

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 8th DAY OF FEBRUARY 2010

BEFORE

THE HON'BLE MR. JUSTICE AJIT J. GUNJAL

WRIT PETITION NO.21697/2009(GM-Res)

BETWEEN :

Shimnit Utsch India Pvt. Ltd.,
A company incorporated under
Companies Act, 1956,
Having its registered office at
8th Floor Chambers,
Nariman Point, Mumbai-400 021
Rep. by Director.

...PETITIONER

(By Sri.B.C.Thiruvengadam/ Adv. for
M/S.Thirai & Thiru Assts., Advs.)

AND :

1. Principal Secretary,
Transport Department
And Appellate Authority,
Department of Transport,
Government of Karnataka,
Room No.153, M.S.Building,
Gate No.3, Bangalore-560 001.
2. State of Karnataka,
Through its Chief Secretary,
Department of Transport,
Government of Karnataka,
Vidhana Soudha,
Bangalore - 560 001,
Karnataka.

3. Promuk Hoffman International Limited. A public limited company Incorporated under The Companies Act, 1956 and having its registered Office at 6-3-649/5, 2nd Floor, Chakkilam House Samajiguda (Behind Medinova Hospital), Hyderabad - 500 082. Represented by its Director. ...RESPONDENTS

(By Sri.Narendra Prasad, HCGP for R1 & R2,
Sri.Srivatsa, Sr. Adv. for
M/S.Lex Plexus, Advys. For R3)

This writ petition is filed under Articles 226 and 227 of the Constitution of India with a prayer to quash/set-aside the order dated 06.06.2009 passed by the Hon'ble Secretary to the Government, Transport Department and Appellate Authority, Government of Karnataka in Appeal No.SARIE 252 SAENYA/2008 vide Annexure 'A' and holding that the purported appeal of the R3 is barred by limitation and etc.

This writ petition coming on for *preliminary hearing* in 'B' Group, this day, the Court made the following:

ORDER

The controversy which falls for consideration in this writ petition is whether Section 14 of the Limitation Act is applicable to Transparency Act and if it is so, whether the respondent was diligently prosecuting



another writ petition before this Court so as to exclude the time spent in the said writ petition.

2. The matter arises in the following manner:

Pursuant to a notification dated 28.03.2001 the Central Government propounded the Scheme of High Security Registration Plates (HSRP) by amending Rule 50 of the Central Motor Vehicle Rules, 1989. Two more notifications were issued in the year 2001 clarifying the scheme. A tender was floated by the State on 29.08.2005 inviting bids for providing and fixing High Security Registration Plates for all existing registered Motor vehicles and new vehicles to be registered in Karnataka on a Build, Own and Operate (BOO) basis. This is under a two cover bidding process. Along with the petitioner as well as the contesting respondent, four more bidders were there in the fray. Ultimately after processing both technical as well as financial bid, the bid of the petitioner was accepted.

3. Questioning the said acceptance, respondent No.3 was before this Court in W.P.No.6599/2006. In



the said proceedings, the petitioner had entered appearance and filed statement of objections inter alia contending that since there is an alternate and more efficacious remedy by way of an appeal under Section 16 of the Transparency Act, the writ petition is not maintainable. Statement of objections was filed at the inception, on receipt of the notice. The same was pressed into service when the matter was taken up for final disposal. This Court, while hearing the matter was of the view that since there is an alternate and efficacious remedy, the petitioner was to invoke the said alternate remedy and file an appeal. This Court while disposing of the writ petition observed thus:

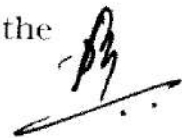
"If the petitioner has filed this petition without availing the statutory remedy, it is always open for the petitioner to file an appeal and no permission is required to be granted by this Court as it is a statutory appeal provided to an aggrieved person."

The order passed by this Court is at Annexure 'K'.

The 3rd respondent pursuant to the order passed by this



Court has filed an appeal before the Appellate Authority under Section 16 of the Transparency Act. It is not in dispute that the said memorandum of appeal was not accompanied by an application for condonation of delay, but nevertheless exemption and limitation was pleaded in the memorandum of appeal indicating that the 3rd respondent was prosecuting the writ petition before this Court. Though the 3rd respondent had not specifically pleaded or raised applicability of Section 14 of the Limitation Act, 1963, the tenor of the grounds was that it is so. The petitioner filed his objections to the said appeal inter alia contending that the appeal is not filed within 30 days from the date of the order or for that matter within the extended period of another 30 days. Hence, it was contended that the appeal before the Appellate Authority was statute barred. The Appellate Authority however was of the view that the delay in filing the appeal is to be condoned on two grounds; one is that this Court has observed that an appeal is to be preferred as against the acceptance of the tender of the



petitioner and further that another companion appeal is pending before it filed by another bidder, whose bid was rejected. The said order is questioned in this writ petition.

4. Mr.Thiruvengadam learned counsel appearing for the petitioner vehemently submits that Section 16 of the Transparency Act does not provide the Appellate Authority with the power to condone the delay in filing the appeal, which is filed beyond initial period of 30 days and additional period of 30 days. He submits that the provision of the Act is silent on this aspect of the matter. Hence, the question of applicability of either Section 5 or Section 14 of the Limitation Act in the circumstances does not arise. His alternate argument is assuming that Section 14 of the Limitation Act is applicable, the said provision envisages that the persons seeking exemption must be prosecuting the proceedings in a different Court diligently and bonafide. Hence, he submits that the Appellate Authority was not justified in condoning the delay.

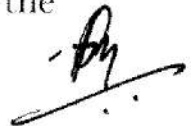


5. Mr.Srivatsa, learned Senior Counsel appearing for the 3rd respondent in support of the order submits that indeed the 3rd respondent was prosecuting the writ petition before this Court right from the date of filing of the writ petition i.e., 10.05.2006 till 18.02.2008. He submits that when this Court observed that there is an appeal provided under the Statute, which is a more efficacious remedy, the 3rd respondent has filed an appeal. He submits that the time, which is spent in this Court has to be excluded in which case the appeal filed before the Appellate Authority would be in time. He further submits that another companion appeal is pending before the Appellate Authority. Hence, if the present appeal filed by the 3rd respondent is also heard along with the other appeal, no prejudice or injustice would be caused to the petitioner.

6. Mr.Narendra Prasad, learned HCGP appearing for respondents 1 and 2 submits that since another appeal is already pending, the 3rd respondent is added as a co-appellant. Hence, justifies the impugned order.




7. Before advertng to the contentions raised by the learned counsel appearing for the petitioner as well as the respondents, it is necessary for us to look into the provisions of Transparency Act. Section 16 of the Transparency Act provides for an Appeal. Sub-section (1) of Section 16 of the Act contemplates about filing of an appeal by the aggrieved party within thirty days from the date of receipt of the order. The proviso would indicate that if an appeal is not presented within thirty days as spoken to in Sub-Section (1) of Section 16 of the Act, additional thirty days is granted provided the appellant shows sufficient cause for not preferring the appeal in time. But however, the said extension is confined only to the additional thirty days. It is no doubt true that a reading of the said provision would indicate that the Appellate Authority may not have the powers to condone the delay which is beyond 60 days, but however, what is required to be looked into is whether Section 14 of the Limitation Act is made applicable to the present proceedings. Section 14 of the



Limitation Act is in respect of excluding the time, which is spent by a party or a person prosecuting in proceedings including an appeal or revision or an order with due diligence in some other forum. Indeed the said period, which is spent bonafide prosecuting before a wrong forum is required to be excluded. It is the contention of the petitioner that Section 14 of the Limitation Act itself is not applicable, but whereas the learned Senior Counsel for respondent No.3 submits that indeed it is applicable. A perusal of the Transparency Act, as observed, does not indicate that the Limitation Act is made applicable. But however, similar provisions are enacted in number of statutes.

8. indeed one can refer to Section 34 of the Arbitration and Conciliation Act, 1996. Section 34 is a provision, which is designed to make an application for setting aside an arbitral award. Sub-Section (3) of Section 34 of the Act indicates that an application to set-aside an award is required to be made within three months or within an additional thirty days as provided



under the proviso. Indeed the proviso also would indicate that the Court shall not entertain an application, if the same is not filed within the extended period of thirty days as provided under the proviso. The said provision is almost identical to Section 16 of Transparency Act. Indeed it is no doubt true that in the Transparency Act, there is no provision wherein Limitation Act is made applicable. But however, it is also to be noticed that nowhere it is stated that Limitation Act cannot be made applicable.

9. Indeed the applicability of Section 14 of the Limitation Act for arbitration proceedings, fell for consideration before the Apex Court in the case of **Gulbarga University V/S. Mallikarjun S.Kodagali and another** reported in **2008 AIR SCW 6389**. The Apex Court, while considering the applicability of scope of Sub-Section (4) of Section 34 has observed thus:

“Though no provision exists in arbitration and conciliation Act as regards application of Section 14 of the Limitation Act, same




would be applicable to arbitration proceedings as it does not expressly exclude its applicability.

10. Indeed the Apex Court in the case of **M/S. Consolidated Engineering Enterprises V/S. Principal Secretary, Irrigation Department and others** reported in **2008(6) SCALE 748** once again, while dealing with the scope of Section 34 vis-à-vis Section 14 of the Limitation Act has observed thus:

"A bare reading of Sub-Section (3) of Section 34 read with the proviso makes it abundantly clear that the application for setting aside the award on the grounds mentioned in Sub-Section (2) of Section 34 will have to be made within three months. The period can further be extended, on sufficient cause being shown, by another period of 30 days but not thereafter."

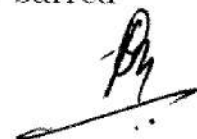
But however, while dealing with the scope of Section 14 of the Limitation Act, the Apex Court has further observed thus:



"However merely because it is held that Section 5 of the Limitation Act is not applicable to an application filed under Section 34 of the Act for setting aside an award, one need not conclude that provisions of Section 14 of the Limitation Act would also not be applicable to an application submitted under Section 34 of the Act of 1996."

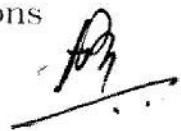
Thus, I am of the view that though the Transparency Act does not provide for applicability of Section 14 of the Limitation Act, it also does not exclude the applicability of Section 14 of the Act.

11. Another factor which persuades this Court not to interfere with the order is, there is already an appeal pending before the Appellate Authority, which is filed by another aggrieved tender participant. The question now is if another appeal is filed and pending before the Appellate Authority in respect of the same subject matter questioning the awarding of tender in favour of the petitioner, whether another appeal, which is barred



by a statute can be entertained. I am of the view that as there is already an appeal pending before the Appellate Authority questioning the awarding of tender in favour of the petitioner, there is no reason as to why appeal filed by the 3rd respondent also should not be entertained. The normal rule is, if a companion appeal is already pending, questioning the same action, the Courts are required to be little liberal in admitting a companion appeal. If any decision is required in this regard, one can refer to the ruling of the Apex Court in the case of **Wadhya Mul V/s. Prem Chand Jain and another** reported in **(1981)3 SCC 122**. Indeed the Apex court has observed that *"the delay must be condoned on the only ground of pendency of other appeals and the appeal of the appellant must also be entertained and disposed of on merits"*.

12. Indeed respondent No.3 was prosecuting the proceedings bonafide in this Court. It is no doubt true that Mr.Thiruvengadam, learned counsel appearing for the petitioner submits that the Statement of objections



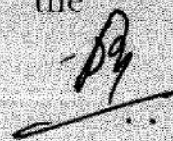
were filed in the proceedings at the inception indicating that the writ is not maintainable inasmuch as a statutory appeal is provided under the Act. Notwithstanding such a positive statement in the objections, respondent No.3 has chosen to prosecute the writ petition. Hence, the same cannot be construed as bonafide and diligent prosecution of the proceedings.

13. Indeed it is to be noticed that the order by the State Government awarding contract in favour of the petitioner was passed on 27.04.2006. The petition was filed on 10.05.2006, which would necessarily mean that the 3rd respondent has taken about 20 days in filing the writ petition after the order was passed. The writ petition was disposed of on 19.02.2008 directing the 3rd respondent to avail the alternate remedy with an observation that Court's permission is not required to do so. The appeal before the Appellate Authority is filed on 14.03.2008, which would necessarily mean that the 3rd respondent has additional 23 days. Indeed the time which is spent by the 3rd respondent in filing the writ

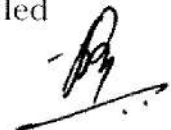


petition from the date of the order certainly cannot be excluded. The only time, the petitioner is entitled for exclusion is from 20.05.2006 to 19.02.2008, which would necessarily mean that the petitioner has lost a period of 44 days. Sub-section (1) of Section 16 of the Transparency Act speaks about filing of an appeal within thirty days from the date of the order and an additional thirty days as provided under the proviso. Thus, to that extent, I am of the view that the time, which is spent by the petitioner before this Court is to be excluded.

14. Section 22 of the Transparency Act was pressed into service vigorously by Mr.Thiruvengadam, learned counsel for the petitioner indicating that this special enactment overrides other laws and hence, the Limitation Act is also excluded. I am afraid that the said contention cannot be accepted. Indeed it is to be noticed that the exclusion of other enactments does not necessarily exclude the applicability of Limitation Act inasmuch as the proviso to Section 16 of the



Transparency Act itself envisages condonation of delay of filing an appeal beyond thirty days. Indeed almost identical provision also fell for consideration in the case of **Consolidated Engineering**, which is referred to supra and the Apex Court was of the view that Section 5 of the Limitation Act would not be applicable because the applicability of Section 5 of the Limitation Act stands excluded does not necessarily give rise to a presumption that the provisions of Section 14 is also excluded. Indeed that is also the view of the Apex Court in the case of **M/S.Singh Enterprises V/S. Commissioner of Central Excise, Jamshedpur and others** reported in **2007(14) Scale 610** where the applicability of Section 5 of the Limitation Act to the proceedings under Section 35 of the Central Excise Act, 1944 fell for consideration. The Apex Court was of the view that Section 5 of the Limitation Act is not applicable to the proceedings inasmuch as the wordings of the provision clearly show that the appeal is to be presented within a specified time and if the same is filed

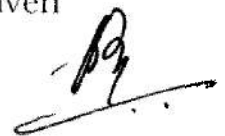


beyond the specified time even beyond the extended period, the question of condoning the delay by invoking Section 5 of the Limitation Act does not arise.

15. But however, that is not the case here. Section 14 of the Limitation Act is in respect of exclusion of time, which is spent while prosecuting the proceedings in a wrong forum.

16. Indeed nothing sinister can be read into the fact that the 3rd respondent had filed a writ petition before this Court. Indeed as has often been said that a "plaintiff is entitled to present a plaint for the pleasure of getting it rejected". Having given my anxious consideration, the petitioner is required to take an order on merits.

17. This takes us to the next question as to the cost. Indeed the 3rd respondent for some reason or the other is becoming an impediment in having the matter concluded either way. I am of the view that the petitioner is put to lot of inconvenience by being driven



to file the present writ petition and to appear in the earlier writ petition as respondent. Hence the petitioner is entitled to cost quantified at Rs.50,000/- (Rupees Fifty Thousand).

18. Mr.Poonacha, learned counsel appearing for the 3rd respondent submits that the cost will be paid to the petitioner within next two weeks.

19. Petition stands *disposed of* accordingly.

The Appeals to be disposed of within a period of four weeks from the date of receipt of this order.

20. Mr.Narendra Prasad, learned HCGP appearing for respondents 1 and 2 is permitted to file memo of appearance within four weeks.

Sd/-
Judge

SPS