
(1993) 08 AP CK 0002

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3481 of 1991

Goli Mallikharjuna and Sons

APPELLANT

Vs

Goli Gangadhara Rao and Another

RESPONDENT

Date of Decision : 02-08-1993

Acts Referred:

Andhra Pradesh Shops and Establishments Act, 1966 — Section 43, 44

Andhra Pradesh Shops and Establishments Act, 1988 — Section 4, 50, 79

Citation : (1993) 3 ALT 151 : (1994) 2 LLJ 161

Hon'ble Judges : Easwara Prasad, J

Bench : Single Bench

Advocate : M. Ramaiah, for the Appellant; B. Adinarayana Rao, for the Respondent

Final Decision : Dismissed

Judgement

Easwara Prasad, J.—The respondents filed an application before the District Munsif, Chirala, Authority under the Shops and Establishments Act, u/s 44 of the A.P. Shops and Establishments Act, 1966 (1966 Act, for short) for payment of gratuity, compensation for wrongful deduction of wages etc.

2. A preliminary objection as to the maintainability of the petition, was raised by the petitioner in I.A. No. 1868/91 to frame a preliminary issue relating to the jurisdiction, that is, that after the repeal of 1966 Act by A.P. Shops and Establishments Act, 1988 ("1988 Act", for short) the District Munsif had no jurisdiction to deal with the matter, as the authority appointed u/s 50 of 1988 Act alone is competent and also on the ground that the application u/s 44 of 1966 Act is not maintainable. The application was dismissed holding that the District Munsif is competent u/s 43 of the Act to decide all questions, including determination of jurisdiction.

3. The learned Counsel for the petitioner submitted that after the repeal of 1966 Act, the application filed under the Old Act of 1966 the District Munsif was not competent to entertain the same. It is further submitted that the District Munsif

is not the competent authority to go into the question as 1988 Act came into force with effect from November 1, 1988 and by the date of filing of the application on July 31, 1990 u/s 50 of 1988 Act, the Government may, by a notification, appoint an authority to decide the claims arising out of deductions from the wages or delay in payment of wages or service compensation payable under this Act in any establishment. The learned Counsel for the respondents contended that by virtue of Section 79 of 1988 Act, the appointment of the District Munsif to determine the matters was saved, and the proceedings before the District Munsif have to be continued and completed as if the old Act, that is, 1966 Act, had not been repealed, but continued to be operative. He further submitted that the provision quoted in the application will be amended and that quoting a wrong provision is not fatal to the application.

4. u/s 43 of 1966 Act, the Government may by notification appoint a judicial authority to hear and decide for any specified area all claims arising out of deductions from the wages or delay in payment of the wages or gratuity payable to employees in any establishment in that area. Accordingly, District Munsifs were appointed as judicial authority u/s 43. This Act of 1966 was repealed by the enactment of 1988 Act u/s 50 of 1988 Act, the Government may appoint an authority to hear and decide claims arising out of deductions from the wages or delay in payment of wages or service compensation payable to employees in any establishment in that area. No appointment of an authority u/s 50 was made till December 19, 1990 and the District Munsifs appointed under the old Act, 1966 Act, as authority u/s 43, continued to entertain applications filed under the 1966 Act, as well as under 1988 Act This is pursuant to the saving clause in Section 79 of 1988 Act. Clause (a) of the Proviso to Section 79 of 1988 Act, which validated every appointment, order, rule, notification or notice made, issued or given under the provision of 1966 Act, in so far as it is not inconsistent with the provisions of the 1988 Act, and laying down that it shall be deemed to have been made, issued or given under the provisions of the 1988 Act, unless and until superseded by any appointment, order, rule, notification, or notice made, issued or given under 1988 Act By virtue of Clause (b) of the Proviso to Section 79 of 1988 Act, proceedings relating to the trial of any offence punishable under the provisions of the 1966 Act shall be continued and completed as if the 1966 Act had not been repealed but had continued in operation and any penalty imposed on such proceedings shall be recovered under the 1966 Act. By virtue of Clause (a) of the Proviso to Section 79 of the 1988 Act, the appointment of the District Munsif as the authority under the 1966 Act is continued until the Labour Officers are appointed as the authorities under the 1988 Act. Until December 19, 1990, the District Munsifs were competent to receive applications and they had jurisdiction to proceed and adjudicate upon the applications. By virtue of Clause (b) of the Proviso to Section 79 of 1988 Act, the proceedings initiated before the District Munsifs shall be entertained and completed as if the 1966 Act had not been repealed. It has, therefore, to be held that the proceedings in question initiated before the District Munsif by the respondents on July 31, 1990 were competent

and the learned District Munsif has jurisdiction to proceed with adjudication of the matter.

5. The second contention of the learned Counsel for the petitioner that the application was not competent for the reason that it was filed u/s 44 of 1966 Act, cannot also stand for the reason that Section 44 of 1966 Act is equivalent to Section 41 of 1988 Act. If a provision of law is wrongly quoted, it does not invalidate the proceedings. The respondents will have to amend the provisions of law under which the application has been made.

6. The learned District Munsif was correct in holding that there is no need to frame a preliminary issue and in rejecting I.A. No. 1968/91. There are no reasons for interference in this revision. The revision is accordingly dismissed. No order as to costs.