

(2016) 01 AHC CK 0194
In the Allahabad High Court
Case No : Special Appeal No. 898 of 2015

Pradeshik Cooperative Dairy Federation Ltd.	APPELLANT
Vs	
Authority Under Minimum Wages Act and Others	RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Customs Act, 1962 — Section 128
Limitation Act, 1963 — Section 10, Section 10, Section 11, Section 11, Section 12,
Section 12, Section 13, Section 13, Section 14, Section 14, Section 14, Section 15,
Section 16, Section 17, Section 18, Section

Citation : (2016) 2 ADJ 229 : (2016) 3 AllWC 2479 : (2016) 1 CLR 772 : (2016) 149 FLR 313 : (2016) 34 LCD 672

Hon'ble Judges : Dr. D.Y. Chandrachud, C.J. and Yashwant Varma, J.

Bench : Division Bench

Advocate : Jamal Ahmad Khan, for the Appellant;

Final Decision : Disposed off

Judgement

1. This special appeal has arisen from a judgment of the learned Single Judge dated 5 November 2015 by which the writ petition that was filed by the appellant for challenging the orders passed by the Prescribed Authority under the Minimum Wages Act, 1948 has been dismissed.

2. The appellant is a unit of the Pradeshik Cooperative Dairy Federation Limited. A survey was conducted by the Labour Enforcement Officer under the Act. According to the appellant, it was observed during the course of the survey and in the inspection note prepared by the Labour Enforcement Officer that in the establishment of the appellant certain employees engaged by the contractor were working and that the contractor was paying wages lower than the minimum wages fixed by the State Government. The Labour Enforcement Officer filed a claim petition under Section 20(2) of the Act against the appellant which was registered as M.W. Case No. 442 of 2001. The appellant was made a party to the case as the principal employer. According to the appellant, it was only on 3 May 2015 when the Collection Amin visited the establishment on behalf of the

Collector and demanded an amount of Rs. 27,00,156/- together with the collection charges on the basis of an order of the Prescribed Authority dated 16 July 2003 (in pursuance of an ex parte order dated 27 March 2002) that the appellant obtained knowledge of the proceedings. A recovery citation has been issued by the Collector on 29 April 2015. According to the appellant, it was upon the service of the recovery citation that the appellant obtained knowledge of the fact that an ex parte order had been passed by the Prescribed Authority on 27 March 2002. The appellant moved an application for recalling the ex parte order on 15 May 2015. A reply was filed to the application by the Labour Enforcement Officer stating that the notice of the proceedings was remitted to the appellant through the process server and by registered post and since it had not been returned back, there was a presumption of service. In pursuance of an order passed by this Court, in another writ proceeding instituted by the appellant, the Prescribed Authority passed an order dated 18 September 2015 rejecting the recall application. Aggrieved, the appellant instituted a writ petition to challenge both the orders, being the order on the recall application and the original order of the Prescribed Authority. The writ petition was dismissed by the learned Single Judge on 5 November 2015. The learned Single Judge has held that the restoration application does not mention that any efforts were made by the appellant for searching in its office as to whether the notice has been served and that the appellant had not produced its receipt and dispatch registers before the Prescribed Authority. Moreover, it was held that since the award of the Prescribed Authority was passed on 27 March 2002, the restoration application which was filed in 2015 was beyond the period prescribed by Rule 29 of the Minimum Wages (Central) Rules, 19502 and since the rule did not provide for any relaxation of the period of limitation, the provisions of the Limitation Act, 1963 stood ousted. The writ petition challenging the order of 27 March 2002 has been held not to be maintainable on the ground of an unexplained delay of thirteen years.

3. The learned counsel appearing on behalf of the appellant submits that in the present case the contention of the appellant all along has been that there was no notice by the Prescribed Authority. As a matter of fact, the Labour Enforcement Officer merely relied upon a general presumption that since the notice has been dispatched by registered post, it should be presumed to have been served on the appellant and there was no need of actual service. Further, it was also urged that the learned Single Judge was in error in coming to the conclusion that the application which was filed by the appellant upon obtaining knowledge of the original order, following the service of the recovery citation in 2015, could not be entertained on the ground that it was beyond the period of limitation prescribed under Rule 29(4) of the Rules. Finally, it was submitted that the appellant is a government entity and to establish its bona fides, it is ready and willing to deposit 50% of the amount. Learned counsel submitted that this is a case where the appellant should be given a due and proper opportunity since it is its contention that the actual payment which was made to the workmen was in

excess of the minimum wages. Moreover, as a matter of fact, the Prescribed Authority imposed a demand of five times the actual difference thereby saddling a huge liability of Rs. 27,00,000/- upon the appellant. In another case, it was urged that the authority had not imposed such a large demand.

4. Upon perusing the record, it is evident that the contention of the appellant is that there was no notice of the proceedings before the Prescribed Authority. Now a perusal of the application which was filed by the Labour Enforcement Officer before the Prescribed Authority would indicate that basically the application was against the Contractor and the Manager of the appellant. The appellant was evidently proceeded in its capacity as the principal employer. The order of the Prescribed Authority refers to the names of the contesting respondents in the following terms:

5. In the application for restoration the specific case of the appellant was that it was only when the recovery citation was sought to be served by the Recovery Amin that the appellant obtained knowledge of the passing of the original order. In response, the Labour Enforcement Officer only relied upon the general presumption that since the notice by registered post had been dispatched, it would be presumed to have been served on the appellant.

6. Rule 29(4) of the Rules stipulates that when an order is passed ex parte under sub-rule (2), it may be set aside on sufficient cause being shown by the defaulting party within one month from the date of the said order and the application shall then be reheard after service of notice on the opposite party of the date fixed for rehearing in the manner specified in sub rule (1). Sub rule (1) of Rule 29 provides that if an application under Section 20(2) or Section 21 is entertained, the authority shall serve upon the employer by registered post a notice in Form IX to appear before him on a specified date with all relevant documents and witnesses. There is absolutely no material before the Court to indicate that the service in the manner prescribed by Rule 29(1) was effected on the appellant. The learned Single Judge seems to have proceeded on the basis that there was no provision under Rule 29(4) under which the period of limitation of one month that is prescribed could be extended or a delay could be condoned.

7. Section 29(2) of the Limitation Act, 1963 provides as follows:

"(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law."

8. We are conscious of the position that the provisions of the Limitation Act, 1963 may not ipso facto apply because the Prescribed Authority under the Minimum

Wages Act is not a "court". However, we are of the view that the principles underlying the various provisions contained in the limitation statute would clearly be applicable and in any view of the matter do not stand excluded either explicitly or by implication.

9. The Supreme Court in *J. Kumaradasan Nair v. Iric Sohan* , (2009) 12 SCC 175 enunciated the law on the subject in the following terms:

"16. The provisions contained in sections 5 and 14 of the Limitation Act are meant for grant of relief where a person has committed mistake. The provisions of Sections 5 to 14 of the Limitation Act alike should, thus, be applied in a broad-based manner. When sub section (2) of Section 14 of the Limitation Act per se is not applicable, the same would not mean that the principles akin thereto would not be applied. Otherwise the provisions of Section 5 of the Limitation Act would apply.

17. There cannot furthermore be any doubt whatsoever that having regard to the definition of "suit" as contained in Section 2(1) of the Limitation Act, a revision application will not answer the said description. But, although the provisions of Section 14 of the Limitation Act per se are not applicable, in our opinion, the principles thereof would be applicable for the purpose of condonation of delay in filing an appeal or revision application in terms of Section 5 thereof."

10. The principle laid down in *J. Kumaradasan Nair* (supra) was again reiterated by the Supreme Court while dealing with the issue of applicability of the provisions of the Limitation Act to an appeal preferred under Section 128 of the Customs Act in *M.P. Steel Corporation v. Commissioner of Central Excise* , (2015) 7 SCC 58.

11. In our opinion the specter of finality getting attached to an ex parte order passed by the Prescribed Authority under the Minimum Wages Act upon the expiry of a period of 1 month from its date clearly warrants the infusion of the principles underlying Sections 5 and 14 and other like provisions of the Limitation Act into Rule 29(4) of the Act.

12. In the facts of the present case, we are of the view that having regard to the entire factual background, it would have been appropriate and proper for the Prescribed Authority to recall its order upon subjecting the appellant to the condition of a fair deposit. As we have noted above, the appellant has fairly stated before the Court that it is willing to deposit 50% of the amount covered by the recovery citation.

13. For these reasons, we allow the special appeal and set aside the impugned judgment and order of the learned Single Judge dated 5 November 2015. The writ petition filed by the appellant to challenge the orders of the Prescribed Authority dated 18 September 2015 and 27 March 2002 shall accordingly stand allowed and both the aforesaid orders of the Prescribed Authority shall stand set aside conditionally on the appellant depositing 50% of the amount covered by

the recovery citation before the Prescribed Authority within a period of two months from the receipt of a certified copy of this order. Conditional on this deposit being made, the case instituted by the third respondent, the Labour Enforcement Officer, Varanasi before the Prescribed Authority (M.W. Case No. 442 of 2001) shall stand restored to the file of the Prescribed Authority for disposal afresh.

14. The special appeal is, accordingly, disposed of. There shall be no order as to costs.

1Act

2 Rules