
(2002) 10 OHC CK 0024
In the Orissa High Court
Case No : O.J.C. No. 6295 of 1992

Banto Bhaskar Rao

APPELLANT

Vs

Purna Suna and Others

RESPONDENT

Date of Decision : 29-10-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 21, 226, 227
Workmens Compensation Act, 1923 — Section 30(1)

Citation : (2003) 2 ACC 625 : (2004) ACJ 1411 : (2003) 1 LLJ 920 : (2003) 1 OLR 33

Hon'ble Judges : R.K. Patra, J;L. Mohapatra, J

Bench : Division Bench

Advocate : B. Pal, O.N. Ghosh, N.N. Mohapatra and A.K. Mishra, for the Appellant; R. Mohapatra and Addl. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

L. Mohapatra, J.—This writ petition has been filed for a declaration that third proviso to Section 30(1) of the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act") is ultra vires of the Constitution of India and for a further declaration that despite availability of an alternative statutory remedy under the Act the petitioner has a legal right to invoke the writ jurisdiction and for quashing the award passed by the Commissioner for Workmen's Compensation at Annexure-3.

2. The case of the petitioner is that he is a share cropper and earns his livelihood by taking on lease small parcels of land belonging to the different owners of his locality and by cultivating the same for specific season or periods. He had employed one Gadan Chhatria alias Suna on casual basis as and when the necessity arose for help in the matter of cultivation in respect of the land taken on lease. The term of employment was purely casual, intermittent and on daily basis. During the year 1989 the said Gadan was being paid Rs. 10/-per day and such wages were paid after the day's work. Four to five days prior to March 14,

1989 the petitioner had engaged the said Gadan in his field but he was not seen by any one thereafter and on subsequent inquiry it was found that the dead body of Gadan was lying in a nearby field. In view of such unnatural death of Gadan, Attabira P.S. Case No. 52 of 1989 was registered suo motu by the police indicating therein that between March 14, 1989 and; March 18, 1989 the death had occurred and a case was registered for the offences committed under Sections 379, 304-A, 201 of the Indian Penal Code. When the matter stood thus, the petitioner was called by the Assistant Labour Officer, Bargarh in the month of May, 1989 to reply to the grievance made by the mother of Gadan. The total arrear wages were calculated, at Rs. 2,000/- and the petitioner also paid the same in presence of the Assistant Labour Commissioner, Bargarh. Thereafter, the father of Gadan i.e. opposite party No. 1 filed W.C. case No. 5 of 1989 against the petitioner claiming compensation before the opposite party No. 2. The claim was based on the allegation that Gadan was a workman employed by the petitioner in July, 1988 and in course of his employment he met his death on March 14, 1989. The further allegations in the petition were that Gadan had been engaged as house servant under the petitioner and was also asked to do some agricultural work. On March 14, 1989 while Gadan was watering the agricultural land of the petitioner during evening hours, he was murdered and his death was detected 4 to 5 days thereafter. Since Gadan was being paid at Rs. 360/- per month and was aged about 15 years at the time of his death, a lump sum compensation of Rs. 32,589.72 paise was claimed. The petitioner appeared in the said W.C. Case and contested denying the allegations made in the petition and his liability to pay any compensation only on the point that neither he was employer nor Gadan was a workman under him. The opposite party No. 2 however, passed an award in favour of the opposite party No. 1 directing the petitioner to deposit compensation of Rs. 45,312/- within a period of 30 days from the date of receipt of the order. The said award is annexed to the writ petition as Annexure-3.

3. This writ petition has been filed instead of filing an appeal challenging the provision contained in Section 30, Sub-section (1) third proviso which prescribes for depositing the compensation amount and obtaining a certificate for the purpose of filing an appeal. In paragraph-16 of the writ petition it is contended that the statutory provision, namely, third proviso to Section 30 of the Act is ultra vires the Constitution as it does not enable the petitioner to challenge the perverse award accusing him as murderer and as such the provision is hit by the equality clause of Article 14 of the Constitution and is also contrary to the provisions of Articles 19(1)(g) and 21 of the Constitution of India. It is also contended in paragraph- 17 of the writ petition that the discretionary remedy available to the petitioner under Articles 226 and 227 of the Constitution of India should be made available to him despite the fact that appeal is provided for under the statute which cannot be resorted to by the petitioner due to his poverty and the effect of which would be that the petitioner will not be in a position to clear himself of the finding of murder against him. In paragraph-18 of

the writ petition it is also contended that there is no law or provision made by the Central Government or State Government for giving aid to an indigent person, in the matter of deposit of amount awarded against him for maintaining an appeal. Though the CPC and other Acts provide for non-payment of Court-fee by an indigent person so far as the Act is concerned, a statutory bar has been imposed which also applies to the indigent persons and therefore a man without any means has to suffer an award under the provisions of the Act and therefore such provision which is opposed to the principle of equality and provisions incorporated in Articles 19(1)(g) and 21 of the Constitution. No counter has been filed either by the opposite party No. 1 or by the opposite party No. 3.

4. Shri Pal, learned senior counsel appearing for the petitioner contended that the Commissioner for Workmen's Compensation as is evident from the award has committed illegality in holding that there exists master and servant relationship between the petitioner and deceased Gadan who is alleged to have died in course of employment. Shri Pal contended that the Commissioner for Workmen's Compensation has exceeded his jurisdiction by holding that on March 14, 1989 the deceased was under employment of the petitioner and on being asked by the petitioner he had gone to the field of the petitioner to put water and in course of watering the agricultural field of the petitioner he was murdered. Shri Pal further contended that though such findings of the opposite party No. 2 are beyond the scope of a proceeding for compensation to be adjudicated by the Commissioner, the petitioner is not in a position to file an appeal against the said award in view of the restriction imposed in Section 30(1) of the Act. According to Shri Pal, though the CPC and some other statutes provide reliefs for indigent persons and permit them to file cases without any Court-fee, there is no such provision under the Act and right of an indigent person through has been recognised in the CPC and some other Acts, the same has not been recognised under the Act. In view of the above, the said proviso prescribing for depositing the compensation amount before filing an appeal is hit by the equality clause under Article 14 of the Constitution and is also violative of Articles 19(1)(g) and 21 of the Constitution of India, the learned counsel Shri Mohapatra appearing for opposite party No. 1 contended that the question is no more res integra and is settled by decisions of Karnataka and Kerala High Courts. Shri Mohapatra also contended that when constitutional validity of provision contained in the Act is in question before this Court, the learned Advocate General/ Attorney General should have been made a party. Reliance is also placed in a decision of the Apex Court in this regard by Shri Mohapatra.

5. We may now refer to Section 30(1) of the Act which is extracted hereunder:

"30. Appeals - (1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely:

(a) an order awarding as compensation a lump sum whether by way of redemption of a half monthly payment or otherwise or disallowing a claim in full or in part for a lump sum:

- (aa) an order awarding interest or penalty u/s 4-A;
- (b) an order refusing to allow redemption of a half monthly payment;
- (c) an order providing for the distribution of compensation among the dependants of a deceased workman, or disallowing any claim of a person alleging himself to be such dependant;
- (d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of Sub-section (2) of Section 12; or
- (e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal and, in case of an order other than an order such as is referred to in Clause (b), unless the amount in dispute in the appeal is not less than three hundred rupees; -

Provided further that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner or in which the order of the Commissioner gives effect to an agreement come to by the parties:

Provided further that no appeal by the employer under Clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against"

6. Bare perusal of the provision quoted above indicates that against an award passed by the Commissioner for Workmen's Compensation an appeal lies, but such appeal can only be entertained, if the awarded amount is deposited before the Commissioner and a certificate is obtained in support of the same. The question raised for consideration is whether such a provision is violative of Article 14/19(1)(g)/21 of the Constitution of India. The Karnataka High Court in *Gokak Mills and Anr. v. Commissioner for Workmen's Compensation* 1999 III LLJ 399 has held as follows at pp. 399 & 400 of LLJ:

"It is submitted that the requirement of depositing the amount payable under the order appealed against even at the stage of filing appeal itself results practically in whittling down the right of appeal and is, therefore, arbitrary. It is not possible to agree with this contention. The learned single Judge rightly repelled that contention following a Division Bench judgment of this Court in the case of *Manctal Panchayat, Gokarna v. Seetabai Rama Kale*. Writ Appeal No. 273 of 1993, decided on April 6, 1993. In that case, the Division Bench consisting of K.A. sWAM, the then Acting Chief Justice and SADASHIVA, J. considered a *pari materia* proviso, which was second proviso to Section 7(7) of the Payment of Gratuity Act, 1972, which had laid down that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the Controlling Authority to the effect that the appellant

has deposited with him an amount equivalent to the amount of gratuity required to be deposited under Sub-section (4) of deposits with the appellate authority such amount. The learned single Judge has held that the object of second proviso to Section 7(7) is to discourage filing of the appeals and even if the appeals are filed, the person who is entitled to the payment of gratuity should not be deprived of the benefit of it during the pendency of the appeals. It was found that there is nothing to show that the proviso becomes invalid as only it has provided for pre-deposit of gratuity amount. So far as the present provision is concerned, it has to be kept in view that the Workmen's Compensation Act is a beneficial legislation: The dependants of the workman who suffers fatal injury or the workman who gets a grave physical injury in the course of employment are entitled to go to the Commissioner for Workmen's Compensation for claiming adequate and proper amount of compensation as laid down by the Schedule to the Act. Under these circumstances, once the Commissioner adjudicates and awards compensation payable by the employer, if the latter's right to appeal is made subject to the fetter of depositing of the amount, it cannot be said that the right of appeal has become illusory or arbitrary. It is now well settled that the appeal is the creation of statute and it is open to the legislature to give a fettered right of appeal or unfettered right of appeal as the legislative policy requires in the given set of circumstances for catering which the statute is enacted. In this connection, we may refer to a decision of the Supreme Court in the case of *The Anant Mills Co. Ltd. Vs. State of Gujarat and Others*, in para 40 of the Report, the Supreme Court has observed that provision of predeposit cannot be treated as nullifying the right of appeal, specially keeping in view the fact, that the discretion is vested in the appellate Judge to dispense with the compliance of the above requirement. Consequently, it cannot be said that the impugned notices are arbitrary and violative of Article 14 of the Constitution as submitted."

The Kerala High Court also in *T. Narayanan Nair v. Union of India* took a similar view and held, that the requirement of depositing the amount before availing the right of appeal is not ultra vires of the Constitution. In this connection, another decision of the Apex Court in *Anant Mills Co. Ltd. v. State of Gujarat* (supra), may be referred to. The question raised in the aforesaid decision was constitutional validity of different provisions of Bombay Provincial Municipal Corporation Act as amended by the Gujarat Acts No. 8 of 1968 and 5 of 1970. A similar provision contained in the Act was considered by the Apex Court and it was observed as follows:

"..... The bar created by Section 406(2)(e) to the entertainment of the appeal by a person who has not deposited the amount of tax due from him and who is not able to show to the appellate Judge that the deposit of the amount would cause him undue hardship arises out of his own omission and default. The above provision, in our opinion, has not the effect of making invidious distinction or creating two classes with the object of making out differential treatment to them. It only spells out the consequences flowing from the omission and default of a

person who despite the fact that the deposit of the amount found due from him would cause him no hardship, declines of his own volition to deposit that amount. The right of appeal is the creature of a statute. Without a statutory provision creating such a right the person aggrieved is not entitled to file an appeal. We fail to understand as to why the legislature while granting the right of appeal cannot impose conditions for the exercise of such right, in the absence of any special reasons there appears to be no legal or constitutional impediment to the imposition of such conditions. It is permissible, for example, to prescribe a condition in criminal cases that unless a convicted person is released before his appeal against the sentence of imprisonment would be entertained. Likewise, it is permissible to enact a law that no appeal shall lie against an order relating to an assessment of tax unless the tax had been paid. Such a provision was on the statute book in Section 30 of the Indian Income Tax Act, 1922. The proviso to that section provided that..... "no appeal shall lie against an order under Sub-section (1) of Section 46 unless the tax had been paid". Such conditions merely regulate the exercise of the right of appeal so that the same is not abused by a recalcitrant party and there is no difficulty in the enforcement of the order appealed against in case the appeal is ultimately dismissed. It is open to the legislature to impose an accompanying liability upon a party upon whom a legal right is conferred or to prescribe conditions for the exercise of charge of the right. Any requirement for the discharge of that liability or the fulfilment of that condition in case the party concerned seeks to avail of the said right is a valid piece of legislation, and we can discern no contravention of Article 14 in it. A disability or disadvantage arising out of a party's own default or omission cannot be taken to be tantamount to the creation of two classes offensive to Article 14 of the Constitution, specially when that disability or disadvantage operates upon all persons who make the default or omission."

7. In view of what has been decided in the above decisions, we are unable to accept the contention of Shri Pal that third proviso of Section 30(1) of the Workmen's Compensation Act is opposed to Article 14 of the Constitution of India or violative of Article 19(1)(g) of the Constitution of India. The other (question raised by Shri Mohapatra has some relevance. In *Basantlal v. State of U.P.* 1999 16 (OCR) 271 it has been held as follows:

"It apparently needs to be stated that statutory provisions are to be assumed to be constitutional, that constitutionality is to be considered only where absolutely necessary, that a statute cannot be struck down unless notice has been given to the Attorney General in the case of a Central statute, as here, or the Advocate General in the case of a State statute....."

8. We may also in this connection note that existence of alternative remedy by way of statutory appeal does not bar the jurisdiction of this Court to entertain, in the appropriate cases, the petition for issue of writ of certiorari. It is a question of exercise of sound discretion. In the case at hand, the petitioner did not exhaust the alternative remedy on the plea that he has to deposit the

compensation awarded by the Commissioner along with the appeal. We have already held that the provision requiring the party to deposit the compensation is constitutionally valid. Having regard to the facts and circumstances, we cannot permit the petitioner to by-pass the alternative remedy and rush to this Court for invoking the writ jurisdiction.

9. In the result, we do not find any merit in this writ petition which is accordingly dismissed.

R.K. Patra, J.

I agree.