

(1962) 10 BOM CK 0011

In the Bombay High Court

Case No : Special Civil Application No. 340 of 1962

Haji Latif Gani, Nagpur

APPELLANT

Vs

Abdul Rashid Sheikh Mohammad Khan

RESPONDENT

Date of Decision : 12-10-1962

Acts Referred:

Minimum Wages Act, 1948 — Section 20

Citation : (1963) MhLj 361

Hon'ble Judges : N.L. Abhyankar, J; L.M. Paranjpe, J

Bench : Division Bench

Judgement

Paranjpe, J.—This is a petition under Art. 226, or, in the alternative, under Art. 227 of the Constitution, for a writ of certiorari to quash the order dated 27 July, 1962, passed by respondent 2 and for the issue of a writ of mandamus directing respondent 2 to decide the question of limitation as a preliminary issue.

2. Respondent 1 was employed as a manager of the Tumsar Branch of Haji Latif Gani, Bidi Manufacturers, Nagpur, for several years. He claimed that his services were wrongfully terminated on 30 July, 1961 (?), by the then general manager. Respondent 1 thereafter filed an application under S. 15 of the Payment of Wages Act in the Court of respondent 2 for recovery of the following amounts :

RS. NP. (1) Overtime wages for the period July 1958 to June 1961 ... 6,851 28
(2) Travelling allowance for the period July 1958 to June 1961 ... 1,270 00 (3)
Leave in lieu with wages for the period 1948 to 1961 ... 1,300 00 (4) Bonus for
the period 1948 to 1961. ... 5,800 00 ----- Total ... 15,221 28

3. Respondent 1 claimed in his petition that as per contract of service and prevailing practice these amounts were payable whenever demanded by the applicant. The applicant made a demand of the claim on 15 January, 1962, and that claim has been refused by the non-applicant and, therefore, he was compelled to file the present petition. This petition was filed on 29 January 1962.

4. The petition, by itself, did not explain how the claim beyond one year could be included in it. On 26 February, 1962, respondent 1 filed his application, when would be found at p. 20 of the paper book, for condonation of the delay. The ground of condonation were stated in the following terms :

"(1) That, in the application dated 29 January 1961 the applicant has included the claim for a period of above one year and the reason for it is that, he has been demanding this continuously from the opposite parties and he opposite parties always stated that, they will pay it. Moreover the accounts are never settled and they are continuous, the cause of action arose when the application made a demand on 15 January, 1962. The reply is sent on 3 February, 1962 refusing the claim and thus the claims became payable on 3 February, 1962 the date of refusal and such the claims are within limitation. There is thus sufficient cause for condonation.

(2) However, the applicant is making this application for condonation of delay by way of abundant precaution . . ."

5. On being served with the main petition under S. 15, the present petitioners raised certain preliminary objections and claimed that the petition be dismissed. On being further served with the application for condonation of delay, the petitioners filed their reply and denied the allegations of facts made therein and contended that the delay was not liable to be condoned and also prayed that the application for condonation should be dismissed. On 19 July, 1962, respondent 2, who is the Authority under the Payment of Wages Act, noted the fact that the present petitioners had filed their reply and fixed the case for 21 August, 1962, for "hearing the application for condonation of delay and for issues." After hearing the counsel for the parties on 21 August, 1962, respondent 2 passed the impugned order to the effect that the point of limitation and condonation of delay would be dealt with along with the merits of the application. Consequently, the petitioners have moved this Court.

6. The learned counsel for the petitioners, Sri Phadke submitted that under the first proviso to Sub-section (2) of S. 15 of the Payment of Wages Act as now amended, such applications have to be filed within one year from the date of the alleged deduction or non-payment of wages, and under the second proviso thereto, an application made after the expiry of one year from the date of deduction or non-payment of wages, may be admitted when the applicant satisfies the Authority that he had sufficient cause for not making the application within that period. He drew our attention to Sub-section (3) and urged that the Authority had jurisdiction to hear the application only after it was "entertained." According to him such an application can be entertained within the meaning of Sub-section (3) straightway if it was filed within one year, but it could not be so entertained when filed beyond one year unless it was "admitted" after the Authority was satisfied about the sufficiency of the cause for not filling it within one year. He urged that the second proviso enjoined upon the authority the duty to apply its mind to the question of the alleged sufficiency of the cause for delay

and it has no jurisdiction to "admit" the application without being so satisfied or to entertain it on its merits. In his view, the Authority had failed to exercise the jurisdiction vested in it to satisfy itself about the sufficiency of the alleged cause of delay and had exceeded this jurisdiction in proceeding to enquiry into the merits without passing an order admitting the application after recording his satisfaction as per the second proviso referred to above. He, therefore urged that the order be quashed and the appropriate writs be issued. Sri Kukde, the learned counsel for respondent 1, contended on the other hand, that it was a matter for the discretion of the Authority to postpone its decision on the preliminary question of limitation and to try that question along with the merits of the case. He submitted that the question of condonation of delay was a matter between the applicant and the Authority and the employer did not come in the picture at all and no notice was required to be sent to him. According to him, there was no illegality in the procedure, even if it may be irregular, and the Authority had neither failed to exercise jurisdiction, nor exceeded its jurisdiction. He submitted that the petition did not disclose any ground for interference or for issue of prerogative writs as prayed. He submitted that deciding the preliminary question first would unnecessarily postpone the proceedings and cause considerable delay. In his view, interference by the Court, would result in numerous such petitions being filed.

7. The relevant provisions of S. 15 of the Payment of Wages Act are in the following terms :

"15. (2) Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorized in writing to act on his behalf, or a representative union registered as such under the Bombay Industrial relations Act, 1946, or any inspector under this Act, or any other person acting with the permission of the Authority appointed under sub-section (1) may apply to such Authority for a direction under sub-section (3) and in case of death of the employed person, it shall be lawful for his legal representative to make an application for such direction :

Provided that every such application shall be presented within one year from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be :

Provided further that any application may be admitted after the said period of one year when the applicant satisfied the Authority that he had sufficient cause for not making the application within such period.

(3) When any application under Sub-section (2) is entertained, the Authority shall hear the applicant and the employer or other persons responsible for the payment of wages under S. 3, or given them an opportunity of being heard, and after such further inquiry (if any) as may be necessary, may, without prejudice to

any other penalty to which such employer or other person is liable under this Act, direct refund to the employed person or his legal representative as the case may be of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority think fit . . ."

8. A perusal of the above provisions of S. 15(2) would show that the employee has ordinarily to file his application to the prescribed Authority for direction under Sub-section (3) within the prescribed period of limitation. The second proviso further lays down that an application filed beyond the prescribed period of limitation, which is now one year as amended, may be admitted when the applicant satisfies the authority that he had sufficient cause for not making the application within such period. Clause (3) of S. 15 lays down the procedure to be followed after the application is entertained in terms of Clause (2), which would also include the provisos thereunder. Thus on a plain reading of S. 15(2) and (3) it would clearly appear that on receipt of an application for payment of wages beyond the prescribed period of limitation, the Authority concerned must satisfy itself that there was good and sufficient cause for making the application beyond the period of one year and then pass an order admitting the application before proceeding to deal with it on merits. When the second proviso requires the Authority to be "satisfied," that would obviously mean that the Authority has to apply its mind to the question and come to a conscious decision before being so satisfied. It is obviously not a merely clerical or routine matter.

9. In this context, Sri Kukde, the learned counsel for respondent 1, submitted that even if the Authority was to satisfy itself within the meaning of the second proviso to S. 15(2), that was a matter entirely between the Authority and the petitioner-employee but the employer did not come into the picture at all. Sri Kukde relied on *Dinabandhu v. Jadumoni* AIR 1954 S.C. 411 to support his submission that the Authority could decide this question of limitation and condonation of delay without any reference to the employer who was the opposite party. That decision was under S. 85 of the Representation of the People Act, 1951, under which the Election Commission was not required to issue a notice to the opposite party before coming to a decision with respect to the point of limitation. This Supreme Court decision was followed in *K. Ramaswamy Doss Vs. A. Rama Pillai and Another*, to which our attention was drawn by Sri Kukde. That Madras case was under the Minimum Wages Act and it was held therein that the Minimum Wages Act and rules framed thereunder did not prescribe any written application for condonation of delay or a notice to show cause against it. In the first place, that Madras case was not under the Payment of Wages Act but was on a different Act, viz., the Minimum Wages Act and, therefore, it would not be apposite to the facts of the present case. It would be seen that the question about the proper procedure to be followed in the case under the Payment of Wages Act had come before this high Court in an earlier case. In *Prem Narayan Amritlal v. D. T. M. Bhusawal* 1953 I L.L.J. 334, the learned Chief Justice had to consider the provisions of S. 15 and Sub-section (2), (3) and (4) thereof. He pointed out in that decision that the question of proceeding under Sub-section

(3) could arise only after the application is entertained and admitted under Sub-section (2) and the Authority was not competent to entertain the application at all unless it had condoned the delay, if any. His observation would also repel the submission of Sri Kukde, that the employer did not come in the picture at all and it was not necessary to notice him on the point of condonation of delay. He made the following observations (p. 335) :

"... Mr. Baptista has contended that Sub-section (3) provides for Authority hearing the applicant and the employer and giving them an opportunity of being heard, and Mr. Baptista says that this applies not only to the merits of the application, but also to the merits of the condonation of delay. In my opinion, that contention is entirely untenable. It is clear that what Sub-section (3) contemplates is hearing the applicant and the employer and giving them an opportunity of being heard with regard to the merits of the application, because it is only after the application is entertained that the question arises of hearing the applicant and the employer or giving them an opportunity of being heard, and as I have already pointed out, no application can be entertained if it is beyond time unless the delay has already been condoned . . .

It is then pointed out that the Authority may admit the application ex parte, taking the view that there is a prima facie case for condoning delay, and subsequently notice might be given to the other side and the application for condonation of delay may be heard on merits at a later stage and that stage may well fall under Sub-section (3). In my opinion, it would be erroneous and clearly erroneous on the part of the Authority, to admit an application which is beyond time by condoning delay without giving notice to the other side and without hearing the other side on the application made by the employee. If an application is beyond time, the employer has acquired a valuable right, and it is an elementary proposition of law that a Court cannot deprive a party of a valuable right without hearing him. Therefore, in my opinion, the proper procedure for the Authority to follow in every case where an application is filed beyond the period of six months is not to admit the application but to keep it pending and issue merely a notice upon the other side to show cause why delay should not be conducted. I am told by Mr. Baptista that in cases like this what the Authority does is that it calls upon the employee to file a written statement not only with regard to the question of limitation, but even on the question of merits. In my opinion this procedure is not a correct procedure because till the application is admitted and till the Authority had made up its mind that the applicant had sufficient cause for not making the application within the statutory period, no question of considering the merits of the application can possibly arise, and therefore at that stage the notice should only be given with regard to the question of limitation. It is only after the application is admitted that the employer should be called upon to file his written statement on merits."

10. This view of the learned Chief Justice has been affirmed in a Division Bench decision in *Sitaram Ramcharan and Others Vs. M.N. Nagrashna and Another*, .

After starting the preliminary facts, the earlier decision in *Prem Narayan Amrital v. Divisional Traffic Manager* 1953 I L.L.J. 334 (vide supra) was referred to and it was again pointed out that the scheme of the Payment of Wages Act is that an application for payment of wages is entertained under Sub-section (3) of S. 15, Payment of Wages Act, only after it has been admitted on sufficient cause being shown if it is presented after the period of limitation laid down in Sub-section (2).

11. Sri Kukde for respondent 1 was wanting us to distinguish the above two decisions of this High Court on the ground that those authorities were mainly concerned with the question whether an appeal did or did not lie against an order by which the delay in filing such an application was condoned. The question of the right of appeal in these circumstances was doubtless considered in the decisions, but it was also necessary to first consider the prescribed period and the proper procedure in order to determine when and under what circumstances the right of appeal could or did arise. In any case, the Division Bench to which the learned Chief Justice was a party, has approved the expression about the prescribed procedure which was given in the earlier decision by the learned Chief Justice, sitting singly. There was no force in the submission on behalf of respondent 1, that those remarks regarding the procedure to be followed with respect to the condonation of delay were immaterial for the decision of that case or that they could be disregarded as being obiter dicta. It would also be seen from the decision in *Lachhmi Narain Tewari Vs. District Judge, Lucknow and Others*, that it was necessary for the Authority concerned to give hearing to the opposite party before deciding the question of limitation and condonation of delay and before admitting the application for hearing. It would not be fair or proper to postpone the decision of such an important question of limitation particularly when a very old and a stale claim was being put forth as in the present case.

12. Sri Kukde for respondent 1 then draw our attention to a recent decision of the Division Bench of this Court in *Kawdu Bapurao v. Sheskarani Sobhagmal* 1962 SCA 48 decided by Abhyankar and Palekar, JJ., on 26 June, 1962 (unreported) and urged that it should be followed in preference to the earlier Division Bench decision, cited supra. One of us (Abhyankar, J.), was a party to that decision. In these cases also claims for minimum wages made beyond the period of limitation and objections were taken on behalf of the opposite party that the cases may not be decided until the question of limitation was first determined. The Authority concerned had declined to decide the point of limitation at the earlier state and had held over the question of limitation for decision along with the merits of the application on the ground that mixed questions of law and facts were involved and it would be more convenient to decide the point of limitation with other points. Those decisions were challenged in this Court in writ petitions. The Division Bench held in those cases that there was no reason or ground to interfere with the orders of the Authority under the Minimum Wages Act and rejected the petitions. Sri Kukde read out to us the relevant provisions of S. 15(2) and (3) of the Payment of Wages Act and S. 20 of the Minimum Wages Act

and submitted that the two provisions were in pari materia and therefore, this decision of the Division Bench above should be followed in preference to the earlier Division Bench decision in *Sitaram Ramcharan and Others Vs. M.N. Nagrashna and Another*, . We would like to point out that the learned counsel for respondent 1 was not right in his submission that the relevant provisions in the Payment of Wages Act and the Minimum Wages Act were exactly similar. While rejecting those writ petitions, the Division Bench had repelled the suggestion that the relevant provisions of the Payment of Wages Act and the Minimum Wages Act were in pari materia and had shown how the provisions in the two Acts were dissimilar. The Division Bench had pointed out that whereas an appeal is provided against the decision of the Payment of Wages Authority under Sub-section (3) of S. 15 of the Act as it then stood, there is no right of appeal or any other remedy against the decision of the Authority under the Minimum Wages Act. The Division Bench also stressed another point of distinction between the provisions of the two Acts, namely, under the Payment of Wages Act a single application is permissible by persons employed, but it is restricted to the same unpaid group claiming wages for the same wages period while on the other hand, under S. 20(I) of the Minimum Wages Act any number of employees can join in a single application without any such restriction that their claim should be confined to the same wage period. In view of these differences, the Division Bench declined to follow the decision of the learned Chief Justice in *Prem Narayan Amritlal v. Divisional Traffic Manager 1953 I L.L.J. 334* (vide supra) and dismissed the writ petitions. When Sri Kukde was relying on this decision for asking us to follow it in preference to the earlier Division Bench decision *Sitaram Ramcharan and Others Vs. M.N. Nagrashna and Another*, he could not be permitted to say, as he did, that the distinction sought to be made between the Payment of Wages Act and the Minimum Wages Act by the Division Bench was not correct. Apart from the fact that the distinction as pointed out by the Division Bench exists and is material, that decision would have to be seen as it stands and under the terms of that decision itself the Minimum Wages Act was not in pari materia with the Payment of Wages Act and consequently that decision could not be made applicable to the present case, which is under the Payment of Wages Act. We may mention that the earlier Division Bench ruling in *Sitaram Ramcharan and Others Vs. M.N. Nagrashna and Another*, was apparently not brought to the notice of the Division Bench and only the Single Judge's decision in *Prem Narayan Amritlal v. Divisional Traffic Manager 1953 I L.L.J. 334* (vide supra), was shown. We may also mention that the Division Bench ruling *H. G. Henson v. M. Sultan, Deputy Commissioner AIR 1958 Ass 1* which had expressly followed the decision of the learned Chief Justice in *Prem Narayan Amritlal v. Divisional Traffic Manager 1953 I L.L.J. 334* (vide supra), while deciding the case under the Minimum Wages Act, was also apparently not brought to the notice of the Division Bench. We are unable to accept the submission of Sri Kukde on behalf of respondent 1 that we should prefer this later Division Bench under the Minimum Wages Act to the earlier decision in *Sitaram Ramcharan and Others Vs. M.N. Nagrashna and Another*, , which was directly on the point at issue.

13. Thus it would appear that the learned Authority under the Payment of Wages Act had materially erred in not following the correct procedure, which was explained in the two earlier Bombay decisions cited supra. It was incumbent upon him to come to a decision about the question of condonation of delay and then to proceed with the decision on merits, in case he admitted the entire, or part of the claim, as the case may be. Sri Kukde appearing for respondent 1 then submitted that the learned respondent 2 had, if at all, made only a procedural error and it would not be proper or correct to interfere with it by correcting the procedural error under colour of Arts. 226 and 227 of the Indian Constitution. We do not think that Sri Kukde was right in treating this as a mere procedural mistake. It was something much more than that. As we have explained above the Authority was mandatorily required to apply its mind to the question and to satisfy itself that there was sufficient cause for the delay and then to pass an order admitting or entertaining the application and then only he could have proceeded with the consideration of the merits of the claim in accordance with Sub-section (3) of S. 15.

14. After reciting the submissions of the learned counsel for the parties on this point, the learned Authority, respondent 2, has made the following remarks :

"However, I find that there is considerable force in the arguments advanced by learned counsel Sri Kolate that the point of limitation should be dealt with while dealing the petition on merits inasmuch as the contentions raised by Sri Kolate that the demand was made and the accounts are continuous are all questions of facts on which it would be necessary to hear the evidence of parties, oral as well as documentary. I, therefore, hold that the point of limitation would be dealt with while dealing the petition on merits."

15. This reasoning was clearly wrong. The mere fact that a considerable amount of evidence may have to be recorded for deciding the question of limitation would be no ground to put the cart before the horse and to proceeding to consider the merits without admitting the petitions after recording satisfaction of the Authority about the sufficiency of the alleged cause for delay. As was pointed out by the learned Chief Justice in Prem Narayan case, cited supra 1953 I L.L.J. 334 :

". . . the proper procedure for the Authority to follow in every case where an application is filled beyond the period of six months is not to admit the application but to kept it pending and to issue merely a notice upon the other side to show cause why delay should not be condoned."

16. In that view, the question of convenience or otherwise would be entirely irrelevant.

17. Mr. Phadke for the petitioners brought to our notice the following remarks of their lordships of the Supreme Court in T.C. Basappa Vs. T. Nagappa and Another, :

"A tribunal may be competent to enter upon an enquiry but in making the enquiry it may act in flagrant disregard of the rules of procedure or where no particular procedure is prescribed, it may violate the principles of natural justice. A writ of certiorari may be available in such cases. An error in the decision or determination itself may also be amenable to a writ of certiorari but it must be a manifest error apparent on the face of the proceedings, e.g., when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision."

18. As we have shown above the learned respondent 2 has not made merely a procedural error but his order was in flagrant disregard of the rules of procedure laid down in the second proviso to S. 15(2) and in S. 15(3) of the Payment of Wages Act, which we have explained at considerable length. Sri Phadke also draw attention to the remarks of their lordships in Waryam Singh and Another Vs. Amarnath and Another, :

"This power of superintendence conferred by Art. 227 is, as pointed out by Harries, C.J., in *Dalmia Jain Airways Ltd. Vs. Sukumar Mukherjee, S.B.*] to be exercised most sparingly and only in appropriate cases in order to keep the subordinate Court within the bounds of their authority and not for correcting mere errors. As rightly pointed out by the Judicial Commissioner in the case before us the lower Courts in refusing to make an order for ejectment acted arbitrarily. The lower Courts realized the legal position but in effect declined to do what was by S. 13(2)(i) incumbent on them to do and thereby refused to exercise jurisdiction vested in them by law. It was, therefore, a case which called for an interference by the Court of the Judicial Commissioner and it acted quite properly in doing so."

19. It would be seen from the foregoing discussion that in postponing the decision on the question of condonation of delay for consideration with the merits of the application, respondent 2 has not only failed or refused to exercise jurisdiction vested in it by law, but has also exceeded its jurisdiction in proceeding to consider the merits without admitting the application in terms of proviso to S. 15(2) of the Payment of Wages Act. We are of the opinion, therefore, that interference is necessary for correcting the patent error of respondent 2. The apprehension of the learned counsel for respondent 1 that our interference may result in several other similar petitions cannot be a ground to deter us from exercising our supervisory jurisdiction. If authorities invested with jurisdiction fail to exercise it, or exceed their jurisdiction or commit such patent errors, the supervisory jurisdiction of this Court is bound to be invoked.

20. We, therefore, allow the petition, quash the order dated 27 July 1962, which was passed by respondent 2, and direct him to first decide the question of condonation of delay in terms of the second proviso to S. 15(2) of the Payment of Wages Act and then to proceed to determine the question of giving directions with respect to such of the claims as he finds to be within time or with respect to which he may condone delay. Under the circumstances we make no order as to

costs.