

(1964) 12 AP CK 0011

In the Andhra Pradesh High Court

Case No : Writ Petition No. 307 of 1964

D. Murugappa Mudaliar

APPELLANT

Vs

Presiding Officer, Labour Court, Guntur and Another

RESPONDENT

Date of Decision : 18-12-1964

Acts Referred:

Andhra Pradesh Minimum Wages Rules, 1960 — Rule 34(2), 34(4)
Minimum Wages Act, 1948 — Section 30(1)

Citation : AIR 1965 AP 433

Hon'ble Judges : Gopalakrishnan Nair, J

Bench : Single Bench

Advocate : K. Sreenivasamurthy, for the Appellant; O.A. Reddy, for P. Ramachandra Reddy, Govt. Pleader, for the Respondent

Judgement

(1) The petitioner in this writ petition asks for a writ of Mandamus to compel the "Authority under the Minimum Wages Act" to entertain his application under R. 34 (4) of the Rules framed under that Act and adjudicate upon it on merits. The circumstances leading up to this writ petition are as follows :

The Inspector of Factories, Nellore, who is the second respondent herein filed an application under sub-s. (2) of S. 20 of the Minimum Wages Act before the "Authority under the Minimum Wages Act". A notice of that application was issued to the petitioner, who was a respondent therein. However, the petitioner was not present at the time of the hearing of the application or its disposal. The Authority under the Minimum Wages Act set the employer ex parte and allowed the application of the Inspector of Factories on 24-7-63. A copy of this order was despatched to the employer (the petitioner herein) only on 11-10-63. The petitioner received it the next day. Thereupon, he filed on 7-11-63 an application under sub-r. (4) of R. 34 of the Rules framed under the Minimum Wages Act for setting aside the ex parte order passed against him by the Authority under the Minimum Wages Act. The Authority dismissed that application on the ground that it was filed beyond a period of one month from 24-7-63 when the ex parte order

sought to be set aside was passed. It is this order which is now challenged in these proceedings under Art. 226.

(2) The first respondent who is the Authority under the Minimum Wages Act has chosen to remain ex parte. The second respondent who is the Inspector of Factories resist this Writ Petition on the ground that the order passed by the Authority under the Minimum Wages Act was correct, because the application under R. 34 (4) was filed by the employer only after the expiry of the period of one month from the date of the ex parte order.

(3) The short question that falls for determination is whether the application filed by the petitioner under R. 34 (4) on 7-11-63 was barred by limitation. It is useful here to read R. 34 (4) which runs as follows : -

"An order passed under sub-r. (2) or sub-r. (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 re-heard after service of notice on the opposite party of the date fixed for re-hearing in the manner specified in sub-rule (1)".

The undisputed facts are that an order under sub-r. (2) of R. 34 was passed ex parte on 24-7-63. That order was communicated to the petitioner only on 12-10-63. He filed the application to set aside the ex parte order on 7-11-63. If the crucial date is taken to be the date of the communication of the ex parte order to him, the application to set aside the ex parte order made by the petitioner on 7-11-63 will be well within time. On the other hand, if the crucial date is taken to be 24-7-63 when the ex parte order was passed by the Authority under the Minimum Wages Act, his application made on 7-11-63 under R. 34 (4) would be clearly barred by time. What R. 34 (4) says is that the defaulting party may seek to set aside ex parte order passed against him under sub-r. (2) of that Rule within one month of the date of the ex parte order. Now, what construction should be placed upon the words "date of the ex parte order ?" Is it the date on which the order was signed by the Authority under the Minimum Wages Act, or is it the date on which the order passed by the Authority was communicated to the affected party, that should constitute the starting point of limitation for the purpose of R. 34 (4) ?

If the words "date of the said order" in R. 34 (4) are given their literal construction, it would lead too the 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 given to him by R. 34 (4) would be lost for no fault of his. A Court would indeed be slow to adopt a construction which would lead to such a frustrating and unjust result. On the other hand, if the relevant words are so interpreted as to mean that the period of limitation will start against the affected person only from the date of his knowledge of the ex parte order passed against him, everything will be fair ; and the remedy vouchsafed to him under R. 34 (4) will be effectively available to him.

The contention on behalf of the second respondent is that a strict and literal construction should be placed upon the relevant words of R. 34 (4), whereas the learned counsel for the petitioner argues for a fair and reasonable construction of those words. I am inclined to accept the contention advanced on behalf of the petitioner in this case. This contention is well founded in principle and authority. Different Statutes employing practically the same words as R. 34 (4) have come up for consideration before Courts, and more than once it has been held that the words should not be construed in a literal and hide-bound manner but should receive a fair and liberal construction that would accord with the correct principle of law and the intention of the Legislature .

(4) Under S. 25 of the Madras Act (Act XXVIII of 1860), the starting point of limitation was the passing of the Survey Officer's decision . The question that arose in Annamalai v. Cloete ILR Mad 189 , was as to when the Survey Officer can be said to have passed his decision only when it was communicated to the parties. This ruling was followed in Seshamma v. Sankara, ILR Mad 1. This principle has been reiterated by a Division Bench of the Bombay High Court in considering the provisions of S. 20 of the Khoti Settlement Act (Bombay Act I of 1880), in Mahipat v. Lakshman ILR 24 Bom 426 .In that case at p. 430. Parsons J. observed :

"If a dispute exists, he is to determine it, but he can do this of his own motion, and no provision is made for the communication of his decision to any of the parties affected thereby. It may lie buried in his desk for three years as in the present case, and no one may know of its existence till it is made use of for the purpose of framing the register. It is not necessary to discuss what effect the proved communication of the decision may have ; it is sufficient to say that the decision can have no force until it is pronounced or in some way brought to the notice of the parties, and that as this is not shown to have been done in the present case till the botkhat was framed and signed, the date when this was done should be taken as the starting point of limitation."

In Secy. of State v. G. Narayanaswami Naidu ILR Mad 151 , the starting point of limitation for the purpose of availing of the remedy under S. 24 of the Survey and Boundaries Act (Madras Act IV of 1897) fell for consideration. That Act prescribed the date of decision under S. 13 of it as the starting point of limitation. The true connotation of the words "date of decision" was in controversy and called for the decision of the Division Bench of the Madras High Court. The Bench consisting of Miller and Munro, JJ. held as follows:

"There is some difficulty in the matter, but on the whole we think we ought to follow the authorities to which we have referred which hold that the date of a decision is the date of the communication to the parties. A decision cannot properly be passed until it is in some way pronounced or published under such circumstances that the parties affected by it have a reasonable opportunity of knowing what it contains. Till then, though it may be written out, signed and dated, it is nothing but the decision which the officer intends to pass. It is not

passed so long as it is open to him to tear up what he has written and write something else".

In *Abdul Ali v. Mirja Khan* ILR Bom 8 a Division Bench of the Bombay High Court considered the meaning of the expression "making of the order" occurring in S. 77 of the Indian Registration Act. Chandawarkar, J. speaking for the Division Bench stated:

"The lower Courts have held that the plaintiff's suit is within limitation, because in their opinion it must be taken to run from the date on which the order of the Registrar was communicated to the plaintiff. We agree with that view. An order does not become an order unless and until steps are taken by the officer passing it to bring it to the consciousness and knowledge of the party against whom it is passed."

This decision was followed by a Division Bench of the Punjab High Court in *Kirpa Ram v. Asa Singh* 41 Pun Re 1917 : AIR 1917 Lah 63 Shadi Lal, J., who delivered the judgment observed as follows:-

"As observed by the Bombay High Court in ILR 28 Bom 8, the expression "making of the order" in S. 77 means, not merely recording the order of refusal in writing, but communicating it to the party concerned so as to bind him by it. Any other interpretation would lead to the absurdity that a suit might be barred by time before the person entitled to impeach the order came to know of its existence."

The question as to the terminus a quo of limitation under S. 78(1) of the Limitation Act came up for decision before a Division Bench of the Madras High Court in *Swaminathan alias Chidambaram Pillai Vs. Lakshmanan Chettiar and Another*, and it was expressed held that an appeal to the District Registrar or a suit as the case may be is not barred by statute, if it is filed within 30 days of the date of communication of the order of the Sub-Registrar or a suit as the case may be is not barred by statute, if it is filed within 30 days of the date of communication of the order of the Sub-Registrar or of the District Registrar refusing registration, even though it is filed beyond 30 days of the date of that order. At p. 491, Venkatasubba Rao, J., pointed out:-

"Apart from authority, it seems to me that there can be valid order unless it is made after notice to the parties affected by it, or, it is communicated to them in the absence of such notice. To take a contrary view seems opposed to reason and principle."

He proceeded to observe that "the very word "order" by necessary implication means in law that the party affected has had reasonable notice of it."

(5) *O.A.O.A.M. Muthiah Chettiar Vs. The Comr. of Income Tax*, , was concerned with the ascertainment of the starting point of limitation under S. 33-A (2) of the Income Tax Act, 1922, Rajamannar, C. J. delivering the judgment of the Division Bench stated the position of law thus:

"If a person is given a right to resort to the remedy to get rid of adverse order within a prescribed time, limitation should not be computed from a date earlier than that on which the party aggrieved actually knew of the order and, therefore, must be presumed to have had knowledge of the order. Therefore, the period of one year has to be computed not from the date when the order was signed by the Income Tax Officer but the date when it was communicated to the assessee or the date when it was pronounced or published in such a manner that the party must be deemed to have had notice of it on the date of such pronouncement or publication."

(6) In *Khajana Lakshmana Rao Vs. Revenue Divisional Officer, Ranipet, , Rajagopala Ayyangar, j.* considered the provisions of sub-s. (2) of S. 18 of the Land Acquisition Act and stated the principle in perfect consonance with the view propounded in the several decisions to which I have already adverted. A recent decision of the Supreme Court in *Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer and Another, ,* which has referred to AIR 1930 Mad 490: ILR 53 Mad 491, and other decisions has authoritatively laid down the law by approving the principle of the decisions, mentioned above.

(7) It follows, therefore, that a mere passing of an order under R. 34 (2) will not start limitation against an affected party, and that limitation will begin to run only when that party had notice or knowledge of the order by its being formally communicated to him or otherwise. In the instant case, the petitioner, who was the affected party did not notice or knowledge of the ex parte order passed to his detriment by the Authority under R. 34 (2). He came to know of it only when it was communicated to him on 12-10-63. But, he made his application under sub-r. (4) R. 34 on 7-11-63, i.e., before the expiry of one month from 12-10-63. It follows that the application made by him under R. 34 (4) for setting aside the ex parte order passed against him was within time and ought not to have been rejected by the Authority under the Minimum Wages Act as barred by limitation. The impugned order passed by the first respondent in the instant case thus constitutes a clear violation of law and that order must, therefore, be quashed and the first respondent directed to entertain the petitioner's application under R. 34 (4) and dispose of it on merits.

(8) The writ petition is accordingly allowed.

(9) Petition allowed.