

(1984) 12 KAR CK 0031
In the Karnataka High Court
Case No : Criminal R.P. No. 203 of 1983

Basavaraj Chenna Naik

APPELLANT

Vs

General Manager

RESPONDENT

Date of Decision : 07-12-1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397
Minimum Wages Act, 1948 — Section 20, 20 (2), 20 (6)

Citation : (1985) ILR (Kar) 2172 : (1985) 2 KarLJ 371

Hon'ble Judges : Narayana Rai Kudoor, J

Bench : Single Bench

Advocate : R.G. Hedge, for the Appellant; K.N. Patil, for the Respondent

Final Decision : Dismissed

Judgement

Narayana Rai Kudoor, J.—This Criminal Revision u/s 397 of the Code of Criminal Procedure (for short "the Code") is directed against the Judgment and order dated 17th January, 1983, passed by the 1st Additional JMFC, Sirsi, in Crl. Mis. No. 16/82 dismissing the complaint filed by the petitioners and several others u/s 20(2) of the Minimum Wages Act, 1948 (for short "the Act"). I shall refer to the parties in the course of this order as they were referred to in the Court below for the sake of convenience.

2. Few facts relevant for the disposal of this Revision may be stated as under :

The petitioners are the employees of the opponent industry Karnataka Veneers Limited, Kavachur, in Siddapur Taluk of North Kanara District. The Government of Karnataka fixed the minimum wages payable to different classes of employees in plywood industries as per the notification dated 16th May, 1978 published in the Official Gazette on 30-5-1978 commencing with effect from 1-6-1978. The petitioners claimed that the opponent industry of which they are the employees is a plywood industry and as such they are entitled for the minimum wages as fixed by the State Government under the said notification. However, the

opponent industry contended that the Veneers industry is not a part of the plywood industry to which alone the notification in question is applicable. So, the opponents claimed exemption from the application of the provisions of the notification. The petitioners are paid salaries less than the minimum wages fixed under the notification. So, they approached the 1st Addl. J.M.F.C., Sirsi, for enforcing their claim for wages as fixed under the notification. The Learned Magistrate, after hearing the arguments and considering the material placed before him, came to the conclusion that the opponent industry did not fall within the ambit of the notification and as such, the petitioners are not entitled to claim minimum wages fixed therein and accordingly, the application filed by the petitioners was dismissed as per the Judgment and order stated supra. Hence, this Revision by two of the several petitioners who had filed the application before the Magistrate.

3. Sri K.N. Patil, Learned Advocate appearing for the Respondent, raised a preliminary point at the outset questioning the maintainability of the Revision. Pursuant to this point, further he contended that the order of the Learned Magistrate is not amenable to the Revisional jurisdiction of this Court under the provisions of the Code as the Magistrate while passing the impugned Judgment and order did not act as an inferior Criminal Court but acted as Persona Designate, being the Authority constituted under the Act to dispose of the claims arising u/s 20 of the Act. Besides, he has also pointed out that the decision or direction of the Magistrate is made final under subsection (6) of Section 20 of the Act. On these grounds, he contended that the order passed by the Magistrate is not revisable by this Court under the provisions of the Code, Per contra, it is contended by Sri R.G. Hegde, Learned Advocate appearing for the petitioners that there is no substance or force in this contention. He argued that the authority who exercised jurisdiction and decided the claim of the petitioners being a sitting Magistrate presiding over a regular Criminal Court, the Magistrate has acted as an inferior Criminal Court in deciding the question and as such, his decision is amenable to the revisional jurisdiction of this Court under the provisions of the Code.

4. I shall first deal with the preliminary point raised by Sri K.N. Patil before considering the other questions raised in this revision on merits if found necessary.

5. Before examining the rival contentions, it is necessary to notice the relevant provisions of law.

6. Section 20 of the Act deals with claims. Subsection (1) of Section 20 which is material for our purpose reads :

"The appropriate Government may, by notification in the Official Gazette appoint any Commissioner for Workmens Compensation or any Officer of the Central Government exercising functions as a Labour Commissioner for any region or any officer of the State Government not below the rank of the Labour Commissioner

or any officer with the experience as a Judge of a Civil Court or a judicial Magistrate to be the Authority to hear and decide for any specified area all claims arising out of payment of less than minimum rates of wages or in respect of payment of remuneration for days of rest or for work done on such days under Clause "b) or Clause (c) of sub-section (1) of Section 13 or of wages at the overtime rates u/s 14 to the employees employed or paid in that area."

(emphasis is supplied)

Sub-sections 2 to 5 deal with procedure in disposing of any application presented to the authority under sub-section (2) of Section 20 of the Act by an employee. Sub-section (6) of Section 20 provides that every direction by the Authority u/s 20 of the Act shall be final. Sub-section (7) stipulates that every Authority appointed under sub-section (1) shall have all the powers of a Civil Court under the CPC (Act 5/1908) for the purpose of taking evidence and enforcing attendance of witnesses and compelling the production of documents and every such Authority shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898.

7. In exercise of the powers conferred by sub-section (1) of Section 20 of the Act, the State Government by notification No. LLH. 78 MNW 57 dated 18/27 October, 1958, appointed the Magistrate of Sirsi to be the Authority in respect of the area Sirsi, Siddapur and Mundgod Taluks and empowered to hear and decide all claims arising out of payment of less than minimum rate of wages and other claims specified in sub-section (1) of Section 20 of the Act. The question now for consideration is whether the Magistrate at Sirsi appointed as the Authority specified under sub-section (1) of Section 20 of the Act, is a "Persona Designate" or that the power was given to the Magistrate being the Presiding Officer of the Court, in other words, to the preexisting Court of the Magistrate to hear and decide all claims of the employees specified in sub-section (1) of Section 20 of the Act.

8. In *Vasudeva Traders - v. - State of Karnataka* this Court while holding that the Sessions Judge functioning u/s 6-C of the Essential Commodities Act, 1955, was functioning as an inferior Criminal Court, proceeded on the basis that while exercising power of appeal under the said Act, he was functioning as a Court and not as Persona Designate. In the case of *Public Prosecutor - v. - Linga Setty* the Andhra Pradesh High Court has taken the same view. The view taken by Andhra Pradesh High Court was based mainly on two reasons namely that the intention of the Legislature was to confer the appellate power u/s 6-C of the Essential Commodities Act on the preexisting Judicial authority and secondly, the decision of that Appellate Authority has not been made final. In *Thakurdas - v.- State of Madhya Pradesh* the Supreme Court while examining the question whether the decision of the Appellate Authority u/s 6-C of the Essential Commodities Act should be revised by the Court exercising its revisional power, approved the decision in *The Public Prosecutor Vs. Legisetty Ramayya and Another*,

In *Krishnaji Venkatesh Shirodkar - v. - Gurupad Shivaram Kavalekar and others* which was under the Karnataka Rent Control Act, 1961 two questions were referred to the Full Bench. The questions referred were :

1. 1977 (1) KLJ 339 2 The Public Prosecutor Vs. Legisetty Ramayya and Another, 3. Thakur Das (Dead) by Lrs. Vs. State of Madhya Pradesh and Another, (1) Whether the District Judge referred to u/s 50(2) of the Rent Control Act is a Court subordinate to the High Court against whose order a Petition u/s 115 C.P.C. lies or he is a persona Designate, and

(2) Whether the second sentence in Section 52(2) namely, "the order of the District Judge shall be final" precludes the High Court from exercising jurisdiction u/s 115 C.P.C. if it is held that the District Judge is a Court subordinate to the High Court.

The Full Bench held that the District Judge referred to in Section 50(2) of the Rent Control Act is a Court subordinate to the High Court and is not a persona Designate and that a petition u/s 115 would lie notwithstanding the fact that the revisional order u/s 50(2) of the District Judge is made final. The Full Bench in deciding so, has relied upon the previous decision of this Court in *Ganesh Rao - v.- Sarphina D'Souza Bai* which in turn relied on a Full Bench decision of the Allahabad High Court reported in *Chatur Mohan and Others Vs. Ram Behari Dixit*, . The ratio of these decisions in deciding the question whether a particular authority named either to decide the claim or appeal is "Persona Designate" or "not" depends upon the intention of the Legislature whether the power was given to decide such questions to the preexisting Court of which the authority named is the Presiding Officer or to the named officer. If the intention is to confer power to a preexisting Court then even if the authority is named by mentioning the presiding officer of that Court, the power conferred to the Magistrate cannot be said to be in his capacity as "Persona Designate" But, on the other hand if it could be gathered from the provisions of the Statute that the power is conferred to the authority and not to the preexisting Court of which he is the Presiding Officer, then the power conferred under the Statute to the authority named in his capacity as "Persona Designate" and not by virtue of the office he holds. In this 5. 1975 (2) KLJ 352 background let me now proceed to consider whether the Magistrate at Sirsi was appointed as the Authority under sub-section (1) of Section 20 of the Act as "Persona Designate" or that the power was conferred upon the preexisting Magistrate Court at Sirsi.

9. It is seen from sub-section (1) of Section 20 of the Act that the power is given to the appropriate Government to appoint any person who falls within the specified class of officers enumerated therein, to be the Authority to hear and decide, for any specified area, all claims of the employees arising under the provisions of the Act stated therein. The Officers specified under sub-section (1) are any Commissioner for Workmen's Compensation or any officer of the Central Government exercising functions as a Labour Commissioner for any region or any officer of the State Government not below the rank of Labour Commissioner or

any other officer with experience as a Judge of a Civil Court or as a Judicial Magistrate. After enumerating the three class of officers who are eligible for being appointed as the "Authority", provision is made respecting any other officer, provided such officer possessing the experience as a Judge of a Civil Court or as a Judicial Magistrate. Thus, it is clear that whenever the appropriate Government appoints other officers to be the Authority under the Act other than those specifically mentioned in sub-section (1) of Section 20 of the Act, should possess the experience as a Judge of a Civil Court or as a Judicial Magistrate and the choice should not fall beyond or outside these category of officers. Thus, it is clear from the above provision that the intention of the Parliament while enacting sub-section (1) of Section 20 of the Act appears to be not to confer the power of the Authority under the Act to the pre-existing Civil or Criminal Courts but to an officer with experience as a Judge of a Civil Court or as a Judicial Magistrate. In other words, it is obvious that the power of the Authority under sub-section (1) of Section 20 of the Act was conferred on the officer with experience as a Judge of the Civil Court or as a Judicial Magistrate as "Persona Designate". Provision is not made to empower the appropriate Government to appoint any Judge or Magistrate of a Court having jurisdiction in the specified area under the Act. Instead it is specifically provided that the officer to be appointed as the Authority should be an officer with experience as a Judge of Civil Court or as a Judicial Magistrate, without limitation of any territorial jurisdiction in which jurisdiction is exercised by the Judge or the Magistrate of any existing Court. This would indicate that if the Officer with the experience as Judge of a Civil Court or as a Judicial Magistrate is appointed as the Authority, he is so appointed as "Persona Designate" and not as the Presiding Judge of the existing Court either Civil or Criminal.

10. The view I take in this regard gains support from the notification issued by the State Government in exercise of the powers conferred by sub-section (1) of Section 20 of the Act in appointing the Magistrate of Sirsi as the authority under the Act. Sl. No. 27 of the Notification refers to the Judicial Magistrate First Class, Sirsi, as the authority appointed under sub-section (1) of Section 20 of the Act for the area covered by Sirsi,, Siddapur and Mundgod Taluks. I am told, besides at Sirsi, there is a regular Magistrate Court at Siddapur and an Itinerate Court at Mundgod at present, thereby the jurisdiction of the Magistrate Court at Sirsi is confined to Sirsi Taluk. Even if the position as en the date of issue of the notification was not the same as at present, certainly, if the Legislature intended to confer the power of the Authority under the Act to the respective Jurisdictional Magistrate, there would have been a notification appointing the Jurisdictional Magistrate as the Authority under the Act to exercise power within their respective local Jurisdictions. Admittedly, this was not done. The Judicial Magistrate First Class at Sirsi is still the Authority under the Act to exercise powers in Sirsi, Siddapur and Mundgod Taluks. This would go to show that the power conferred on the Magistrate, Sirsi, to be the Authority under the Act to deal with the claims of the employees arising under the provisions of the Act in

the areas of Sirsi, Siddapur and Mundgod Taluks is in his capacity as Persona Designate and not as Presiding Magistrate of the existing Magistrate Court.

11. However, it was argued by Sri. Hegde placing reliance on sub-section (7) of Section 20 that when an authority appointed under sub-section (1) is empowered with all the powers of a Civil Court under the CPC for taking evidence and of enforcing attendance of witnesses and compelling production of documents and when such authority is deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXXV of the Code of Criminal Procedure, it would imply that such powers are given to the authority not in his capacity as Persona Designate but in his capacity as the Presiding Officer of the Court over which he presides.

12. This submission was strongly refuted by Sri. K. N. Patil, learned advocate appearing for the respondent, contending that sub-section (7) of Section 20 is intended to clothe the authority appointed under sub-section (1) with necessary powers for effectively discharging its functions, and such powers are not conferred upon a preexisting Court over which the officer appointed as an authority under sub-section (1) presides.

13. It seems to me that the argument advanced by Sri K. N. Patil sounds reasonable. From the content and the language of sub-section (7) it is reasonable to hold that the authority appointed under sub-section (1) is conferred with the powers of a Civil Court under the CPC to enforce his directions touching the matters mentioned in the first part of sub section (7) and that such authority shall be deemed to be a court for all the purposes of Section 195 and Chapter XXXV of the Code of Criminal Procedure which is the additional power conferred upon the Authority for discharging its functions effectively. It is difficult to draw sustenance from sub-section (7) that the powers of the Civil Court conferred upon the authority under sub-section (7) were in effect conferred upon a preexisting Court over which he presides as it is provided under sub-section (1) that the appropriate Government may, by notification in the official Gazette appoint not only the officer with experience as a Judge of a Civil Court or as a Judicial Magistrate but also other officers detailed in sub-section(1) of Section 20. Thus I hold that sub-section (7) of Section 20 does not help to conclude that the authority appointed under sub-section (1) is not a Persona Designate.

14. Thus, viewed from any angle, it seems to me that the Judicial Magistrate First Class at Sirsi who is appointed as the Authority under the Act is an officer appointed as Persona Designate and not by virtue of Magistrate exercising jurisdiction within the local limits of Sirsi Magistrate Court.

15. Once it is held that the Magistrate at Sirsi is functioning as the Authority under the Act as "Persona Designate" he will not fall within the classification as an inferior Criminal Court while discharging the functions under the Act. Necessarily it follows that the orders passed and the directions given under the Act by him are not amenable for correction by this Court in exercise of its revisional power under the Code. In that view, this revision filed by the

petitioners is not maintainable.

16. In the view I take that revision is not maintainable and this Court has no power to deal with it on merits, I do not consider it proper to express any opinion on the other points canvassed in the revision.

17. In the result, for the reasons stated above, this Revision fails and the same is dismissed.