

(1959) 09 KL CK 0014

In the High Court Of Kerala

Case No : O.P. No's. 63, 206, 207 and 208 of 1959

M. Velayudhan and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 28-09-1959

Acts Referred:

Constitution of India, 1950 — Article 226

Industrial Disputes Act, 1947 — Section 15, 17A, 18(3), 19(3), 19(5)

Citation : AIR 1960 Ker 220 : (1959) 3 KLJ 1267 : (1960) 1 LLJ 319

Hon'ble Judges : T.K. Joseph, J

Bench : Single Bench

Advocate : T.N. Subramania Iyer and S. Neelakanta Iyer, in O.P. No. 206/59, S. Neelakanta Iyer and K.S. Rajamony, in O.P. No. 63/59, A. Anantakrishna Iyer, in O.P. No. 207/59 and K.S. Paripoornan, in O.P. No. 208/59, for the Appellant; Government Pleader and M.M. Cherian, for the Respondent

Judgement

T.K. Joseph, J.—These petitions arise from proceedings under the Revenue Recovery Act for recovery of sums due to some workmen under an award of the Industrial Tribunal, Trivandrum. The District Labour Officer issued a certificate u/s 33(c)(1) of the Industrial Disputes Act to the Collector, Trivandrum, for recovering the amounts under the Revenue Recovery Act. Pursuant to the certificate, the Tahsildar attached immovable property of one M. Velayudhan (petitioner in 6. P. No. 63) and certain buses belonging to the petitioners in the three other original petitions. These petitions have been filed to quash these proceedings.

2. The reference to the Industrial Tribunal was by an order dated 19-4-1955. The Tribunal gave an award on 28-10-1955 and the same was published in the Government Gazette on 22-11-1955. The dispute referred was one between the workmen of M. V. Motor Service and M. V. Velayudhan, the Proprietor of M. V. Motor Service. The latter appeared before the Tribunal and stated that the concern owned by him as M. V. Motor Service had ceased to exist, the assets having been sold before the date of the reference. Thereafter he did not appear

to contest the claim, and the award was passed against him by the tribunal.

3. O. P. No. 63 of 1959 may be considered first. As stated earlier the petitioner is M. Velayudhan whose Immovable property has been attached for recovery of the sum due under the award. The grounds stated in the petition are that the award is not binding on the petitioner as the M. V. Motor Service was not in existence on the date of the reference or the award, that Section 33(c) of the Industrial Disputes Act which was not in force on, the date of the award cannot be availed of in this case, that even if this provision is applicable, the Government must be satisfied that the persons against whom the award is sought to be enforced are either successors or assigns of the employer, that principles of natural justice were violated in the proceedings relating to recovery of the amount from him, that the workmen concerned have not applied to the Government for recovery of the money due to them, and that in any event the award is not enforceable one year after the same is published by the Government.

4. The first respondent is the State of Kerala and respondents 2 and 3 are two workmen whose claims are sought to be enforced against the petitioner, Respondents 4 and 5, the President, Trivandrum District Motor Workers Union, and the Tahsildar, Neyyattinkara, respectively have filed counter affidavits denying the grounds relied on by the petitioner, According to them the award is binding on the petitioner and the same cannot be questioned in this original petition. It is also contended that the proceedings under the Revenue Recovery Act are proper and taken with jurisdiction. and the award can be enforced even after one year. The maintainability of the petition is questioned also on the ground that the petitioner has other adequate remedy either under the Revenue Recovery Act or by way of a civil suit.

5. On behalf of the respondents it is contended that it is not open for this court to consider the validity of the award in this petition. M. Velayudhan, the petitioner, was a party to the industrial dispute and he appeared before the Tribunal to raise a contention that the M. V. Motor Service in respect of which the dispute arose was no longer in existence. He did not contest thereafter and the award passed with him on the party array cannot be questioned by him. The award does not form part of the record and the Industrial Tribunal has not been made a respondent to this petition. The only question which has therefore to be considered is whether the proceedings under the Revenue Recovery Act are valid.

6. It is contended on behalf of the petitioner that u/s 19(3) of the Industrial Disputes Act, the award continues to be in force only for a period of one year from the date on which it becomes enforceable u/s 17(1) and that the proceedings taken after the expiry of the said term are therefore without jurisdiction. Section 19(3) provides as follows:

"19(3) An award shall, subject to the provisions of this section, remain in operation for a period of one year from the date on which the award becomes enforceable u/s 17-A:

Provided that the appropriate Government may reduce the said period and fix such period as it thinks fit:

Provided further that the appropriate Government may, before the expiry of the said period, extend the period of operation by any period not exceeding one year at a time as it thinks fit so however, that the total period of operation of any award does not exceed three years from the date on which it came into operation."

This has to be read along with Section 19(5) which is in the following terms:

"19(5) Nothing contained in sub-section (3) shall apply to any award which by its nature, terms or other circumstances does not impose, after it has been given effect to, any continuing obligation on the parties bound by the award."

The claim now sought to be enforced is not in the nature of a continuing obligation on the parties to the award and the fact that the claim awarded is in respect of an antecedent period takes it out of the operation of Section 19(3).

7. Another ground taken is that there was no application by the workmen concerned for recovery of the money awarded to them u/s 33(c) of the Act. It is seen from the records that the workmen concerned did make an application u/s 33(c) and that it was on the basis of the same that the certificate was issued by the District Labour Officer. The Government had delegated their power u/s 33(c) to the District Labour Officer and it was on the strength of such delegation that he issued the certificate to the Collector. There is, therefore, no substance in this contention.

8. This is a case in which the award is sought to be enforced against a party to the award and considerations which may arise in the other original petitions are not applicable to this petition. Once the award has become enforceable no party thereto can escape the obligations under it. No question of violation of principles of natural justice arises in this case. The petitioner was made party to the industrial dispute as the proprietor of M. V. Motor Service, and he is bound by the terms of the award.

9. The last point raised on behalf of the petitioner is that Section 33(c) was introduced by amending the Industrial Disputes Act by Act XXXVI of 1950 and that this remedy which was not available to workmen on the date of the award could not be availed of by them to enforce the award. It is true that this remedy was not available on the date of the award but this does not follow that it cannot be taken advantage of by the workmen. The workmen had obtained under the award a substantive right to recover a certain sum of money from, the employer and Section 33(c) only provided a mode of recovery of the same. The only question is whether the award is enforceable on the date "of the amending Act; if it is, the procedure prescribed by the amended provision for recovery of a sum awarded by the Industrial Tribunal must apply to the same. I have already held that the award was enforceable even after the expiry of one year from the date

of the award. Section 33(c) is therefore applicable to the workmen for enforcing the liability of the petitioner under the award.

10. No other questions arise in this original petition which must therefore be dismissed.

11. Original petitions Nos. 206, 207 and 208 of 1959 may be considered together. The petitioner in original petition No. 206 is the M. V. Industrials Private Ltd., Noyyatinkara, Five buses belonging to this petitioner have been attached under the Revenue Recovery Act for recovering money due to workmen under the award. The petitioner in original petition No. 207 is the Jaya Service Private Ltd., Neyyatinkara, three buses belonging to which" have been attached under the Revenue Recovery Act. The petitioner in original petition No. 208 of 11959 is the proprietor of P. M. Bus Service, Neyyattinkara, two of whose buses have been attached by the Tahsildar. The award was sought to be enforced against these petitioners u/s 18(3)(e) of the Industrial Disputes Act. Besides raising the grounds raised by the petitioner in original petition No. 63 of 1959 these petitioners contend that the proceedings under the Revenue Recovery Act taken against them are without jurisdiction as they arc neither parties to the award nor successors or assigns of M. V. Motor Service, The respondents contend that they are Successors or assigns of the M. V. Motor Service and are therefore bound by the award. It is further contended that in issuing the certificate the District Labour Officer does an administrative act, that the same is not liable for judicial review, and that the petitioners have other adequate remedies.

12. While dealing with original petition No. 63, I have referred to points which are common in all the four original petitions, and the above points alone need he considered in these petitions.

13. The existence of another remedy has never been treated as an absolute bar to the exercise of the powers under Article 226 of the Constitution. It may also be stated that the petitioners do not appear to have any other adequate remedy. Buses belonging to these petitioners have been attached in enforcement of the award and the Revenue Recovery Act does not expressly provide for any claim or objection regarding moveables attached under the Act although there is a specific provision regarding Immovable property attached under the said Act. No doubt the parties have a right of suit but it is not an adequate or effective remedy as such a suit can be filed only after the expiration of two months after the tissue of a notice u/s 80 of the C. P. C. It is open for the Tahsildar to sell the buses before the institution of a suit becomes possible. If the court has otherwise jurisdiction to deal with the matter, the fact, that it is open for the parties to institute a suit is no bar to interference by this court.

14. It is urged on behalf of the respondents that the issue of a certificate by the District Labour Officer u/s 33(c)(1) of the Industrial Disputes Act is purely an administrative act which is not open for judicial review. Even though, the Act may be administrative if the effect of the same is to affect the fundamental rights

of citizens, such as to hold property, it is open for this court to interfere.

15. Coming to the merits, the Government or the officer to whom power is delegated must be satisfied that any money is due to a workman before issuing a certificate. The money can be recovered only from a defaulter under the Revenue Recovery Act. The expression "defaulter" has been defined in the Revenue Recovery Act as follows :

" "Defaulter" means a person from whom an arrear of public revenue is due, and includes a person who is responsible as surety for the payment of any such arrear of revenue."

Under section 18(3)(c) of the Industrial Disputes Act a successor or assign of the establishment to which the dispute relates can be treated as a party to the industrial dispute. The certificate issued by the District Labour Officer in this case is in the following terms ;

"This is to certify that an aggregate amount of Rs, 25,6717/- is due from the management of M. V. Industries (Private) Ltd., Neyyattinkara, Taya Service (Private) Ltd., Neyyattinkara, P. K. N. Service, Neyyattinkara, P. M. Bus Service, Neyyattinkara which are owned and managed by Sri. M. Velayudhan, Proprietor and employer, M. V. Motor Service (now Managing Director, M. V. Industries Ltd.) Neyyattinkara on account of amount payable by the said managements to their workmen u/s 18(3) of the Industrial Disputes Act, 1947. You are hereby requested u/s 33(c)(i) of the said Act to recover the same as if it were an arrear of land revenue".

The District Labour Officer has directed the Collector to recover the money from the petitioners in these three petitions u/s 18(3) of the Industrial Disputes Act. It is not stated in the certificate that the petitioners are either successor or assigns of M. V. Motor Service, the employer in the industrial dispute. Even in the affidavits filed on behalf] of the respondents it is not stated whether they are successors or assigns of M. V. Motor Service, the employer in the industrial dispute. Even in the affidavits filed on behalf of the respondents it is not stated whether they are successors or assigns.

For the application of Section 18(3)(c), it is necessary that when the award is sought to be enforced against a person who is not a party to the award, he must be either a successor or assign of the establishment to which the dispute relates. The position taken in the counter affidavits is that M. V. Velayudhan who was the party to the dispute transferred his buses to the petitioners in these 3 petitions in order to escape liability under the award, suggesting thereby that such transfers were made either after the date of the reference or after the award. It does not appear from the records that the District Labour Officer who issued the certificate was satisfied on this point. The case of the three petitioners on this point may be separately examined.

16. O. P. No. 206 of 1959 : M, V. Industrials Private Limited is a company

incorporated in 1953 which purchased some of, the buses belonging to M. V. Motor Service as early as 1953. In view of the documents produced by the petitioner it was not contended by the respondents that this is a case of succession or assignment after the date of the reference. The reference was made only in 1955 and there is no scope for the argument that the transfer of buses to this petitioner was either a fraudulent or a benami one. M. V. Industrials Private Limited has been paying Income Tax from the commencement of its operations in 1953. It may also be stated that Sri. Balagangadhara Menon learned counsel for the contesting respondents, fairly stated that the transfer of some buses to this petitioner being long prior to the dispute the award could not be enforced against this petitioner. The certificate must therefore be struck down so" far as this petitioner is concerned and the proceedings under the Revenue Recovery Act quashed.

16a. O. P. 207 of 1959: Three buses, KLT. 2380 KLT. 1875 & KLT. 2437, belonging to the petitioner, the Jaya Service Private Limited have been attached by the Tahsildar in enforcement of the award. According to this petitioner no bus has been purchased from M. V. Motor Service or any other concern belonging to M. Velayudhan, the party to the dispute. The registration certificates of the three buses attached have been produced here and it is seen that the three buses were purchased from other parties, It is not clear how the District Labour Officer treated the petitioner as successor or assign of the employer in the dispute in question.

The certificate does not throw any light on the point. It may also be stated that no notice appears to have been issued to this petitioner either by the District Labour Officer or by the Tahsildar before the commencement of proceedings. The petitioner therefore did not get any opportunity to prove that the buses were not liable to be attached. The respondents have no definite case that this petitioner has purchased any bus from M. Velayudhan either before or after the adjudication. The certificate so far as it relates to this petitioner also must therefore be struck down and the proceedings under the Revenue Recovery Act quashed.

17. O. P. No. 208 of 1959 : This is a petition by one P. Madhavan, Proprietor, P. M. Bus Service. Two of Ms buses KLT. 2378 and MDK 575, have been attached by the Tahsildar pursuant to the certificate issued by the District Labour Officer. The registration certificates of these buses have been produced by the petitioner and these show that the buses were purchased from strangers. No notice was given to the petitioner either by the District Labour Officer or the Tahsildar. All the considerations which applied to O. Ps. Nos. 206 and 207 apply to this petition also. The certificate and the proceedings under the Revenue Recovery Act must therefore be quashed in respect of this petitioner also.

18. In the result, O.P. No. 63 of 1959 is dismissed with costs to the fourth respondent. O. Ps, Nos. 206, 207 and 208 of 1959 are allowed, but in the circumstances without costs.