

(2014) 03 KAR CK 0082

In the Karnataka High Court

Case No : Writ Petition No. 12047/2013 [L-Res]

A.S. Chandra Prakash

APPELLANT

Vs

The Labour Officer and Minimum Wages Enquiring Authority
and Manju

RESPONDENT

Date of Decision : 26-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Land Acquisition Act, 1894 — Section 18
Minimum Wages Act, 1948 — Section 20, 20[2], 30

Citation : (2014) 3 AKR 78 : (2015) 145 FLR 341 : (2014) 142 FLR 317 : (2014) ILR 2577 : (2014) 6 KarLJ 519 : (2014) 3 KCCR 1893 : (2014) 2 LLJ 443

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : K.S. Ganesha, Advocate for GRV Legal Solutions, Advocate for the Appellant; K.A. Ariga, A.G.A. for R1 and K. Govindaraj, Advocate for R2, Advocate for the Respondent

Judgement

Ram Mohan Reddy, J.—Petitioner-employer, issued with a notice to appear before the 1st respondent - Labour Officer, Minimum Wages Authority in a proceeding u/s 20[2] of the Minimum Wages Act, 1948 [for short "Act"], when not available at the postal address, the postal authorities placed the intimation in the post box assigned to the petitioner, at Chikmagalur, which was not opened by the petitioner since away at Mumbai and on return on 29.5.2012, having opened the post box though noticed the intimation, nevertheless awaited further notice from the Minimum Wages Authority. According to the petitioner, on receipt of a copy of the order dated 26.9.2012, acknowledged on 10.1.2013, filed an application under Order IX Rule 13 C.P.C. to set aside the order placing him ex parte and to extend an opportunity of hearing, which when, rejected by endorsement dated 22.2.2013 Annexure-C, has presented this petition.

2. The Minimum Wages Act, 1948, beyond cavil of doubt, is promulgated with the laudable object of fixing minimum rates of wages in certain employments, and a

procedure to adjudicate upon disputes over alleged contravention of the Act, as well as penalties. The specific remedy to recover minimum wages when such wages are not paid or short paid to any employee is governed by section 20 of the Act. The issues arising there from involve disputed questions of fact requiring an investigation.

3. Sub-section [2] of Section 20 enables an employee to file an application for determination of the minimum wages unpaid or short paid by the employer, while sub-section [3] invests a jurisdiction in the Authority to hear the parties, extend reasonable opportunity of hearing and hold such further inquiry as may be necessary. Even in the absence of the employer, after due service of notice of hearing and no resistance to the claim of the employee, the Authority is required to consider the material on record placed by the workman as well as the evidence both oral and documentary, so placed, and pass an order. The Authority is required to discharge the statutory duty of adjudication of the dispute brought before it, if the employer does not choose to appear and oppose the claim.

4. The Karnataka Minimum Wages Rules, 1958, [for short "Rules"] framed in exercise of power u/s 30 of the Act, provides amongst others, under Rule 34, the appearance of parties in a proceeding u/s 20[2] of the Act, requiring the Authority to serve upon the employer by registered post a notice in Form XII to appear before him on a particular date fixed for hearing the application filed by the employee. Sub-rule [2] states that if the employer fails to appear on the specified date, the Authority may hear and determine the application ex-parte. However, sub-rule [4] provides that an order under sub-rule [2] or [3] may be set aside on sufficient cause being shown by the defaulting party within one month from the date of the order.

5. Thus the absence of the employer, for valid and sufficient cause the employer may seek recalling of the order passed by the Authority. Though the Act does not provide for a remedy, in such a situation, nevertheless, is covered by sub-rule [4] of Rule 34 of the Rules, which reads thus:-

34. Appearance of Parties:-

[1] XXX XXX XXX

[2] XXX XXX XXX

[3] XXX XXX XXX

[4] An order passed under sub-rule [2] or sub-rule [3] may be set aside on sufficient cause being shown by the defaulting party within one month of the date of the said order, and the application shall then be reheard after service of notice on the opposite party of the date fixed for re-hearing, in the manner specified in sub-rule [1].

6. In the instant case though 1st respondent - Authority issued a notice of hearing to the petitioner, by registered post, nevertheless, the postal authorities

placed an intimation letter in the post box of the petitioner at Chikmagalur, while petitioner, was, away at Mumbai. Thus, there was no "service" of notice on the petitioner of the proceeding instituted by the employee before the 1st respondent complaining of contravention of the provisions of the Act. On the petitioner's return from Mumbai, having noticed the postal intimation, being of view that the Authority would issue a fresh notice, did not pursue the matter by making an enquiry, but came to the knowledge of the petitioner only on 10.1.2013 when a copy of the order dated 26.9.2012 was served on him. Hence the application though invoking Order IX Rule 13 C.P.C. instead of Rule 34[4] of the Rules to recall the order dated 26.9.2012. The Authority having regard to the strict interpretation of the words "within one month of the date of the said order" occurring in sub-rule [4] of Rule 34 of the Rules, noticed that the application to recall the order dated 26.9.2012 was filed much after the expiry of one month there from rejected the application on the premise that he had no jurisdiction to entertain the same, by the endorsement impugned.

7. The questions that falls for consideration are:-

[i] Whether Sub-rule [4] of Rule 34 deploying the words "within one month of the date of the said order" is to be interpreted as "one month from the date of communication or knowledge of the said order? And if so,

[ii] Whether the endorsement dated 22.2.2013 Annexure-C of the 1st respondent, rejecting petitioner's application to recall the ex parte order dated 26.9.2012 Annexure-A as without jurisdiction on the expiry of one month from 26.9.2012, is illegal?

8. Learned Counsel for the petitioner reiterates the assertions in the memorandum of writ petition while the learned Government Advocate for the respondents supports the endorsement impugned rejecting the application on the ground that the language deployed in sub-rule [4] of Rule 34 of the Rules, the Authority becomes functus officio on the lapse of one month from the date of the order and his jurisdiction to recall the order comes to an end.

9. In identical circumstances, regard being had to Rule 34[4] of the Andhra Pradesh Minimum Wages Rules, 1960, pari materia with that of Sub-rule [4] of Rule 34 of the Rules, the High Court of Andhra Pradesh in D. Murugappa Mudaliar Vs. Presiding Officer, Labour Court, Guntur and Another, , following reported opinions of the High Court of Madras, held that passing of an order under Rule 34[2] of the said Rules is not the starting point of limitation to begin against an affected party and limitation will begin to run only when that party had notice or knowledge of the order by its being formally communicated to him. The Court held that if the words "date of the said order" is assigned a literal construction, it would lead to an anomalous result that even if a party, against whom an ex parte order was passed, was not aware of it, had no inkling whatsoever of it, time would run against him and the remedy under Rule 34[4] would be lost for no fault of his. In order to be fair, remedy vouchsafed and effectively available to

the affected person under Rule 34[4] of the Rules, the words "date of the said order" was interpreted as to mean the date of communication of the order on the affected person and that the period of limitation would commence only from the date of his knowledge of the ex parte order.

10. In similar, though not identical circumstances, the Apex Court, having regard to section 48AA of the Bar Council of India Act providing a limitation of 60 days from the date of the order for exercise of review jurisdiction, in *D. Saibaba Vs. Bar Council of India and Another*, , observed thus:-

9. So far as the commencement of the period of limitation for filing the review petition is concerned, we are clearly of the opinion that the expression "the date of that order" as occurring in Section 48AA has to be construed as meaning the date of communication or knowledge of the order to the review-petitioner. Where the law provides a remedy to a person, the provision has to be so construed in case of ambiguity as to make the availing of the remedy practical and the exercise of power conferred on the authority meaningful and effective. A construction which would render the provision nugatory ought to be avoided. True, the process of interpretation cannot be utilized for implanting a heart into a dead provision; however, the power to construe a provision of law can always be so exercised as to give throb to a sinking heart.

10. An identical point came up for the consideration of this Court in *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another*, . Section 18 of the Land Acquisition Act, 1894, contemplates an application seeking reference to the Court being filed within six months from the date of the Collector's award. It was held that "the date of the award" cannot be determined solely by reference to the time when the award is signed by the Collector or delivered by him in his office. It must involve the consideration of the question as to when it was known to the party concerned either actually or constructively. If that be the true position, then placing a literal and mechanical construction on the words "the date of the award" occurring in the relevant section would not be appropriate. It is fair and just that a decision is communicated to the party whose rights will ultimately be affected or who will be affected by the decision. The knowledge, either actual or constructive, of the party affected by such a decision, is an essential element which must be satisfied before the decision can be brought into force. Thus construed, the making of the award cannot consist merely of the physical act of writing an award or signing it or even filing it in the office of the Collector; it must involve the communication of the said award to the party concerned either actually or constructively. A literal or mechanical way of construing the words "from the date of the Collector's award" was held to be unreasonable. The court assigned a practical meaning to the expression by holding it as meaning the date when the award is either communicated to the party or is known by him either actually or constructively.

The Apex Court followed its earlier observations in,

[i] Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another,

[ii] State of Punjab Vs. Mst. Qaisar Jehan Begum and Another,

[iii] Assistant Transport Commissioner, Lucknow and Others Vs. Nand Singh,

[iv] Raj Kumar Dey and Others Vs. Tarapada Dey and Others,

[v] O.N. Mohindroo Vs. The District Judge, Delhi and Another,

At paragraph 16, the well settled principles of interpretation from Principles of Statutory Interpretation [8th Edn., 2001] is extracted and reads thus:-

It may look somewhat paradoxical that plain meaning rule is not plain and requires some explanation. The rule, that plain words require no construction, starts with the premise that the words are plain, which is itself a conclusion reached after construing the words. It is not possible to decide whether certain words are plain or ambiguous unless they are studied in their context and construed.

Again at paragraph 17 thus:-

17. The learned author states again, "In selecting out of different interpretations "the court will adopt that which is just, reasonable and sensible rather than that which is none of those things" as it may be presumed "that the Legislature should have used the word in that interpretation which least offends our sense of justice", (p. 113, *ibid*)

The courts strongly lean against a construction which reduces the statute to a futility. A statute or any enacting provision therein must be so construed as to make it effective and operative "on the principle expressed in the maxim: *ut res magis valeat quam pereat*". (p. 36, *ibid*)

If the language used is capable of bearing more than one construction, in selecting the true meaning regard must be had to the consequences resulting from adopting the alternative constructions. A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results."(pp. 112-113, *ibid*).

Further, at paragraphs 18 and 19 concluded thus:-

18. Reading word for word and assigning a literal meaning to Section 48AA would lead to absurdity, futility and to such consequences as the Parliament could have never intended. The provision has an ambiguity and is capable of being read in more ways than one. We must, therefore, assign the provision a meaning - and so read it - as would give life to an otherwise lifeless letter and enable the power of review conferred thereby being meaningfully availed and effectively exercised.

19. On the same principle the provision has to be interpreted from the point of view of exercise of the power by the Bar Council. The interpretation ought to be directed towards giving the expression a meaning which will carry out the purpose of the provision and make the remedy of review conferred by the provision meaningful, practical and effective. How can the Bar Council of India or any of its Committees exercise their power to review unless the matter is before them? The jurisdiction to exercise power of review does not come to an end merely by lapse of sixty days from the date of the order sought to be reviewed. In view of the construction which we have placed hereinabove, in our opinion, the expression "sixty days from the date of that order" prescribes the period of limitation for invoking the power of review. It has nothing to do with the actual exercise of power by the Bar Council. In other words, merely by lapse of sixty days from the date of the order sought to be reviewed, the Bar Council of India or any of its Committees is not divested of its power to exercise review jurisdiction. That is the only reasonable construction which can be placed on the provision as framed; though we cannot resist observing that the provision is not happily drafted.

11. If regard is had to the words "date of the said order" in sub-rule [4] of Rule 34 of the rules and applying the well settled principles of interpretation, the words must be interpreted by giving a meaning which will carry out the purpose of the provision and make the remedy conferred under the provision meaningful, practical and effective. Therefore, the jurisdiction of the Authority under Rule 34[4] of the Rules to recall an order or an ex parte order under Rule 34[2] does not come to an end merely by lapse of one month from the date of the said order, and the expression "one month of the date of the said order" prescribes the period of limitation for invoking the power under Sub-rule [4]. The mere lapse of one month from the date of order sought to be recalled, the Authority under the Act, is not divested of its power to exercise jurisdiction to recall an order passed ex parte under Sub-rule [2].

12. Similar is the view taken [RMRJ] in "M/s. Sun & Ski Exports Pvt. Ltd., v. Shri. P.K. Sujith and Another" W.P. No. 15084/2008 DD - 7.12.2009, in interpreting the words "thirty days of the said order" occurring in the proviso to Rule 11[5] of the Karnataka Payment of Gratuity Rules, 1973, in the matter of review jurisdiction of the Authorities under the Payment of Gratuity Act, 1972.

13. In the circumstances, the questions supra are answered accordingly and the endorsement dated 22.2.2013 Annexure-C is illegal and arbitrary.

14. In the result, this petition is allowed in part. The endorsement impugned is quashed and the proceeding remitted for consideration afresh by the 1st respondent treating the application under Order IX Rule 13 C.P.C. as one under Rule 34[4] of the Rules and to pass orders in accordance with law.

15. Rs. 5000/- in deposit by way of litigation cost is directed to be made over to the learned Counsel for the 2nd respondent since 2nd respondent would have to

make a trip to Bangalore for withdrawal of the said sum. The amount equivalent to 50% of the amount determined by the Authority which is in deposit in this court, is directed to be forwarded forthwith to the 1st respondent, who is directed to invest it in a term deposit in a Nationalized Bank until disposal of the application.