

GOVERNMENT OF ODISHA  
FINANCE DEPARTMENT

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NO.FIN-LFA-Estt.-0007/2014 18572 /F.,Dt. 19/6/2014

From

Shri A. K. Mohanty,  
Under Secretary to Government.

To

The Director, LFA, Odisha,  
Bhubaneswar.

Sub:

Condonation of delay in certain cases.

Sir,

With reference to the letter No.2181 dt.18.02.2014 of the Deputy Director, LFA on the afore cited subject, I am directed to say that the matter was referred to the Law Department for their views in light of the decision of the Hon'ble Appex Court.

After consideration of the matter Law Department has offered their considered view in the matter which is enclosed herewith.

You are requested to act accordingly.

Yours faithfully,

  
Under Secretary to Government.

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**NOTE SHEET**  
**LAW DEPARTMENT**

Perused the office notes of A/D and connected papers.

The sole question raised by the A/D in this case is whether Sec.5 of the Limitation Act would be applicable to condone delay in filing an appeal under Sec.11 of the O.L.F.A. Act, 1948.

A reading of Sec.5 of the Limitation Act itself reveals that it applies only to the appeals or applications except an application under Order 21 of the C.P.C.

The relevant portion of Sec.11 of O.L.F.A. Act runs as follows:

Sec. 11 – (i) Any person aggrieved by any surcharge or charge made, may, within fourteen days from the date of communication of such order, appeal to such authority as the Provincial Government may appoint in this behalf to set aside such surcharge or charge.....

In the case of **State of Odisha and others Vrs. Durga Charan Routray 2007 (Supp-1) OLR 548**, the Hon'ble High Court of Orissa have observed that if the legislature by a special statute has prescribed the period of limitation for filing an application and has provided in clear terms that such period, on sufficient causes being shown may be extended in the maximum only upto a specified time and no further, the Court concerned would have no jurisdiction to entertain such application beyond the time limit prescribed in the statute.

While dealing with the applicability of Sec.5 of the Limitation Act to condone delay in filing a petition under Sec.34 of the Arbitration & Conciliation Act, 1996, it has also been settled by various judicial pronouncements {See. AIR 2001 SC 4010} that the

NOTE SHEET

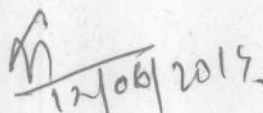
specific language used by legislature under the statute is to be taken into consideration. The crucial words used under Sec.34 of the Arbitration & Conciliation Act, 1996 are "may not be made after three months" and "but not thereafter". Interpreting the words "but not thereafter" the Hon'ble Supreme Court in the case of **Union of India Vrs. Popular Construction Co. AIR 2001 SC 4010** have observed that;

"As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to Sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the Court could entertain an application to set aside the Award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result".

But in Sec.11 of O.L.F.A. Act, there is absolutely no use of phrases like "may not" or "but not thereafter" to show the intention of the legislatures regarding exclusion of Sec.5 of the Limitation Act. Sec.5 of the Limitation Act has been introduced to advance substantial justice.

Thus, in my humble view, Sec.5 of the Limitation Act may be pressed into service in aid of a belated application filed under Sec.11 of the O.L.F.A. Act, 1948.

Finance Department.

  
12/06/2019  
(S.K.Swain)

2<sup>nd</sup> Addl.L.R.-cum-Addl. Secy.

2<sup>nd</sup> ALR-cum-Addl. Secy.

to Govt. of Odisha

Law Department, Bhubaneswar