

(2006) 10 KL CK 0049

In the High Court Of Kerala

Case No : R.P. No. 626 of 2001 in M.F.A. No. 1479 of 1998

E.S.I. Corporation

APPELLANT

Vs

Rajagopal Textile Mills (P) Ltd.

RESPONDENT

Date of Decision : 26-10-2006

Acts Referred:

Constitution of India, 1950 — Article 141
Employees State Insurance Act, 1948 — Section 2(22)

Citation : (2006) 4 KLT 730

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : T.P.M. Ibrahim Khan, for the Appellant; M.P. Ashok Kumar, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—Is a judgment of an inferior court, rendered contrary to a binding earlier decision of a superior court, liable to be reviewed on that count? This is the short issue for consideration in this application for review.

2. One of the issues that arose for decision in I.C.No.25 of 1996 filed by the respondent-establishment before the Employees' Insurance Court, Palakkad, for short, the "E.I.Court", was as to whether holiday wages will amount to wages within the meaning of Section 2(22) of the Employees' State Insurance Act, 1948, hereinafter, the "ESI Act", for short. The E.I.Court, following the decision of the Full Bench of this Court in Employees State Insurance Corpn. Vs. Malabar Cashewnut and Allied Products and Others, answered that issue against the Corporation by order dated 4-5-1998. Employees' State Insurance Corporation, hereinafter referred to as the "Corporation", for short, appealed against that decision to this Court, contending that S.L.P.(C) Nos. 10057-59/93, against the decision of this Court in MC & AP's case (supra) are pending before the Apex Court. This was specifically raised as Ground (B) in the appeal memorandum and one of the substantial questions of law suggested in the memorandum, for consideration in the appeal, was as to whether the additional remuneration paid

to employees under the Kerala Industrial Establishments (National and Festival Holidays) Act, 1958, hereinafter, the "Holidays Act", will come within the definition of "wages" as defined in Section 2(22) of the ESI Act. When the appeal came up for final hearing on 16-10-2001, it was submitted on behalf of the Corporation that its appeal against the decision of this Court in MC & AP's case (supra) was still pending before the Apex Court. Accordingly, the judgment sought to be reviewed was issued following the decision of the Full Bench of this Court in MC & AP's case (supra) apparently because, the Full Bench decision was not shown to have been set aside or set at naught by the Apex Court and it was, therefore, binding on the learned single Judge.

3. This review petition is filed by the Corporation contending that long before the disposal of the appeal by this Court on 16-10-2001, the Apex Court had reversed the Full Bench decision of this Court. The said fact is not in dispute. By order dated 3-12-1997, of the Honourable Supreme Court of India, in C.A.Nos. 3851-53/1993, it was held that the wages, as per the Holidays Act, on holidays, to the employees, would form part of the "wages" as per Section 2(22) of the ESI Act and that the decision of the Apex Court in Regional Director, Employees' State Insurance Corporation Vs. M/s. Popular Automobiles, answers the point. It is urged on behalf of the Corporation that the judgment sought to be reviewed is vitiated by an error apparent on the face of the record, in as much as it was delivered contrary to the ratio of the aforesaid order of the Apex Court though the said order of the Apex Court reversing the decision of the Full Bench was not brought to the notice of this Court.

4. Per contra, it was urged on behalf of the respondent-establishment that no ground for review is made out. Reference was made to the 16th Edn. of Mulla on the Code of Civil Procedure, 1908 wherein it is recorded that (1) in *Amrit Lal v. Madho Das* (1884) 6 All 292 it was held that where a decree is based upon a decision of a Division Bench of the High Court, and that decision is subsequently overruled by a Full Bench, the reversal is no ground for a review of the decree and that (2) it was held in *Ellen v. Rasheer* (1876) 1 Cal 184 and in *Abdul Sadq v. Abdul Aziz* (1899) 21 All 152, that the production of a new ruling or authority, which if brought to the notice of the Judge at the first hearing might have altered the judgment, is not a "new and important matter within the meaning of the rule providing for review. The decision of the Apex Court in *Shahada Khatoon v. Amjad Ali* 2000 (1) KLT 696 (SC) was cited for the proposition that the contention that the judgment sought to be reviewed was overruled in another case subsequently is not a ground for review of the said decision. Reference was also made to the decision of the Apex Court in *Dokka Samuel Vs. Dr Jacob Lazarus Chelly*, to urge that the omission to cite an authority of law is not a ground for reviewing the prior judgment on the ground that there is an error apparent on the face of the record. However, it was not attempted to be pointed out that the decision of the Apex Court cited by the Corporation reversing the judgment of the Full Bench of this Court does not apply.

5. The above precedents, cited on behalf of the respondent, do not answer the issue in hand which is as to whether the judgment sought to be reviewed, being one passed by this Court relying on a judgment of this Court, which had already been reversed by the Apex Court, is to be reviewed.

6. Going by the relevant dates, the decision of this Court in MC & AP's case (supra) was reversed by the Apex Court even before the E.I.Court rendered the order, forming the basis of these proceedings.

7. The judgment sought to be reviewed was passed without the learned Judge being apprised of the reversal of the judgment of this Court in MC & AP's case (supra). As is apparent from the judgment sought to be reviewed, all that was submitted was that the Corporation's appeal was pending consideration before the Apex Court.

8. Article 141 of the Constitution of India provides that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The decision of the Apex Court in C.A.Nos.3851-53 of 1993, was a binding precedent delivered before the judgment sought to be reviewed was passed. So much so, this Court was bound to follow that decision while deciding the appeal from which this review petition arises. It was, and is still, nobody's case that the decision in MC & AP's case does not apply. So much so, in consonance with the salutary principles emanating out of Article 141 of the Constitution of India, the application for review sustains. When an inferior court overlooks the binding decision of the Apex Court and renders a decision contrary to the law already laid by the Apex Court, such a decision is one that is vitiated by an error apparent on the face of the record, to justify the review of the decision rendered contrary to that law laid by the Apex Court.

9. Non-consideration of an existing decision to the contrary, rendered by a superior court, is a ground for review of judgment. In fact, this is explicit from a proper understanding of the Explanation to O. XLVII R. I C.P.C., which provides that the fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior court in any other case shall not be a ground for the review of such judgment. By providing such an explanation, to the effect that the subsequent decision of the superior court shall not be a ground for review, the legislative intention is clear, that an earlier decision of a superior court, to the contrary, on the question of law on which the judgment of an inferior court is based, is a ground for review.

10. Formidable support for the view taken above is seen. In Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh, it was laid down that where there is a decision of the Supreme Court bearing on a point and where a court has taken a view on that point, which is not consistent with the law laid by the Supreme Court, it needs no elaborate argument to the point and there could reasonably be no two opinions entertained about such error. Following the said

decision, it was held in *Selection Committee, Medical & Dental College v. M.P. Nagaraj* AIR 1972 Mys 44 that the contrary view in certain earlier decisions of the Madras High Court do not hold good. The Bench of the Mysore High Court, which decided that case also relied on the decision in *Venkatarayulu Naidu v. Rattamma Garu* AIR 1939 Mad. 292 to state that where there is an error apparent on the face of the record, it should be corrected at the earliest possible time without driving, the parties to the expenses of an appeal or revision petition to which there would be no answer. The Full Bench of the Himachal Pradesh High Court in *The Nalagarh Dehati Co-operative Transport Society Ltd., Nalagarh Vs. Beli Ram etc.*, held that the failure of the Court to take into consideration an existing decision of the Supreme Court taking a different or contrary view, would amount to a mistake or error apparent on the face of the record. In *State of Rajasthan Vs. Mehta Chetan Das Kishandass*, it was held that when the earlier decision of the Supreme Court was not noticed and was overlooked by giving a particular verdict, such mistake is an error apparent on the face of the record and is a valid ground for review.

11. Having regard to the position of law as aforesaid, the application for review succeeds.

In the result, the judgment dated 16-10-2001 in M.F.A.No. 1479 of 1998 is reviewed and the appeal is listed for hearing afresh since it appears that certain other questions are also raised therein.