis supplied)

29. Section 34(3) of the Arbitration and Conciliation Act, 1996, which is substantially similar to Section 125 of the Electricity Act came to be interpreted in *Union of India v. Popular Construction Co.* [(2001) 8 SCC 470] The precise question considered in that case was whether the provisions of Section 5 of the Limitation Act are applicable to an application challenging an award under Section 34 of the Arbitration and Conciliation Act, 1996. The two-Judge Bench referred to earlier decisions in *Mangu Ram v. MCD* [(1976) 1 SCC 392: 1976 SCC (Cri) 10], *Vidyacharan Shukla v. Khubchand Baghel* [AIR 1964 SC 1099], *Hukumdev Narain Yadav v. Lalit Narain Mishra* [(1974) 2 SCC 133], *Patel Naranbhai Marghabhai v. Dhulabhai Galbabbhai* [(1992) 4 SCC 264] and held: (*Popular Construction Co. case* [(2001) 8 SCC 470], SCC pp. 474-76, paras 12 & 16) "12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are „but not thereafter“ used in the

proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase „but not This is a digitally signed order.

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16. Furthermore, Section 34(1) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award „in accordance with sub-sections (2) and sub-sections (3). Sub-section (2) relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, sub-section (3) would not be an application „in accordance with that sub-section. Consequently by virtue of Section 34(1), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed under Section 34 is emphasised by the provisions of Section 36 which provide that:

„36. Enforcement.--Where the time for making an application to set aside the arbitral award under Section 34 has expired ... the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the court. This is a significant departure from the provisions of the Arbitration Act, 1940. Under the 1940 Act, after the time to set aside the award expired, the court was required to „proceed to pronounce judgment according to the award, and upon the judgment so pronounced a decree shall follow (Section 17). Now the consequence of the time expiring under Section 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the court. If there were any residual doubt on the interpretation of the language used in Section 34, the scheme of the 1996 Act would resolve the issue in favour of curtailment of the court's powers by the exclusion of the operation of Section 5 of the Limitation Act." (emphasis supplied)

30. In *Singh Enterprises v. CCE* [(2008) 3 SCC 70] the Court interpreted Section 35 of the Central Excise Act, 1944 which is *pari materia* to Section 125 of the Electricity Act and observed: (SCC p. 72, para 8) "8. The Commissioner of Central Excise (Appeals) as also the tribunal being creatures of statute are not vested with This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 19/11/2024 at 21:15:55 jurisdiction to condone the delay beyond the permissible period provided under the statute. The

period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Limitation Act, 1963 (in short „the Limitation Act ) can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period." (emphasis supplied) The same view was reiterated in CCE and Customs v. Punjab Fibres Ltd. [(2008) 3 SCC 73]

31. In CCE and Customs v. Hongo India (P) Ltd. [(2009) 5 SCC 791] a three-Judge Bench considered the scheme of the Central Excise Act, 1944 and held that the High Court has no power to condone delay beyond the period specified in Section 35-H thereof. The argument that Section 5 of the Limitation Act can be invoked for condonation of delay was rejected by the Court and observed: (SCC pp. 801-02, paras 30, 32 & 35) "30. In the earlier part of our order, we have adverted to Chapter VI-A of the Act which provides for appeals and revisions to various authorities. Though Parliament has specifically provided an additional period of 30 days in the case of appeal to the Commissioner, it is silent about the number of days if there is sufficient cause in the case of an This is a digitally signed order.

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32. As pointed out earlier, the language used in Sections 35, 35-B, 35-EE, 35-G and 35-H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the

delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days.

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35. It was contended before us that the words 'expressly excluded' would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law which here in this case is the Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of This is a digitally signed order.

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(emphasis supplied)

32. In view of the above discussion, we hold that Section 5 of the Limitation Act cannot be invoked by this Court for entertaining an appeal filed against the decision or order of the Tribunal beyond the period of 120 days specified in Section 125 of the Electricity Act and its proviso. Any interpretation of Section 125 of the Electricity Act which may attract the applicability of Section 5 of the Limitation Act read with Section 29(2) thereof will defeat the object of the legislation, namely, to provide special limitation for filing an appeal against the decision or order of the Tribunal and proviso to Section 125 will become nugatory."

(emphasis supplied)

11. A perusal of the abovementioned judgments show that if a special Act provides for any limitation then Sections 4 to 28 of the Limitation Act cannot be made applicable and, therefore, there is no power in the Appellate Authority to condone the delay.

12. In the present case, the competent Authority passed the Order on 22.11.2022. Certified copy of the said order was served on the Petitioner herein on 05.12.2022 reckoning the period for filing an appeal as 05.12.2022. The appeal ought to have been filed on or before 45 days from the receipt of

the order and the said time limit expired on 19.01.2023. Section 68-O (1) of the NDPS Act gives the Tribunal the discretion to entertain the appeal with a delay of a maximum of 15 days if sufficient cause is shown as to why the appeal was not filed within the stipulated 45 days. The said period expired on 04.02.2023 and no appeal could have been entertained beyond that period. Since the present appeal was filed on 01.05.2023, there is a delay of about 174 days in filing the appeal which could not have been condoned by the Appellate Authority. This Court, therefore, does not find any reason to interfere with the Order dated 11.07.2023, passed by the Appellate Tribunal, refusing to entertain the appeal This is a digitally signed order.

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13. In view of the above, the Writ Petition is dismissed. Pending applications, if any, also stands dismissed."

6. The host of precedents which the learned Judge had an occasion to review in Suman Kumar Rana have unequivocally held that where a statute creates a special period of limitation, the general power of condonation stands excluded. We find no reason to differ from the legal position which has been correctly enunciated in that decision.

7. On an overall conspectus of the aforesaid, we find no error in the view taken by the Appellate Tribunal.

8. The writ petition, consequently fails and shall stand dismissed.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

NOVEMBER 12, 2024/Ch This is a digitally signed order.

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