

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No. 12961 of 2019

ORDER:

This writ petition is filed challenging the order dt.16.05.2019 passed in Appeal No.9/2019 by the 4th respondent-Film Certification Appellate Tribunal (impleaded in IA.No.3/2019) wherein and whereby the 4th respondent rejected the appeal filed by the petitioner under Section 5(C) of the Cinematograph Act, 1952 (*for short 'the Act'*) holding that the same is time barred.

Sri L.Ravichander, Learned Senior Counsel appearing for the petitioner submits that though statute provides that an appeal under Section 5(C) of the Act is required to be filed within 30 days of passing of the order impugned in the appeal, since the delay is only 5 days the appellate authority could have considered the same. He also submits that the impugned order in the appeal is not published as envisaged under Section 5(A)(2) of the Act; and that unless the same is published in the Gazette of India, the same cannot be construed as valid order. He also submits that even if the appeal is rejected on the ground of delay, still the writ petition can be maintained against original order dt.12.02.2019 passed by the 2nd respondent-Central Board of Film Certification. In support this contention he relied on the Judgment of this Court in *Electronics Corporation of India Limited v. Union of India and others* (in WP.Nos.9482 and 9485 of 2017, dt.13.03.2018).

On the other hand Smt.Anjali Agarwal, learned Standing Counsel for Central Government submits that the statute provides limitation on the power of appellate authority in condoning the delay in filing the appeal and that the appellate authority cannot condone the delay in excess of 30 days, as such, the appellate authority rightly dismissed the appeal as the same is barred by limitation and no exception can be taken on that.

Though, counter is filed this Court is not going into the merits of the case, as such, it is not necessary to refer to the contents of the same.

In the counter nothing is mentioned about publication of the order dt.12.02.2019 which is impugned in the appeal before the appellate tribunal. The requirement of publication is not met by the respondents and the Full Bench of this Court has also held that the writ petition can be entertained against the original order even though the appeal against the said order is dismissed on the ground of delay.

It is to be seen that what is challenged in this writ petition is the order dt.12.02.2019 passed by the appellate authority; and in view of non-publication of the order impugned in the appeal, this Court is of the opinion that, that order can be given effect to only after the same is published in Gazette of India and limitation starts thereafter, as such, appeal is within limitation. In view of the same this court is of the opinion that the impugned order is liable to be set aside.

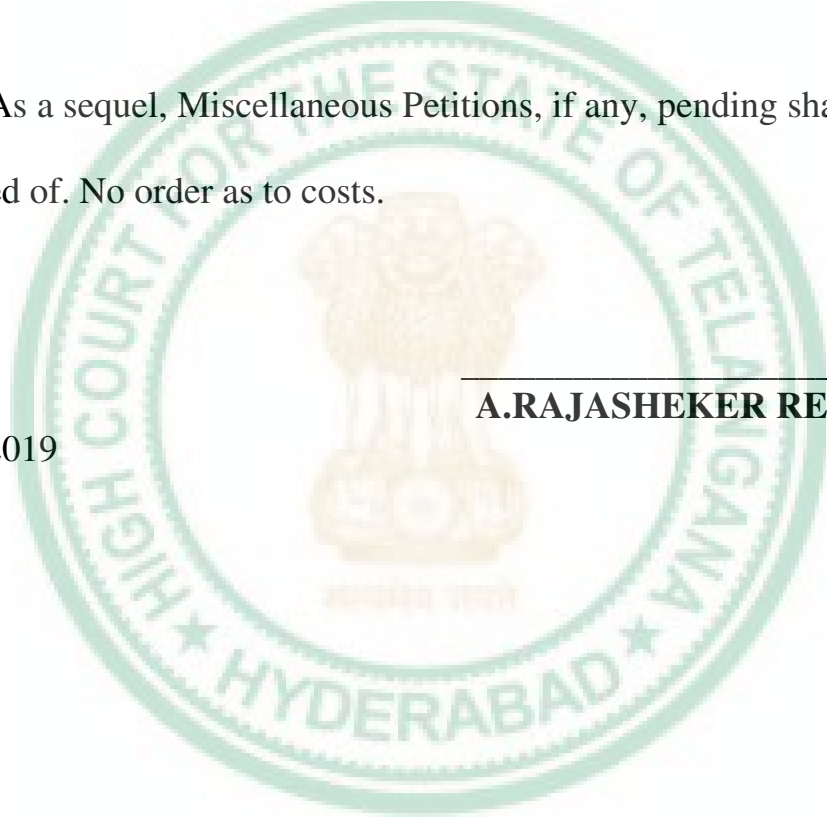
In view of the aforesaid facts and circumstances, the impugned order dt.12.02.2019, passed by the appellate authority is set aside and the appeal is remitted to the 4th respondent directing the 4th respondent to dispose of the appeal afresh on merits, in accordance with law, within a period of four weeks from the date of receipt of a copy of this order, after giving an opportunity of hearing to the petitioner.

Accordingly, the writ petition is allowed. No order as to costs.

As a sequel, Miscellaneous Petitions, if any, pending shall stand disposed of. No order as to costs.

13.11.2019
tk.

A.RAJASHEKER REDDY, J



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