

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

W.P.No.2048 of 2004

ORDER :

This Writ Petition is filed challenging the order dt.12.01.2004 in IA.No.28 of 2003 in W.C.No.4 of 2003 of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Hyderabad – II (2nd respondent herein).

2. One G. Ramulu was allegedly employed by petitioners and he is said to have died while discharging his duties under petitioners on 14.06.2000. His wife and children got issued a legal notice on 30.07.2001 to petitioners seeking compensation under the provisions of The Workmen's Compensation Act, 1923 (for short, 'the Act'). A reply was issued thereto by petitioners on 08.08.2001 to the said notice.
3. Thereafter, on 23.01.2003, WC/4/2003 was filed by wife and children of the said G. Ramulu (who are respondents 3 to 6 herein) before the 2nd respondent seeking compensation against petitioners and 7th respondent.
4. They also filed IA.No.28 of 2003 under Section 5 of Limitation Act, 1963 in the said WC, seeking condonation of delay of (226) days in filing the Workmen Compensation claim petition against petitioners and the 7th respondent.
5. In the affidavit filed in support of the said application it is contended that after the death of Late G. Ramulu, while

discharging his duties on 14.06.2000, the petitioners did not extend any help on humanitarian grounds or paid any workmen compensation to respondent nos.3 to 6 in spite of several demands; they had got issued a legal notice through an Advocate for which the petitioners had sent a reply; that the petitioners had orally promised the respondents that they would pay compensation and dragged on the matter for years without paying compensation on one pretext or the other; and that just prior to filing of the WC, they refused to pay compensation; that respondent nos.3 to 6 are illiterate and did not get in touch with their Advocate and also did not give him any instructions to file a case hoping that petitioners would pay compensation as promised. After refusal of payment of compensation by petitioners, the respondent nos.3 to 6 claimed that they went to their Advocate and then filed this application. It is alleged that for these reasons delay was caused in filing the claim petition and the delay being neither intentional nor wanton, it is liable to be condoned.

6. Counter-affidavit was filed by petitioners opposing the condonation of delay. They contended that they did not know who late G. Ramulu was and they were not aware of the cause of his death or the date of his death. They denied that they had made any promise to pay compensation to respondent nos.3 to 6. Therefore, they contended that the delay in making a claim under the said Act cannot be condoned.

7. By order dt.12.01.2004, the 2nd respondent allowed I.A.No.28/2003 and condoned the delay of (226) days in filing the claim petition. He held that the Act itself speaks of

entertaining a case under certain circumstances when it is not filed within the prescribed time limit; that the Limitation Act, 1963 is not applicable to the Act; and being a Social Welfare legislation, the procedure prescribed in the enactment is in the nature of a summary trial and it is a fit case for condoning the delay.

8. Challenging the same, the present Writ Petition is filed.
9. The counsel for petitioners contended that 2nd respondent ought not to have condoned the inordinate delay of (226) days in filing this claim under the Act; and that provisions of Limitation Act have no application to proceedings under the Act. He urged that sufficient cause has not been shown by respondent nos.2 to 6 for condoning the said delay.
10. Sri J.U.M.V. Prasad, counsel for respondent nos.4, 5 and 6, however, refuted the above contentions. He pleaded that under 5th proviso to sub-Section (1) of Section 10 of the said Act, the 2nd respondent is conferred with the power to entertain a claim even beyond the time prescribed in sub-Section (1) of Section 10 if he satisfied that due to sufficient cause there was failure to prefer the claim. He placed reliance on the judgment in **M/s. N. Pochiah and Co. v. Mulle Nagabhushanam**.
11. I have noted the submissions of both sides.
12. This is an unfortunate case where one G. Ramulu, who is the husband of 3rd respondent and father of respondent nos.4 to 6, is said to have died while in the employment of petitioners and 7th respondent. No doubt, this fact is disputed by petitioners. The

claim before 2nd respondent by respondent nos.3 to 6 was made on 23.01.2003, although under sub-Section (1) of Section 10 of the Act claim for compensation is required to be made before 2nd respondent within two years from the date of death.

13. Admittedly, the claim in WC/4/2003 was made beyond the period of two years prescribed in sub-Section (1) of Section 10. However, under 5th proviso to sub-Section (1) of Section 10, the 2nd respondent is empowered to entertain and decide any claim for compensation in any case even if the claim has not been preferred within time as provided in sub-Section (1) of Section 10, if he is satisfied that the failure to prefer the claim, was due to sufficient cause.

14. In the present case, the cause for the delay pleaded by respondent nos.3 to 6 is that they are illiterate and although petitioners had promised to pay compensation, they did not do so, dragged on the matter and ultimately refused to pay compensation. The reason given by petitioners appears to be plausible because respondent nos.3 to 6, who are wife and minor children of the deceased G. Ramulu, are not shown to be literate and cannot be said to be conscious of their rights so as to rush to 2nd respondent for enforcement of their rights, especially when the petitioners were promising to settle their claim.

15. Having regard to the said fact, I am of the opinion that 2nd respondent had rightly exercised his power under the 5th proviso to sub-Section (1) of Section 10 and condoned the delay. I do not find any error of jurisdiction in the impugned order warranting

interference by this Court under Article 226 of the Constitution of India. Therefore, the Writ Petition fails and is accordingly dismissed. No order as to costs.

16. The 2nd respondent is directed to conclude the enquiry and pass appropriate orders within four (04) weeks from the date of receipt of a copy of this order.

17. Miscellaneous petitions, pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 20-03-2015

Ndr/*