

(1976) 12 GUJ CK 0005

In the Gujarat High Court

Case No : First Appeal No's. 612, 613 to 618 of 1973

Haji Aliyas Yakub since deceased by bis heirs Haji Abdalgani
Haji Aliyas and Another

APPELLANT

Vs

Ayasabai Ismail

RESPONDENT

Date of Decision : 21-12-1976

Acts Referred:

Constitution of India, 1950 — Article 133(1), 14, 359

Income Tax Act, 1922 — Section 30

Workmens Compensation Act, 1923 — Section 30, 30(1), 46(1)

Citation : (1977) ACJ 355

Hon'ble Judges : J.B. Mehta, J;A.M. Ahmadi, J

Bench : Division Bench

Advocate : Suresh M. Shah, for the Appellant; P.K. Parekh and R.A. Mehta, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Mehta, J.—The heirs of the concerned deceased employer had filed all these appeals against the award of the Workmen's Commissioner awarding in each application a sum of Rs. 7,000/- for the death of the concerned workman along with the costs and interest from November 4, 1969. Admittedly while filing these appeals u/s 30 of the Workmen's Compensation Act, 1923, hereinafter referred to as "the Act" the mandatory condition of the appeal being accompanied by a certificate of the Commissioner to the effect that the Appellant had deposited with him the amount payable under the order appealed against had not been complied with. Even till to day, admittedly only Rs. 37,000/-, as stated by Mr. Shah, are said to have been deposited as to the correctness of which Mr. Parekh had no instructions. The appeal being clearly incompetent Mr. Shah had raised the question of vires of the second proviso to Section 30(1) of the Act which laid down this mandatory condition of the deposit being first made before entertaining any such appeal.

2. Mr. Shah had at the outset raised a preliminary contention that even these appeals had first come up before the learned Single Judge Surti J. on February 5, 1976, and he had ordered them to stand over in view of the Presidential order issued under Article 359. As thereafter the learned Chief Justice has put these matters for hearing before this Bench, the question does not arise of any review of the earlier order.

3. The legal position in this connection has already been settled by their Lordships by the final decision in *Anant Mills v. State of Gujarat*. Their Lordships pointed out that the right of appeal was a creature of a statute. Without a statutory provision creating such a right the person aggrieved was not entitled to file an appeal. Therefore, their Lordships failed to understand as to why the legislature while granting the right of appeal could not impose conditions for the exercise of such right. In the absence of any special reasons there appeared to be no legal or constitutional impediment to the imposition of such conditions. Their Lordships pointed out that it was permissible to prescribe such conditions. It was in terms stated that it was permissible to enact a law that no appeal should lie against an order relating to an assessment of tax unless the tax had been paid. In fact, such a provision was on the statute book in Section 30 of the Indian Income Tax Act, 1922, where the proviso was enacted, like our second proviso, to Section 30 that no appeal shall lie against an order under Sub-section (I) of Section 46 unless the tax had been paid. Their Lordships pointed out that such conditions merely regulated the exercise of the right of appeal so that the same was not abused by a recalcitrant party and there was no difficulty in the enforcement of the order appealed against in case the appeal was ultimately dismissed. It was open to the legislature to impose an accompanying liability upon a party upon whom a legal right was conferred or to prescribe conditions for the exercise of the right. Any requirement for the discharge of that liability or the fulfilment of that condition in case the party concerned sought to avail of the said right was a valid piece of legislation and there would be no contravention of Article 14 in it. A disability or disadvantage arising out of a party's own default or omission could not be taken to be tantamount to the creation of two classes offensive to Article 14 of the Constitution, especially when that disability or disadvantage operated upon all persons who made the default or omission. Looking to the salutary object of such a provision to ensure the deposit of the amount claimed from the Appellant in case he sought to file an appeal, the vires of such a provision had been upheld on the ground that such a provision of deposit as a condition precedent for filing an appeal would not violate the equality guarantee enshrined in Article 14. The same view is reiterated by the Full Bench decision in *Narandas v. Gujarat Sales Tax Tribunal* 17 G.L.R. 977, where a similar provision in the Bombay Sales Tax Act and the Gujarat Sales Tax Act imposing a condition on the Appellant that he should deposit the amount of tax assessed before his appeal could be entertained was not held one violative of Article 14 of the Constitution. Mr. Shah, however, argued that these cases must be distinguished in their own context that there was discretion left in the

authority while here the provision is absolutely mandatory giving no discretion to the authority. The Full Bench having in terms referred to the aforesaid provision in the income tax Act, 1922, and having not referred in upholding the validity of this provision to the discretion of the authority, it is obvious that no such contention can now be urged to make any such frivolous distinction. Besides, the present context is of Workmen's Compensation Act where the object of providing for this deposit as a condition precedent is to see that the poor victims or dependents are not denied this benefit. Any delay in such benefit would be tantamount to denials of the benefit as such. The speedy disposal and speedy availability of the benefit to the concerned dependents being the statutory object underlying this condition prescribed as a mandatory condition to be fulfilled by the employer. If he wants to file an appeal, no such distinction could ever be made in the context of the present legislation. The very conduct of the recalcitrant employer completely justifies the view taken by their Lordships.

4. Mr. Shah had also argued before us that this Court had no jurisdiction to proceed in this matter in view of the Presidential notification, even if this was not treated as a review of the earlier order of the learned Single Judge. The present proceeding is not for enforcement of the fundamental rights and in such a context reliance on Article 359 is thoroughly misplaced by Mr. Shah. The present question has arisen in the context of this appeal which is found to be not competent. It is only to support maintainability of this appeal that this contention as to the validity of this law has been raised by Mr. Shah. The Presidential notification, if at all, would take away the locus standi of Mr. Shah to urge this contention and it could not operate as a bar to this Court disposing of this appeal as per the settled law. The legal position is well settled that to such an appeal provision where a mandatory condition of deposit is laid down, there is no bar of Article 14. Therefore, this is not a proceeding in any sense for enforcement of the fundamental rights which would require to be stayed as contended by Mr. Shah. In any event, if Mr. Shah has no locus standi to raise such a contention and if the position is so thoroughly well settled, on such dilatory pleas this Court could never help an employer to enable him to deny this benefit of the award.

5. In the result these appeals are thoroughly incompetent and they cannot be entertained because the mandatory condition of the second proviso in Section 30 has not been complied with. At the end Mr. Shah asks for some time to enable him to pay up the deposit. Even after all these years the Appellant has evaded payment and never cared to make deposit and his conduct completely disentitles him from claiming any extension of period even assuming that such extension could be granted. Therefore, we find no reason to give any time as asked for. In the result all these appeals stand dismissed as incompetent. The Appellants shall pay costs of the Respondents.

6. Mr. Shah asks for a certificate for appeal under Article 133(1). There is no substantial question of law involved of wide general importance which in our opinion requires to be certified as fit for appeal to the Supreme Court and the

request is summarily rejected in all these matters.