IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

RSA No.2269 of 2012 (O&M)
Date of Decision: 26.09.2017

Vinod Kumar

... Appellant

Versus

Punjab State Electricity Board (Now Punjab State Power Corporation Ltd.

... Respondent

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. J.S. Santwal, Advocate,
for the appellant.

Ms. Avin Kaur Sandhu, Advocate for
Mr. Amit Aggarwal, Advocate
for the respondent.

ANIL KSHETARPAL, J.

By this common judgement, I shall be disposing of RSA Nos.2269, 2333 and 3568 of 2012 as a common question arises in these appeals.

The substantial question of law, which needs to be determined, is **whether the Punjab State Electricity Board, which is an independent body, comes within the meaning of State Government as provided in Article 112 of the Schedule attached to the Limitation Act 1963 or not ?**

Before detailed discussion, it would be appropriate to notice Article 112 of the Schedule attached to the Limitation Act, which is reproduced as under:-

112	Any suit (except a suit before the Supreme Court in the exercise of its original jurisdiction) by or on behalf of the Central Government, or any State Government including the Government of the State of Jammu and Kashmir.	Thirty years	When the period of limitation would begin to run under this Act against a like suit by a private person.

A careful reading of Article 112 of the Schedule attached to the Limitation Act, 1963 would show that the limitation for filing any suit by or on behalf of the Central Government or any State Government, including the Government of the State of Jammu and Kashmir, is 30 years from the date, limitation begins to run under this Act. In other words, with respect to the suits filed by or on behalf of the Central Government or the State Government, a special period of limitation has been provided i.e. 30 years in place of the limitation as given under various Articles.

In the present case, the Punjab State Electricity Board filed a suit for recovery on the basis of the original demand notice and thereafter, on the basis of the orders passed by the Dispute Settlement Authority constituted by the Electricity Board. In all these cases, the cause of action to recover the amount has arisen on passing of the orders passed by the Dispute Settlement Authority. In all these cases, the order passed by the Dispute Settlement Authority is dated 25.01.2001, whereas the suit for recovery came to be filed on 04.03.2004 i.e. after a period of more than three years.

As per Part II of the Schedule attached to the Limitation Act, the limitation period for recovery of the amount is 3 years. In the present case, the suit for recovery was admittedly filed after a period of 3 years.

The learned trial Court decreed the suit on the ground that Article 112 of the Schedule attached to the Limitation Act would apply and, therefore, the limitation period is of 30 years. The learned trial Court relied upon the judgements passed by the Hon'ble Courts interpreting Article 12 of the Constitution of India. Article 12 of the Constitution of India is reproduced as under: –

"12. In this part, unless the context otherwise requires, the State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."

A reading of Article 12 of the Constitution of India would show that its wording is entirely different. In Article 12 of the Constitution of India, it is provided that the State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of Government of India.

Whereas in Article 112 of the Schedule attached to the Limitation Act, the words used are Central Government or State Government.

Recently Hon'ble the Supreme Court of India in the judgement reported as (2016) 1 SCC 363, *Bharat Sanchar Nigam Limited Vs. Pawan Kumar Gupta,* has interpreted Article 112 of the Schedule attached to the Limitation Act and has held as under: –

"12. A careful reading of Article 112 of the Limitation Act clearly reveals that in any suit (except a suit before the Supreme Court in the exercise of its original jurisdiction) by or on behalf of the Central Government or any State Government, including the Government of the State of Jammu and Kashmir, the period of limitation would be thirty years. The period of limitation time from which the period begins to run is mentioned under Column 3 of the above Article of the

Limitation in the Schedule, which reads as follows.

> *"When the period of limitation would begin to run under this Act against a like suit by a private person."*

By a careful reading of the aforesaid Article, it makes abundantly clear, that a suit can be instituted by or on behalf of the Central Government. It is not the case of the appellant herein that it has filed the suit on behalf of the Central Government. This is for the reason that the appellant-company has instituted the suit on the basis of the instrument of Office Memorandum wherein the DoT has transferred its assets and actionable claims. It cannot be said that it has filed the suit on behalf of the Central Government because the appellant/plaintiff is a company, a distinctly independent and separate entity. Therefore, the reliance placed upon the aforesaid Article 112 of the Limitation Act to claim that there would be thirty years of limitation period as the asset transferred is an actionable claim due to the DoT is wholly misconceived in law.

13. The other argument advanced by the learned senior counsel on behalf of the appellant-company that it is an agency or instrumentality under the Central Government which falls within the inclusive definition as defined under Section 3(8) of the General Clauses Act is wholly misconceived for the reason that Article 112 of the Limitation Act speaks of the Central Government or the State Government. Its agencies or instrumentalities are not incorporated under Article 112 of the

Limitation Act. Such an argument is contrary to the Constitution Bench judgment of this Court in the case of Padma Sundara Rao (Dead) and Ors. vs. State of T.N. and Ors. reported in (2002) 3 SCC 533. In paragraph 14 of the said judgment it is categorically stated that the legislative casus omissus cannot be supplied by judicial interpretative process and the Court cannot do the legislative functions. Para 14 of the said judgment reads thus:

> *"14. While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. (See Rishabh Agro Industries Ltd. v. P.N.B. Capital Services Ltd., (2000) 5 SCC 515. The legislative casus omissus cannot be supplied by judicial interpretative process. Language of Section 6(1) is plain and unambiguous. There is no scope for reading something into it, as was done in Narasimhaiah's case, (1996) 3 SCC 88. In Nanjudaiah's case, (1996) 10 SCC 619, the period was further stretched to have the time period run from date of service of High Court's order. Such a view cannot be reconciled with the language of Section 6(1). If the view is accepted it would mean that a case can be covered by not only clauses (i) and/or (ii) of the proviso to Section 6 (1), but also by a non-prescribed period. Same can never*

be the legislative intent." (Emphasis supplied)

14. In the connected matter i.e. Civil Appeal No.2409/2009, learned counsel appearing for the respondent has placed reliance on two judgments of this Court in the cases of A.K. Bindal & Anr. vs. U.O.I. & Ors., (2003) 5 SCC 163 paras 5, 14 and 17 and Food Corporation of India vs. Municipal Committee, Jalalabad & Anr., (1999) 6 SCC 74, in support of the contention that the expressions 'Central Government' or 'State Government' in terms of Section 3(8) and Section 3(60) of the General Clauses Act do not include in their purview or definition their agencies or instrumentalities.

15. In view of the aforesaid judgments of this Court, the legal contention urged by the learned senior counsel appearing on behalf of the appellant that the appellant being the agency or instrumentality of the Central Government is entitled to maintain the suit claims within thirty years as provided under Article 112 of the Schedule in the Limitation Act or alternatively, whatever the limitation period which was available for the Central Government, within three years from the date of execution of the agreement are wholly unsustainable in law."

It is clear from the aforesaid discussion that the language of Article 112 of the Schedule attached to the Limitation Act is different from the language of Article 12 of the Constitution of India.

At this stage, it would be appropriate to refer to the meaning assigned to the Central government and the State Government under the

General Clauses Act. Section 3(8) and 3(60) of the General Clauses Act are reproduced as under: –

"3. ***Definitions****. In this Act, and in all Central Acts and regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context-*

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(8) "Central Government" shall-

(a) in relation to anything done before the commencement of the Constitution, means the Governor-General or the Governor General in Council, as the case may be; and shall include-

(i) in relation to functions entrusted under sub-section (1) of section 124 of the Government of India Act, 1935, to the Government of a Province, the Provincial Government acting within the scope of the authority given to it under that sub-section; and

(ii) in relation to the administration of a Chief Commissioner's Province, the Chief Commissioner acting within the scope of the authority given to him under sub-section (3) of section 94 of the said Act; and

(b) in relation to anything done or to be done after the commencement of the Constitution, means the President; and shall include-

(i) in relation to functions entrusted under clause (1) of

article 258 of the Constitution, to the Government of a State, the State Government acting within the scope of the authority given to it under that clause;

(ii) in relation to the administration of a Part C State before the commencement of the Constitution (Seventh Amendment) Act, 1956, the Chief Commissioner or the Lieutenant-Governor or the Government of a neighboring State or other authority acting within the scope of the authority given to him or it under article 239 or article 243 of the Constitution, as the case may be; and

(iii) in relation to the administration of a Union Territory, the administrator thereof acting within the scope of the authority given to him under article 239 of the Constitution;

xx xx xx xx xx

(60) "State Government"-

(a) as respects anything done before the commencement of the Constitution, shall mean, in a Part A State, the Provincial Government of the corresponding Province, in a Part B State, the authority or person authorized at the relevant date to exercise executive government in the corresponding Acceding State, and in a Part C State, the Central Government;

(b) as respects anything done after the commencement of the Constitution and before the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean, in a Part A State, the Governor in a Part B State, the Rajpramukh, and in a Part C State, the Central Government;

(c) as respects anything done or to be done after the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean, in a State, the Governor, and in a Union Territory, the Central Government;

and shall, in relation to functions entrusted under article 258A of the Constitution to the Government of India, include the Central Government acting within the scope of the authority given to it under that article;"

It is clear from the reading of Section 3(8) and 3(60) of the General Clauses Act that the words State Government and Central Government does not include Public Sector Undertakings. These Public Sector Undertakings may be instrumentalities of the State, however, these Public Sector Undertakings do not fall within the meaning of the words Central Government or State Government. These Public Sector Undertakings may be working under the control of the Central Government or the State Government, however, such Public Sector Undertakings cannot be equated with the words Central Government or State Government.

In view of the discussion made above, the question of law as framed (supra) is answered in favour of the appellant.

The suit filed by the Punjab State Electricity Board is held to be barred by time. The judgement and decree passed by the Courts below are set aside.

All the three appeals are allowed.

(ANIL KSHETARPAL)
JUDGE

26.09.2017
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Whether speaking/reasoned Yes/No
Whether Reportable Yes/No