REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 1085 OF 2008

BHARAT SANCHAR NIGAM LTD. ... APPELLANT(S)

VERSUS

PAWAN KUMAR GUPTA ...RESPONDENT(S)

WITH
CIVIL APPEAL NO. 3420 OF 2012 and
CIVIL APPEAL NO. 2409 OF 2009

J U D G M E N T

V. GOPALA GOWDA, J.

Civil Appeal Nos. 1085/2008 and 2409/2009:

Since the issue involved in both the appeals is common and facts are identical, we dispose of both the appeals by this common judgment.

Heard Mr. R.D. Agrawala, learned senior counsel appearing for the appellant in both the appeals and Ms. Tatini Basu, learned counsel for the respondent in Civil Appeal No. 2409/2009. Despite service of notice on the sole-respondent in Civil Appeal No. 1085/2008, he remained unrepresented.

For the sake of convenience, the facts are

taken from the leading case i.e. Civil Appeal No. 1085/2008. This appeal arises out of the judgment and order dated 12.07.2007 passed by the High Court of Punjab & Haryana dismissing Regular Second Appeal No. 835/2007 by affirming the judgment and decree dated 2.09.2006 passed by the learned District Judge, Bhiwani in dismissing the original suit filed by the appellant herein against the respondent on the ground that the suit claim is barred by limitation. The correctness of the same is questioned in this appeal(s), urging various grounds.

Mr. R.D. Agrawala, learned senior counsel appearing for the appellant, inter alia contends that the appellant being a Central Government Undertaking, a Company, which is an instrumentality of the State, has got vested rights on the execution of the instrument, Office Memorandum dated 30.09.2000 wherein the Department of Telecommunication (hereinafter referred to as the "DoT"), of the Central Government represented by its Secretary has executed the said Office Memorandum by transferring the assets and liabilities in respect of the business currently being carried out on account of the Government to the appellant-company on the book value thereof. The book value of the assets comprising of the business transferred in favour of the appellant-company has been provisionally assessed at

Rs. 63,000/- Crores. Therefore, learned senior counsel for the appellant submits that it is an actionable claim as defined under Section 3 of the Transfer of Property Act, 1882 (hereinafter referred to as the "TP Act") which means a claim to any debt which is an asset under Section 130 of the TP Act. The said actionable claim, according to the learned senior counsel, has been transferred in favour of the appellant-company by the execution of instrument i.e. Office Memorandum, referred to supra, therefore, all the rights and remedies of the transferor-DoT vests with the transferee-company. Hence, the appellant-company is entitled to recover or enforce such debts or actionable claim against the respondent-subscriber.

Learned senior counsel for the appellant has further placed reliance upon the book, titled "Accounting Standards and Corporate Accounting Practices" by Dr. T.P. Ghosh in support of the contention that the current assets include assets (such as inventories and trade receivables). He placed strong reliance upon the meaning of the word 'vested' from the Webster's Dictionary in support of his contention and submits that by virtue of the execution of the aforesaid Office Memorandum, the transfer of all the rights and remedies in relation to the actionable claim, which is a debt legally recoverable from the

subscribers, are vested with the appellant-company, and therefore, the benefit of Article 112 of the Limitation Act, 1963 of instituting a suit within thirty years from the date of the cause of action is available for the appellant-company or in the alternative three years from the date of incorporation of the company. He also placed strong reliance upon Section 3(8) of the General Clauses Act, 1897 which defines 'Central Government' as under:

> **"3(8). 'Central Government' shall,-**
>
> > **(a) in relation to anything done before the commencement of the Constitution, mean 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, mean 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 neighbouring 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."

Further, the learned senior counsel by placing strong reliance upon the definition of the 'Central Government', which is an inclusive definition, submits that the Central Government also includes such authorities as are indicated therein. Since the appellant-company is incorporated under the Companies Act and it has acquired the assets and liabilities of the DoT, as an instrumentality of the Central Government, the appellant being a company having a separate and distinct entity from the Central Government, its functioning is controlled by the Central Government and, therefore, it is entitled to avail the benefit under Section 112 of the Limitation Act. Alternatively, it is contended by the learned senior counsel for the appellant that the suit claim is not barred by limitation if its cause of action arose for the appellant-company either on 30.09.2000 i.e. the

date of execution of the Office Memorandum transferring the assets and liabilities or on 01.10.2010, the date of its incorporation, as the case may be. Taking either of the said dates into consideration, the suit claim is within three years and maintainable and, therefore, the courts below were not right in dismissing the suit claim made in the original suit proceedings before the various courts, which is contrary to law. He, therefore, requested this Court to set aside the impugned judgments and decrees passed by the trial court and affirmed by the High Court in the second appeal/civil revision petition.

The query that falls for our scrutiny in that, though, in respect of the claim against the respondent-subscriber, the amount due from the installation of the telephone connection i.e. 29.01.1992 till its disconnection on 16.03.1998 is Rs.25,296/-, the DoT of the Central Government is entitled to file a suit within thirty years under the period of limitation provided under Article 112 of the Limitation Act, whether this benefit will accrue in favour of the appellant-company either from the date of the execution of the Office Memorandum, referred to supra, transferring the assets and liabilities and remedies, or the date of its incorporation. This aspect of the matter is examined by us very carefully in the

light of the provisions of Section 3 and Section 130 of the TP Act and in the backdrop of the Office Memorandum vis-a-vis the Office Memorandum dated 30.09.2000 executed in favour of the appellant-company transferring its assets and liabilities and also remedies available for the transferor in favour of the appellant-company, the legal contention urged is that by virtue of the said transfer an actionable claim, i.e. a claim to any debt from the subscriber should be recoverable debt from the subscriber by the company. Reliance is placed upon the Accounting Standards and Corporate Accounting, referred to supra, and the clarification given in the said extracts, to contend that the actionable claim/ current assets includes the inventories and trade receivables and the said principle is applicable to the appellant-company, being a registered company under the provisions of the Companies Act. Section 133 of the Companies Act, 2013 which provides that the Central Government would prescribe accounting standards and Section 3(8) of the General Clauses Act, which relevant provision is extracted hereinabove, have been relied upon to substantiate the contention that the appellant-company is an agency or instrumentality of the Central Government as it is being financed and controlled by the Central Government, and therefore, the benefit

accrued in favour of the DoT of the Central Government under Article 112 of the Limitation Act would stand extended to the appellant-company, it being an instrumentality of the Central Government for the reason that 100% share capital of the company is owned in the name of the President of India, and therefore, it partakes the character of Central Government. It is urged that this aspect of the matter has not been properly examined and considered by the courts below while rendering the impugned judgments and decrees.

These contentions cannot be accepted by this Court for the following reasons:

No doubt, the assets and liabilities are transferred by the erstwhile DoT in favour of the appellant-company, including the debts due from the subscribers, the respondents herein, an asset which is registered with the company pursuant to the transfer of assets and liabilities as provided under Section 130 of the TP Act upon which reliance is placed by the learned senior counsel. What requires to be carefully examined is that the actionable claim, a claim to any debt from a subscriber-debtor after the assets and liabilities are transferred by an instrument, the Office Memorandum, referred to supra, in favour of the appellant-company, is a legally recoverable debt to

avail the remedy which is transferred in favour of the appellant-company. It could be seen from the undisputed facts, which are adverted to in the impugned judgment that undisputedly the suit claims against the debtors/subscribers are beyond the period of three years of limitation which is available. Therefore, contention of the learned senior counsel on behalf of the appellant-company that the benefit accrued in favour of the Central Government under Article 112 of the Limitation Act is attracted to the fact situation, has a far reaching consequences for the reason that, though the Company is a statutory authority, it is not synonymous with the Central Government. The expression 'Central Government' under the General Clauses Act is clearly defined, which relevant provision is extracted in the aforestated portion of this judgment. By a reading of the aforestated definition, at no stretch of imagination it can be construed that the appellant-company which is registered under the Companies Act, though share capital of the company owned in the name of the President is 100 per cent, it cannot be construed as the Central Government for the reason that the appellant-company by registration under the Companies Act, no doubt it is under the control of the Central Government as it is financed and its administration is under the absolute control of the

Central Government, nonetheless, it shall not be construed as the Central Government for the reason that the appellant-company is a separate legal entity. It also cannot claim that it is entitled to the benefit under Article 112 of the Limitation Act on the ground that a debt recoverable from the subscriber is an actionable claim in terms of Section 3 of the TP Act, even if the same has been transferred under Section 130 of the TP Act by execution of the Office Memorandum, referred to supra, thereby vesting in it the rights and the remedies vis-a-vis the same. No doubt, by execution of the said instrument it has got the actionable claim transferred, the assets that must be recoverable debts from the debtors and subscribers. As could be seen from the claim, the undisputed facts of these appeals are that on the date of the transfer, some of the claims were time barred, therefore, the company cannot construe that the time barred debts are also an actionable claim by way of transfer in its favour, which entitles it to avail the benefit of Section 112 of the Limitation Act i.e. the period of thirty years to institute suits for recovery of the same. Such an interpretation is contrary to Article 112 of the Limitation Act, 1963. 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. 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."**
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> **(Emphasis supplied by this Court)**

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.

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.

For the aforegoing reasons, in the instant cases, even a question of law does not arise, not to speak of a substantial question of law. The appeals must fail. Accordingly, the appeals are dismissed. No costs.

Since the appellant had deposited a sum of Rs. 25,000/- in terms of this Court's Order dated 28.01.2008 towards the costs of litigation of respondent, as he remained absent despite service of notice upon him, the appellant is permitted to withdraw the said money along with interest, if any.

Civil Appeal No. 3420/2012:
[B.S.N.L. & Anr. vs. Tata Communications Ltd.:

This statutory appeal is arising out of the judgment and order dated 16.11.2011 passed by the Telecom Disputes Settlement and Appellate Tribunal, New Delhi, hereinafter referred to as 'the Tribunal', Petition No. 423 of 2010 filed by the respondent, wherein it has sought for setting aside of the demand

notices dated 28.10.2010 and 12.11.2010 relating to a demand of Rs.1,36,74,762/- containing an amount of Rs.1,29,89,326/, Rs.3,11,950/- and Rs.3,73,486/- of the Appellant No.1 herein, which was allowed by the Tribunal by adverting to certain relevant clauses of the interconnect agreement between the parties.

While setting aside the impugned demand notices, the Tribunal inter alia held as under:

> "26. In view our finding in Petition No.186 of 2010, the respondent cannot raise the demand for a period more than 3 years as per the Limitation Act. Therefore, we are of the opinion that the demand raised prior to period October 2007 will not be admissible. Further, in view of the rival contentions about the different bills after October 2007, there is a need for reconciliation of account between the petitioner and the respondent for the period November 2007 to October 2009. If any amount is outstanding, the petitioner will be liable to pay the same amount to the respondent and vice versa. Both the parties are directed to reconcile the amount within four weeks."

It is clear from the aforesaid order of the Tribunal that it had already answered the issues in Petition No. 186 of 2010 wherein it held that the appellant cannot raise the demand for a period of more than three years as per the Limitation Act. Therefore, it opined that the demand raised by the appellant company prior to period October, 2007 will not be admissible. Further,

the Tribunal having said so, has further stated, keeping in view the rival contentions about the different bills after October, 2007, that there is a need for reconciliation of account between the parties for the period November, 2007 to October, 2009. It has further ordered that, if any amount is outstanding, the respondent would be liable to pay the same amount to the appellant herein and vice-versa and both the parties were directed to reconcile the account within four weeks. It has also awarded interest at the rate of 12% per month from the date of deposit of Rs.60,00,000/-, which amount was deposited pursuant to interim order dated 16.12.2010 passed by the Tribunal thereby staying the disconnection of electricity to the respondent. It was made clear, that the said direction of deposit was subject to payment of interest. Therefore, by clarificatory order on the same day, the Tribunal has stated that till the outcome of the measure of reconciliation, as directed in the impugned judgment and order by the parties, the amount would carry with it interest at the rate of 12% per month from the date of of deposit till the date of refund by the appellant Company. The correctness of the said judgment is questioned by the appellant Company by filing an appeal under Section 18 of the TRAI Act. Section 18 of the TRAI Act provides a statutory appeal

against the judgment and order of the appellate tribunal to this Court on one or more grounds specified in Section 100 of the Code of Civil Procedure (for short 'CPC'). That means, that the statutory appeal under Section 18 of the TRAI Act would lie only on a substantial question of law. According to the appellant-Company, it has framed a number of questions of law which are, according to the learned counsel, substantial questions of law. The same are reproduced hereinbelow:

> **"a) Whether the Appellant being an instrumentality of the Central Government was entitled to the protection of Article 112 of the Limitation Act and thus the claim of the Appellant was covered by the limitation period of 30 years?**
>
> **b) Whether the Ld. TDSAT erred in holding that in view of its findings in Petition No.186 of 2010, the Appellant cannot raise the demand for a period more than three years as per the Limitation Act and that the demand raised prior to October 2007 will not be admissible?**
>
> **c) Whether the grant of interest by Ld. TDSAT from the date of decree was by way of a clerical or arithmetical mistake which could be corrected in exercise of its power under Section 152 of the Code of Civil Procedure?**
>
> **d) Whether the Ld. TDSAT can grant interest to the Respondent who has not filed either review or an application seeking grant of interest in the main judgment?**
>
> **e) Whether the notices dated 28.10.2010 and 12.11.2010 were in the nature of fresh demands or mere reminders to make good the short payments from July 2005 to October**

> **2009 especially in view of the fact that the bills issued during the said period were never disputed by the Respondent?**
>
> **f) Whether the stand taken by the Respondent that all billing issues for the period between July 2005 to October 2009 have been settled and closed since there was no claim/dispute raised by the Appellant is contrary to the various documents on record?"**

In our considered view, the questions a, d, e and f framed by the appellant Company in the Memorandum of Appeal would not arise as substantial questions of law in terms of Section 100 of CPC for the consideration of this Court, in its statutory appeal having regard to the undisputed fact that the Tribunal has recorded the finding of fact on the basis of the relevant clauses of the interconnect agreement between the parties and also with reference to the legal contentions urged on behalf of the appellant that it, being an instrumentality of the Central Government, is entitled to the protection under Article 112 of the Limitation Act and, therefore, it was covered by the limitation period of 30 years. The said contention is not tenable in law for the reasons already enumerated in the earlier part of this judgment.

Therefore, the finding of fact recorded rejecting the aforesaid contention by the Tribunal is perfectly legal and valid. The same cannot be re-agitated by the appellant Company by framing the substantial questions of

law namely a, d, e and f. The said finding is based on proper interpretation of undisputed facts and the relevant clauses of the interconnect agreement and relevant clauses of the Schedule in the Limitation Act. Insofar as the substantial questions framed at b & c in the memorandum of appeal filed are concerned, they also cannot be termed as substantial question of law as it is a question of finding of fact recorded by the Tribunal particularly having regard to the undisputed fact that the Tribunal on the same day of pronouncement of judgment, has awarded interest on the amount of Rs.60,00,000/- payable after the reconciliation of the account that is required to be done by the parties. The said amount was deposited by virtue of an interim order granted by the Tribunal not to disconnect the connection of the respondent, as the disconnection notice issued by the appellant Company was stayed by the Tribunal and such direction was subject to payment of interest etc. on the amount of deposit repayable by the appellant Company after reconciliation and adjustment of the amount legally due to the respondent. That means, the claim of the appellant is not within the period of limitation and therefore, the same do not constitute and cannot be termed as substantial questions of law for consideration of this Court and answer thereof.

For the reasons stated supra, there is no substantial questions of law, which would arise for consideration of this Court and the appeal must fail, which we order. Accordingly, the appeal is dismissed.

Since we have dismissed the appeal, the question of passing an order on the other application to give direction on the application does not arise in these proceedings. If the appellant is required to pay any amount due to the respondent it is open for the respondent to pursue the same in the manner known to law. With this liberty I.A. No.2 is also disposed of.

.....J.
(V. GOPALA GOWDA)

.....J.
(AMITAVA ROY)

NEW DELHI,
SEPTEMBER 16, 2015