

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.26917 of 2015

ORDER:

1) The Project Manager, M.A.P. Phase-II, Secunderabad, representing Union of India, preferred the present writ petition questioning the order passed by the first respondent herein, in allowing the claim of the fourth respondent with ten times the compensation to the normal amount due, as illegal and arbitrary.

2) The facts in issue are as under:-

The Government of India floated a tender for construction of dwelling units to officers of Air Force and accordingly entered into an agreement with the second and third respondent for execution of the same. The total value of the work was about Rs.157 crores. The said work was to be completed on or before 13.10.2012. It is said that in spite of giving sufficient time, the second and third respondent failed to execute the work. In view of clause-48 of General Conditions of the Contract, the contract came to be terminated. The averments in the affidavit show that the petitioner herein cleared the amount for the work executed and second and third respondent are due an amount of Rs.80.00 crores to the petitioner. While things stood thus, the fourth respondent, at the instance of second and third respondent, filed an application before the first respondent claiming wages for the period between January, 2013 and December, 2013 amounting to Rs.97,016/- . A detailed counter came to be filed before the first respondent disputing the contents of the said application. The main ground urged before the said authority was that there was no employer and employee relationship between the petitioner and fourth respondent since it was

the second respondent, who engaged the services of the fourth respondent. It was further urged that as the contract itself was terminated and as there was no agreement between the petitioner and fourth respondent, the request of the petitioner cannot be accepted. It is further stated that initially the fourth respondent filed a claim petition against the second and third respondent and later on implicated the petitioner knowing that the petitioner has no liability to clear his claim. After considering the rival submissions made, the impugned order came to be passed directing the petitioner to pay compensation at ten times the normal due amount, within thirty days from the date of receipt of the order. Challenging the same the present writ petition came to be filed.

3) By an order dated 25.08.2015, this Court granted interim suspension of the impugned proceedings.

4) In spite of service of notice there is no representation on behalf of the respondent Nos.2 and 3.

5) A counter came to be filed by the fourth respondent disputing the averments made in the affidavit filed in support of the writ petition. It is stated that the petitioner has employed the fourth respondent through respondent Nos.2 and 3 and as such he has to be treated as an employer of the fourth respondent. Since the fourth respondent as a Site Engineer, is discharging Managerial and Administrative duties to the satisfaction of the petitioner, and as the definition of employee does not exclude Manager/ Administrative Personnel, it is urged that the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 (for short "the Act") and also the Minimum Wages Act, 1948 are applicable against the petitioner. Insofar

as the plea of filing the application, with an abnormal delay before the first respondent, the learned counsel for the fourth respondent would submit that such plea was never taken before the said authority and that the petitioner is barred from raising such a ground in this writ petition. It is further stated in the counter that in the absence of any plea being raised by the petitioner, with regard to the employment of the respondents, the petitioner cannot deny wages to the employees. Hence, it is urged that the order under challenge warrants no interference.

6) Reiterating the averments made in the affidavit filed in support of the writ petition, the learned counsel for the petitioner would submit that the authority could not have entertained the claim-petition without there being a petition to condone the delay. He further submits that in the absence of any relationship of employer and employee, and since the contract was terminated on 03.12.2013 itself, no liability can be fastened on the writ petitioner. Relying upon various judgments of the High Court and the Hon'ble Apex Court, the learned counsel for the petitioner would submit that the order under challenge warrants interference.

7) The same is opposed by the learned counsel for the fourth respondent. He submits that the plea of delay cannot be allowed to be raised for the first time in a writ petition filed before this Court. It is pleaded that in view of Section 21 of the Act, the petitioner is liable to pay the amount.

8) As seen from the record, the fourth respondent herein made an application dated 27.08.2014, under Section 20 (2) of the Minimum Wages Act, 1948 against his employers, who were respondent Nos.2 and

3, for releasing a sum of Rs.97,016/-, being the amount of wages to be paid for the period from January, 2013 to December, 2013, during which period they were employed in the construction work at AF Dundigal and Secunderabad. The writ petitioner herein was shown as non-applicant/ opponent in the said application. After issuing notice to both the parties and after considering the objections raised, the first respondent passed the impugned order. Challenging the same, the opponent No.2 ie. Union of India filed the present writ petition.

9) As stated earlier, the main ground urged by the learned counsel for the petitioner is that the application under the provisions of the Minimum Wages Act came to be filed by the fourth respondent with an abnormal delay. It is his case that the authority could not have entertained such a claim-petition, without there being an application seeking to condone the delay. The same is opposed by the learned counsel for the fourth respondent on two grounds; firstly, such a plea was not taken before the authority and secondly, that this being a continuous offence question of limitation would not arise.

10) Dealing with the later portion of the argument, it is to be noted that the application claiming wages was filed in the month of August, 2014. In the counter filed to the writ petition, it was admitted, that no work was executed after March, 2013 to December, 2013. As no work was executed after December, 2013, the application claiming wages ought to have been filed within a period of six months from December, 2013. In the instant case Form-6 application under Section 20 (2) of the Minimum Wages Act, came to be filed, by the employee, on 26.08.2014. Therefore, the plea that it is a continuous offence cannot be accepted.

11) Admittedly, the application seeking wages was filed without any application to condone the delay. Proviso to Section 20 (2) of the Act, states that any application, if filed after a period of six months can be admitted, if the applicant satisfies the authority that there was sufficient cause for not making such an application within the period prescribed. In the instant case, the application came to be filed, with a delay. It is true that the plea of delay was not taken before the authority, and the reason being that the petitioner received the notice after numbering of the case and hence they proceeded with the matter on different grounds.

12) The question now is whether the petitioner herein is precluded from raising the plea of limitation in the writ petition.

13) In *Mansoor Ahmed v. The Labour Court and another*^{1a} learned Single Judge of this Court while dealing with the proviso to Section 20 (2) of the Minimum Wages Act, observed as under:

“It is contended by the learned Government Pleader that the order passed by the Labour Court condoning the delay is a discretionary one and should not be interfered with. But it is well settled that the discretion should be exercised judiciously and reasonably and it should be based upon the evidence on record. In the instant case neither the pleading nor the evidence of the Assistant Inspector establishes sufficient cause for not filing the application within the time. Particularly the delay from 26th January, to the date of filing of the application ie. 07.04.1971 has not at all been explained except stating that he was busy in routine duties. In the affidavit also absolutely no reason was given for the delay. In the circumstances the discretion exercised by the Labour Court in condoning the delay is not proper or valid.

¹ 1975 LAB.L.C. 1113

In the result, the writ petition is allowed and the impugned order is quashed.

14) Similarly in *Prem Narayana Amritlal Varma v. Divisional Traffic Manager*² the Bombay High Court observed as under:

“4. It is then pointed out that the Authority may admit the application 'ex parts', taking the view that there is a prima facie case for condoning delay, and subsequently notice might be given to the other side and the application for condonation of delay may be heard on merits at a later stage and that stage may well fall under Sub-section (3). In my opinion, it would be erroneous and clearly erroneous on the part of the Authority to admit an application which is beyond time by condoning delay without giving notice to the other side and without hearing the other side on the application made by the employee. If an application is beyond time, the employer has acquired a valuable right, and it is an elementary proposition of law that a Court cannot deprive a party of a valuable right without hearing him. Therefore, in my opinion, the proper procedure for the Authority to follow in every case where an application is filed beyond the period of six months is not to admit the application but to keep it pending and issue merely a notice upon the other side to show cause why delay should not be condoned.”

15) The learned counsel for the fourth respondent would submit that such a plea cannot be raised for the first time before this Court. In support of his plea, he relied upon a judgment of the Apex Court in *Prithi Pal Singh and another v. Amrik Singh and others*³. It was a case where the respondent No.2 therein challenged a sale deed in suit No.353 of 1981 and claimed pre-emption under Section 15 (1) (a) of the Punjab Pre-emption Act, 1913. Dealing with the facts in issue, the Apex Court, after referring to Article 136 of the Constitution of India, held as under:

² AIR 1954 Bombay 78

³ (2013) 9 SCC 576

“The argument of the learned counsel that the suit could not be decreed in view of Haryana Amendment Act 10 of 1995, does not require consideration because no such plea was argued before the High Court and do not find any valid ground to allow the petitioners to raise such plea for the first time.”

16) Situation on hand is totally different. In the instant case, the issue raised goes to the root of the matter as the application made under Section 20 (2) of the Minimum Wages Act, could not have been entertained without there being an application to condone the delay, when admittedly there was a delay in filing the application. In view of the judgments referred to above and having regard to the legal position, the argument of the learned counsel for the petitioner cannot be brushed aside.

17) Apart from that, it is also to be noted that the order under challenge is bereft of any reasons. Except extracting the arguments advanced, no reasons are given to show the existence of employer and employee relationship between the petitioner and the fourth respondent, though such plea was taken in the counter filed by the petitioner. The authorities should have also given reasons as to why penalty of 10 times the due amount was imposed. In the absence of any reasons showing the consideration of the points in controversy, the issue would be whether the order under challenge requires interference on this score also.

18) In *Cable Corporation of India Limited, Mumbai v. A.P. Micro and Small Enterprises Facilitation Council, Hyderabad and another*⁴ a learned Single Judge of this Court held as under:

⁴ (2013) 3 ALD 279

“The experience shows that, whatever may have been the laudable objective of the Central or State Legislatures in enacting laws, providing for "speedy remedies", excessive tribunalisation has given rise to more problems, than what were supposed to be solved. This appears to be mostly on account of the fact that the persons who are associated with the Tribunals, or most of them are not sensitised about the basic principles of adjudication. For the most part of it an adjudication gets or gains acceptability because the end result is the culmination of the application of not only the substantive provisions, but also the principles of procedure, defined by law. Even if the outcome of case is correct on merits, it suffers a serious dent, if there is any serious lapse as to procedure, on an important aspect. There is no attempt by this Court, to subject the order passed by the Council to the litmus test of general principles. A typical procedure is prescribed for the proceedings before the Council.”

19) A Constitution Bench of the Apex Court in *S.N. Mukharjee v. Union of India*⁵ categorically held that “the administrative authorities must record reasons, unless specifically dispensed with expressly or by necessary implication, in support of its decision, in as much as recording of reasons in support of the decision is one of the limbs of the principles of natural justice. The Apex Court further observed as under:

“35. Reasons, when recorded by an administrative authority in an order passed by it while exercising quasi-judicial functions, would no doubt facilitate the exercise of its jurisdiction by the appellate or supervisory authority. But the order considerations, referred to above, which have also weighed with this Court in holding that an administrative authority must record reasons for its decision are of no less significance. These considerations show that the recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and ensures a degree of fairness in the process of decisions-making. The said purpose would apply equally to all decisions and its application cannot be confined to decisions which are subject to appeal, revision

⁵ 1990 AIR 1984

or judicial review. In our opinion, therefore, the requirement that reasons be recorded should govern the decisions of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.”

20) In view of the judgments referred to above; as the order under challenge is bereft of any reasons, and as the said application came to be filed without any petition seeking condonation of delay, the order under challenge is *set aside* and the matter is remanded back to the first respondent directing the fourth respondent to make an application seeking condonation of delay, in which event the same shall be dealt with in accordance with law. Further, if the delay is condoned, the first respondent shall consider all the pleas raised and pass orders in accordance with law as early as possible, preferably, within a period of two months from the date of receipt of a copy of the order.

21) With the above direction, the writ petition is disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:01.06.2017
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