

A KALPATARU AGROFOREST ENTERPRISES

v.

UNION OF INDIA

MARCH 5, 2002

B [SYED SHAH MOHAMMED QUADRI AND R.P. SETHI, JJ.]

Railway Claims Tribunal Act, 1987:

C *Ss.18(3)(f) and 23 r/w r. 32 of Railway Claims Tribunal (Procedure) Rules, 1989—Railway Claims Tribunal—Power of review—Held, Tribunal has the same power as are vested in civil court under CPC—Against appealable orders of Tribunal from which an appeal lies but no appeal is filed, the review petition is maintainable before the Tribunal—In the instant case, no appeal was filed against the order in question though u/s 23. It is appealable—*
D *Consequently, the review petition is maintainable before the Tribunal—Code of Civil Procedure, 1908—s.114—Order 47, Rule 1—Review.*

Railway Claims Tribunal (Procedure) Rules, 1989:

E *r. 32—Validity of—Railway Claims Tribunal—Review of decisions—Held, Rule 32 restricts the scope of power of review vested u/s 18(3)(f) of the Act to non-appealable orders and leaves out from its ambit orders which are appealable u/s 23 of the Act though such orders could be reviewed in view of s.114 and Order 47, Rule 1, CPC—To that extent Rule 32 runs counter to s.18(3)(f) of the Act—As Rule 32 is repugnant to statutory provision of clause (f) of sub-section (3) of s.18, it is bad and cannot be allowed to override the*
F *specific provision of the Act—High Court erred in not considering the appeal on merits on the ground that review petition was not maintainable under Rule 32—Order of High Court set aside—Matter remitted to High Court for decision on merits—Railway Claims Tribunal Act, 1987—ss.18(3)(f) and 23—Code of Civil Procedure, 1908—s.114 and Order 47, R.1.*

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1901 of 2002.

From the Judgment and Order dated 30.10.2000 of the Madhya Pradesh High Court in M.A. No. 160 of 1999.

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C.A. Nos. 1902, 1903, 1904 and 1906/2002. A

Vibhu Bakhru and P.N. Puri for the Appellants.

P.S. Narasimha, P. Sridhar and Mrs. Anil Katiyar for the Respondent.

The following Order of the Court was delivered :

ORDER B

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. C

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. D

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 E
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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

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. A

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. B

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

R.P.

Appeals allowed.