(2006) 06 GAU CK 0061

In the Gauhati High Court

National Insurance Co. Ltd. APPELLANT

Vs

Kanai Dasgupta and Others RESPONDENT

Date of Decision : 07-06-2006

Acts Referred:

Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Section 5

Citation : (2008) 118 FLR 268 : (2006) 4 GLT 287

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Judgement

I.A. Ansari, J.—By an order, dated 16.6.2005, passed in T.S. (W.C.) 2 of 1998, the learned Commissioner, Workmen''s Compensation, North Tripura, Kailashahar, has awarded, in all, a sum of Rs. 1, 71,415.00 as compensation to the respondent Nos. 2 and 3 herein, under the Workmen''s Compensation Act, 1923, with further direction that the said amount of compensation would carry simple interest (c) 12% per annum from the date of filing of the claim petition until realization of the entire amount. The learned Commissioner further directed the Insurer, namely, the petitioner herein, shall make payment of the said awarded amount of compensation with interest: within a period of 45 days. Aggrieved by the award so passed, the Insurer made an application for review of the directions given to them for making payment of the interest. This review application gave rise to Misc. (Review) 10 of 2005. As there was delay in making the application for review, an application u/s 5 of the Limitation Act was also made by the Insurer seeking condonation of delay. This application for condonation of delay gave rise to Civil Misc. No. 11 of 2005. By order, dated 15.6.2005, the learned Commissioner declined to condone the delay and in consequence thereof, another order was passed, on the same day, i.e. on 15.6.2005, by the learned Commissioner, dismissing the review application. It is in such circumstances that the Insurer has come to this Court with the present application made under Article 227 of the Constitution of India.

2. I have heard Mr. A. Lodh, learned Counsel for the petitioner- Insurer, and Mr.

P.K. Dhar, learned Counsel for the owner-respondent No 1. I have also heard Mr. P. Saha, learned Counsel appearing for the claimant- respondent Nos. 2 and 3.

3. Resisting the maintainability of the present writ petition, it has been submitted by Mr. P.K. Dhar, learned Counsel for the respondent-owner, that as the application for review made by the present: petitioner has failed, the petitioner-Insurer cannot invoke this Court''s jurisdiction under Article 227 of the Constitution.

4. While dealing with the objection, so raised, it needs to be noted that the supervisory jurisdiction of the High Court under Article 227 cannot be limited or fettered by any enactment, though the fact remains that the writ jurisdiction, even under Article 227, must be exercised to effectuate the rule of law and not to abrogate it and while the power under Article 227 cannot be circumscribed by any enactment, the legislative intent, as evidenced by the enactment, must be given due regard and the exercise of jurisdiction even under Article 227 has to be consistent; with the provisions of the enactment and not contrary thereto. See Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others,

5. In fact, in State, through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and Others, the Supreme Court has culled out the principles governing the exercise of powers under Article 227. Taking into account what had been culled out as the parameters of the powers of the High Court under Article 227 in Navjot Sandhu (supra), the Supreme Court, in Surya Devi Rai v. Ram Chander Rai and Ors. 2003 (9) AIC 1 (SC) : 2003 (6) SCC 575 speaking through R.C. Lahoti, J. (as his Lordship then was) observed thus:" The principles deducible, well settled as they are, have been well summed up by a two- judge Bench of this Court recently in State, through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and Others, This Court held:

(i) The jurisdiction under Article 227 cannot be limited or fettered by any Act of the State Legislature;

(ii) The supervisory jurisdiction is wide and can be used to meet the ends of justice, also to interfere even with an interlocutory order;

(iii) The power must be exercised sparingly, only to keep subordinate Courts and Tribunals within the bound of their authority to see that they obey the law. The power is not available to be exercised to correct mere errors (whether on the facts or laws) and also cannot be exercised "as the cloak of an appeal in disguise".

6. What may also be noted as regards the scope of Article 227 is that while exercising its supervisory jurisdiction under Article 227, the High Court cannot convert itself into a Court of appeal and determine the correctness of the decision, yet when a Tribunal or Court or an authority, exercising judicial power, oversteps its jurisdiction or indulges in arbitrariness in granting compensation or it acts in denial of the principles of natural justice or acts without jurisdiction or

in flagrant disregard of the law or the procedure occasioning thereby, failure of justice, interference in exercise of certiorari jurisdiction will not only be possible, but would become imperative, for, non-interference even in such cases, where the exercise of powers under Article 227 is warranted, will amount to abdicating by the High Court of its authority under Article 227, though Article 227 forms the basic structure of the Constitution. What the High Court cannot do is to convert itself into a Court of appeal, but it will be too much to say that under no circumstances, the High Court under Article 227 can interfere with an award passed by a Commissioner under the Workmen''s Compensation Act, even if the award be a nullity in the eyes of law or is completely perverse or while passing the award, the Commissioner has gone beyond the powers conferred on him by the very statute whereunder he functions and exercises his powers or even when the award passed is one, which cannot stand most reluctant judicial scrutiny. See Surya Devi Rai (supra).

7. Bearing in mind the principles, which govern the exercise of powers under Article 227, when I turn to the Workmen''s Compensation Act, (in short ''the WC Act''), it clearly transpires that there is nothing in this enactment, which restricts the supervisory jurisdiction of the High Court under Article 227, when conditions necessary for invoking such a jurisdiction are available. This apart, a review application, except as has been provided u/s 6 of the WC Act, is, strictly speaking, not maintainable under the WC Act, for, there is no provision for review of an award passed under the WC Act for the purpose of correcting error apparent on the face of the record.

8. Though the power under Article 227 cannot be exercised to correct mere errors whether of facts or of law, the fact remains when the Commissioner under the WC Act goes beyond the powers vested in him under the relevant statute in granting the relief, such as interest, it would be the duty of the High Court to interfere in such a matter, for, non-exercise of jurisdiction, in such a case, would amount to abdicating the supervisory jurisdiction, which the High Court is duly bound to exercise if conditions necessary for exercise of such jurisdiction exists, In short, when an authority, exercising judicial powers under an enactment, goes beyond its powers, the High Court cannot refuse to step in and correct the wrong by involking its supervisory jurisdiction under Article 227.

9. Coming to the issue, which has been raised, in the present petition, namely, as to whether an Insurer can be made liable to pay interest on the compensation, which was been fixed under the Workmen''s Compensation Act, it is apposite to take note of the provisions of Section 4-A of the Workmen''s Compensation Act, 1,923, which reads as follows;

4-A. Compensation to be paid when due and penalty for default.-(1) Compensation u/s 4 shall be paid as soon as it falls due.

(2) in cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the

extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim.

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall:

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled banks as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and

(b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears, and interest thereon pay a further sum not exceeding fifty per cent of such amount by way of penalty:

Provided that an order for the payment of penalty shall not be passed under Clause (b) without giving as reasonable opportunity to the employer to show cause why it should not be passed.

10. On careful reading of Sub-section (2) of Section 4-A read with Sub-section (1) thereof, what transpires is that the employer, in the first place, has to determine and accept the extent of his liability for payment of compensation and he has to make payment of such amount as compensation, which is, according to the employer, payable to the workman and such payment has to be made either to the workman or shall be deposited with the Commissioner, Workmen''s Compensation Act. Sub-section (1) of Section 4-A makes it mandatory for the employer to pay compensation as soon as the same falls due, Clearly it is, thus, for the employer to determine, in the first instance, as to what is the extent of his liability and on his informing the insurer about the extent of his liability, the Insurer becomes liable to indemnify the insured, that is, the employer to the extent of the liability that the employe accepts. When any employer is in default in making payment of compensation within a month from the date it falls due, then, the Commissioner shall direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank, as may be specified by the Central Government, by notification in the Official Gazette, on the amount due.

11. From a careful reading of Clause (a) of Sub-section (3) of Section 4-A, it becomes abundantly clear that the Insurer has no statutory liability to pay interest on the amount of compensation payable by the employer, When the statute does not make the insurer liable to pay interest, it is for the employer to show that there is a contract whereunder the insurer has assured the insured (i.e. the employer) that the Insurer would be liable to pay interest. The onus, thus, in a proceeding under the WC Act, lies on the employer to show that the Insurer is liable to pay interest. If the employer docs not show that the Insurer is

liable to indemnify the employer in respect of the amount, which the employer is liable to pay as interest, the Commissioner, Workmen''s Compensation Act, cannot impose any liability on the Insurer to pay interest on the compensation awarded to the workman or his legal representative. A reference, in this regard, may be made to the case of P.J. Narayan Vs. Union of India (UOI) and Others, wherein the Apex Court has observed thus:

There is no statutory liability on the Insurer. The statutory liability under the Workmen''s Compensation Act is on the employer. An insurance is a matter of contract between the Insurer and the insured. It is always open to the Insurer to refuse to insure. Similarly, they are entitled to provide by contract that they will not take on liability for interest. In the absence of any statute to that effect, Insurer cannot be forced by Courts to take on liabilities which they do not want to take on.

12. In the present case, there was nothing before the learned Commissioner, Workmen''s Compensation Act, to show that the Insurer had, under the relevant policy of the insurance, assumed the liability to indemnify the insured employer as regards the interest, which the insured employer would be liable to pay. In such circumstances, the question of imposing liability on the Insurer to pay interest does not legally arise. Viewed thus, the impugned order, dated 16.9.2004, to the extent that the same directs the Insurer-petitioner to pay interest on the awarded amount of compensation is beyond the provisions of law and such a direction cannot be allowed to survive, for, non-interference with such an order and non-exercise of supervisory jurisdiction of this Court under Article 227 of the Constitution, in such a case, would cause serious miscarriage of justice.

13. In the result and for the foregoing reasons, the impugned order, dated 16.9.2004, to the extent of the same directs the Insurer-petitioner to pay interest is hereby set aside. It is, however, directed that whatever interest may accrue, on the compensation amount awarded to the respondent Nos. 2 and 3 herein, shall be payable by the employer-respondent No. 1.

14. With the above observations and directions, this writ petition shall stand disposed of. No order as to costs.