
(1967) 02 MAD CK 0024
In the Madras High Court

Integral Coach Factory Employees Consumers Co-operative
Stores

APPELLANT

Vs

V. Rajan Alwar and Others

RESPONDENT

Date of Decision : 21-02-1967

Acts Referred:

Tamil Nadu Shops and Establishments Act, 1947 — Section 41(1)

Citation : (1967) 80 LW 666 : (1967) 2 MLJ 376

Hon'ble Judges : P.S. Kailasam, J

Bench : Division Bench

Judgement

P.S. Kailasam, J.—This Petition is filed for the issue of a writ of certiorari calling for the records connected with the order of the Additional Commissioner for Workmens's Compensation, Madras, dated 14th June, 1966 and made in M.S.E. Case No. 124 of 1965 and quash the same.

2. The first respondent Rajan Alwar was working as a bill clerk in the Petitioner Co-operative Stores and his services were dispensed with effect from 1st June, 1965. The first respondent preferred and appeal against the said order to the Additional Commissioner for Workmens's Compensation, Madras. Notice of the appeal was served on the petitioner and he acknowledged the service but he did not appear to contest the appeal when it was taken up for hearing on 1st June, 1966. The appeal was heard ex parte. The Additional Commissioner for Workmen's Compensation found that no proper enquiry had been held by the petitioner society and held that the provisions of Section 41(1) of the Madras Shops and Establishments Act, 1947, have been violated and the first respondent had been denied the principles of natural justice. Therefore, he set aside the order of the petitioner dated 1st June, 1965. Thereafter, the petitioner approached the Additional Commissioner for Workmen's Compensation for setting aside the ex parte order passed in favour of the first respondent and to re-opening a case heard ex parte. The present writ petition is filed against the order of the Additional Commissioner for Workmen's Compensation, dated 14th

June, 1966, which was passed in the absence of the petitioner.

3. It is admitted that there is no provision either in the Madras Shops and Establishments Act or the Rules framed thereunder for re-opening a case, which has been once decided by the Commissioner for Workmen's Compensation. It is submitted that as the petitioner had no reasonable opportunity to put forward his case, when the appeal was heard by the Commissioner, the principles of natural justice had been violated and that this Court would be justified in interfering, even if the Shops and Establishments Act contains no provisions for re-opening a case once disposed of. This contention, if accepted, would lead to strange results. If the Commissioner had entertained a petition for re-opening the case, even though the Rules do not provide for such re-opening, any writ petition filed against the order of the Commissioner entertaining such a petition would have to be allowed on the ground that the Commissioner had no jurisdiction. If the contention of the petitioner is accepted this Court would be entitled to re-open a case even in the absence of any provisions in the Act in order to provide a reasonable opportunity to the petitioner to put forward his case this would mean that even in the absence of any provision either in the Act or the Rules for re-opening a case, this Court would be directing the Additional Commissioner to re-open the case. The result would be that this Court would be doing exactly the opposite of what it would have done in the Additional Commissioner had re-opened the case,

4. In N.K. Segu Abdul Khadir Hadjar Vs. A.K. Murthy, , a Bench of this Court had to consider the question whether under the Madras Buildings (Lease and Rent Control) Act, an appellate authority can set aside its own ex parte order on the appeal. The Bench held that there were no provisions in the Act and that the ex parte order cannot be set aside. It was contended before the Bench that a writ of certiorari is a matter of discretion and that although the Court may be satisfied that the appellate authority had no jurisdiction to set aside its own ex parte order, nevertheless, in the circumstances of the case, a writ should not issue. It was observed:

In my view, there is nothing which justifies an order for the issue of a writ withheld. So far as the applicant is concerned, he has certainly shown that he is not disentitled to it. He placed his objection before the learned Chief Judge against setting aside the order in appeal and immediately he came to this Court thereafter. In the present instance, if an order were not made, the effect would be that whilst this Court considers that the learned Chief Judge had no jurisdiction to set aside his order in appeal and to direct a further hearing, the further hearing before the learned Judge Would be held which this Court holds he has no jurisdiction to direct.

5. That without a specific provision in the enactment, the authority had no jurisdiction to set aside an ex parte, order, was held by a Bench of this Court in Yerram Koti Reddi Vs. Nagineni Venkayya and Another, , The matter arose in respect of an Election Petition under the District Boards Act. In Thirumalai Naidu

v. Challapathi Naidu (1957) 1 M.L.J. 349, a single Judge of this Court held that in the absence of a specific provision, in the Madras Cultivating Tenants Protection Act, the Revenue Divisional Officer had no power to set aside ex parte order passed by him and restore the application for being re-heard. In coming to this conclusion the learned Judge followed the views of this Court expressed in W.P. Nos. 560 of 1954 and 520 of 1964.

6. It was contended by the learned Counsel for the petitioner, on the strength of Nimai Charan Kamila Vs. Sham Mohan Nandi, , that the High Court exercising its powers under Article 227 of the Constitution of India, has very wide powers and can interfere and restore applications which were dismissed. for default, even though the Tribunal may not have such powers.

7. In view of the Bench decision of this Court in N.K. Segu Abdul Khadir Hadjar Vs. A.K. Murthy, , the decision of the Orissa High Court cited above, cannot be said to. be good law.

8. In the result, the Writ Petition is dismissed, but in the circumstances there will be no order as to costs.