
(2010) 03 AHC CK 0038
In the Allahabad High Court
Case No : Writ-C No. 15532 of 2010

Milton Glass Industries

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 29-03-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2
Constitution of India, 1950 — Article 136, 226

Citation : (2010) 125 FLR 528

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Advocate : P.K. Jain, for the Appellant;

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—Heard.

By means of the present petition, the petitioners have sought quashing of the Order dated 8th of February, 2010 passed by the Workmen's Compensation Commissioner whereby it has framed certain issues but has provided that the said issues shall be disposed of after recording the evidence of the parties.

2. Learned Counsel for the petitioners could not show anything which may persuade this Court to issue a direction to the Labour Court to decide the preliminary issue first. By the order dated 25th of March, 2010 time was granted to the learned Counsel for the petitioners to look into the statutory provisions. But he could not point out any such provision.

3. Contention of the learned Counsel for the petitioners is that a direction be issued by this Court to decide the certain issues as preliminary issues first. It is difficult to issue any such direction.

4. In the case of D.P. Maheshwari v. Delhi Administration and others 1983 (47) FLR 477 (SC) the Apex Court has held that there was a time when it was thought

prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. It has been held that it is better that Tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. The relevant portion is reproduced below:

There was, a time when it was thought prudent and wise policy to decide preliminary issues first. But the time appears to have arrived for a reversal of that policy. We think it is better that Tribunals, particularly those entrusted with the task of adjudicating labour disputes where delay may lead to misery and jeopardise industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. Nor should High Courts in the exercise of their jurisdiction under Article 226 of the Constitution stop proceedings before a Tribunal so that a preliminary issue may be decided by them. Neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment Of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion. Tribunals and Courts who are requested to decide preliminary questions must therefore ask themselves whether such threshold part-adjudication is really necessary and whether it will not lead to other woeful consequence. After all Tribunals like industrial Tribunals are constituted to decide expeditiously special kinds of disputes and their jurisdiction to so decide is not to be stifled by all manner of preliminary objections and journeyings up and down. It is also worthwhile remembering that the nature of the jurisdiction under Article 226 is supervisory and not appellate while that under Article 136 is primarily supervisory but the Court may exercise all necessary appellate powers" to do substantial justice. In the exercise of such jurisdiction neither the High Court nor this Court is required to be too astute to interfere with the exercise of jurisdiction by special Tribunals at interlocutory stages and on preliminary issues.

5. Reference may also be made to S.K. Verma v. Mahesh Chandra and another 1983 (47) FLR 313 (SC) . In that case. Supreme Court commented that there appears to be three preliminary objections which have become quite the fashion to be raised by all employees. Firstly, there is no industry. Secondly, there is no industrial dispute. Thirdly, the workman is "no workman".

6. The attention of the Court was also invited to National Council for Cement & Building Materials v. State of Haryana (1996) 3 SCC 306 wherein the Court deprecated the practice of the management to raise preliminary issues with a view to delay adjudication of industrial disputes.

In our considered opinion, in the present case, it cannot be said that the Courts below have committed any error of jurisdiction in not deciding the issue as to the

maintainability of claim-petitions as preliminary issue. It is well settled that generally, all issues arising in a suit or proceeding should be tried together and a judgment should be pronounced on those issues.

Before more than hundred years, the Privy Council in *Tarakant v. Puddomoney* (1866) 10 MIA 476 favoured this approach.

Speaking for the Judicial Committee, Lord Turner stated:

The Courts below, in appealable cases, by forbearing from deciding on all the issues joined, not infrequently oblige this Committee to recommend that a cause be remanded which might otherwise be finally decided on appeal. This is certainly a serious evil to the parties litigant, as it may involve the expense of a second appeal as well as that of another hearing below. It is much to be desired, therefore, that in appealable cases the Courts below should, as far as may be practicable, pronounce their opinions on all the important points.

(Emphasis supplied)

7. The above principle has been consistently followed. Supreme Court dealing with the provisions of Order XIV Rule 2 (prior to the amendment Act of 1976), in *Major S.S. Khanna Vs. Brig. F.J. Dillon*, stated;

Under Order 14 Rule 2, Code of Civil Procedure, where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the Court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the Court to try a suit on mixed issues of law and fact as preliminary issues. Normally all the issues in a suit should be tried by the Court; not to do so, especially when the decision on issues even of law depend upon the decision of issues of fact, would result in a lop-sided trial of, the suit.

(Emphasis supplied)

8. The Law Commission also considered the question and did not favour the tendency of deciding some issues as preliminary issues. Dealing with Rule 2 of Order XIV (before the amendment), the Commission stated;

This rule has led to one difficulty. Where a case can be disposed of on a preliminary point (issue) of law, often the Courts do not inquire into the merits, with the result that when, on an appeal against the finding on the preliminary issue the decision of the Court on that issue is reversed, the case has to be remanded to the Court of first instance for trial on the other issues. This causes delay. It is considered that this delay should be eliminated, by providing that a Court must give judgment on all issues, excepting, of course, where the Court

finds that it has no jurisdiction or where the suit is barred by any law for the time being in force.

(Emphasis supplied)

9. In view of above discussion, no case for interference under Article 226 of the Constitution of India has been made out. The writ petition is dismissed summarily. But no order as to costs.