
(1962) 03 AHC CK 0004
In the Allahabad High Court

Regional Conciliation Officer	Vs	APPELLANT
Kays Construction Company (Private) Ltd. and Another		RESPONDENT

Date of Decision : 15-03-1962

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33C
Working Journalists and Other Newspaper Employees (Conditions of Service) and
Miscellaneous Provisions Act, 1955 — Section 17

Citation : (1962) 2 LLJ 8

Hon'ble Judges : J. Sahai, J;B. Mukerji, J

Bench : Division Bench

Judgement

B. Mukerji, J.—This is a special appeal Against the decision of a learned single Judge in this Court made on the hearing of a petition filed under Article 226 of the Constitution praying for the issue of a writ of certiorari to quash two orders alleged to have been passed by the State of Uttar Pradesh in the year 1959. In the petition the relevant prayer was put in thus:

To quash the order, dated 10 September 1969 (annexure 8), and order, dated 9 September 1959 (annexure 10), by a writ of certiorari or by any other suitable writ, order or direction.

2. The petitioner also prayed for the issue of a writ of mandamus commanding the respondents to withdraw the demand of rupees one lakh and odd which, according to the prayer, included a demand of Rs. 50,654-9-6 Issued against the petitioner, and release the property of the petitioner from attachment, and farther not to proceed with the recovery proceedings.

3. The petitioner was a private limited concern doing business at the time when the proceedings, out of which this appeal has arisen, arose under the caption "Kays Construction Company (Private), Ltd. "It appears that prior to the company becoming a private limited liability concern it was a private concern of a gentleman named Sri H.M. Khosla. It appears that Sri Khosla, for some reason,

found it unprofitable or found it to his dislike to continue the business as his individual business and, therefore, he stopped doing business for a while and thereafter came into the same business under the caption Kays Construction Company (Private), Ltd. The workmen who were employed by Sri Khosla in his private concern ceased to be utilized by him when he decided to close the business. On the reconstitution of the business as Kays Construction Company (Private), Ltd., part of the labour that was employed by Sri Khosla in his erstwhile construction company got re-employment in the new private limited concern, but some of the labour did not find such employment. There was also a difference even in the case of that labour which found re-employment in the new company, namely, that the labour was not re-employed on the same terms and conditions on which they had been working when the concern was a purely private concern of Sri Khosla. The aforementioned change in the benefits and employment of the labour brought about an industrial dispute and the culmination of that industrial dispute was by an award given by the Allahabad Industrial Tribunal (Sugar) on 31 January 1958, By the award the rights of the labour in respect of their claims against the company, which fell for determination on the labour dispute having been raised, were decided and one of the things which was decided by the tribunal was in respect of the reinstatement of the discharged labour and the wages to which such labour was entitled on their reinstatement.

4. The relevant portion of the award in the dispute between the parties was in these words:

As a result of my findings above, I hold that the management of Kays Construction Company (Private), Ltd., Allahabad, are required to reinstate the old workmen given in the annexure of Kays Construction Company (Private), Ltd., Allahabad. They will be restored in their old or equivalent jobs and given continuity of service. In view of the somewhat peculiar features of this case and In the largest interest of the Industry, I would, however, order that the workmen be paid only fifty per cent of their back-wages for the period they were forcibly kept out of employment.

5. A large number of workmen preferred claims to the money to which they were entitled on the basis of the award. The claims which the workmen purported to make were made under the provisions of Section 6A of the Uttar Pradesh Industrial Disputes Act. On 21 July 1958 purporting to act under the provisions of Section 6H(1) of the Uttar Pradesh Industrial Disputes Act, the Labour Commissioner of Uttar Pradesh to whom the power to act u/s 6H had been delegated by the State Government, issued the following certificate:

...I have the honour to say that the workmen mentioned in the annexure have applied to me under Sub-section (1) of Section 6H of the Uttar Pradesh Industrial Disputes Act, 1947, for the recovery of the money due to them from Kays Construction Company (Private), Ltd., Rambagh, Allahabad, under the award of the Industrial Tribunal (Sugar), Uttar Pradesh, Allahabad, dated 31 January

1958. I am satisfied that an amount of Rs. 1,06,588-6-6 is due to them and request that this amount may be recovered as an arrear of land revenue from Kays Construction Company (Private), Ltd., Allahabad, and paid to the appellants as mentioned in the annexure in consultation with the Regional Conciliation Officer, Allahabad, and under intimation to me...

6. On 23 November 1958, respondent 1 before us filed certain written objections which were forwarded to the State Government against the issue of the certificate, and as a result of these objections It appears that the State Government ordered the Regional Conciliation Officer, Allahabad, to verify the claims of the various workmen afresh. The result of these proceedings to wit, the objections raised by Kays Construction Company (Private), Ltd., was that on 9 September 1959, another certificate appears to have been issued under the provisions of Section 6H(1) of the Act by the Labour Commissioner of Uttar Pradesh wherein the Labour Commissioner declared a sum of Rs. 50,654-9-6 only as realizable for the time being. It is necessary to see exactly the words of this certificate also since the first certificate has been quoted earlier in extenso. The second certificate, bearing the date 9 September 1959, was in these words:

“In continuation to this office letter No. 6075/I AIR CB 5(73)/57 dated 21 July 1958 and with reference to your letter No. 1360/CRA dated 29 May 1959, on the above subject, I have the honour to say that in partial modification of the aforesaid order I am to request you that a sum of Rs. 50,654-9-6 only may at present be realized from Kays Construction Company (Private), Ltd., Allahabad, and paid to the workmen mentioned in the annexure in consultation with Regional Assistant Labour Commissioner, Allahabad, and under intimation to me...

7. At the end of the aforequoted certificate the Labour Commissioner also made the following observations:

Orders regarding the claim of rest of the dues would be issued after re-verification of the same very shortly.

8. On the issue of the certificates-we are referring to the certificates that we have quoted earlier-the Collector appears to have acted under the powers conferred on him under the present Uttar Pradesh Zamindari Abolition and Land Reforms Act, and attached the property belonging to the respondents sufficient in the view of the Collector to meet the liability of rupees One lakh and odd which amount was claimed as being due under the first certificate issued by the Labour Commissioner, namely, the certificate of 21 July 1958. As we noticed earlier, respondent petitioner challenged the certificate as also attachment and the consequent recovery proceedings by the petition out of which this appeal has arisen.

9. The main contention which was raised on behalf of the petitioner before the learned single Judge, as would appear from the Judgment under appeal, was about the power of the Labour Commissioner, as a delegate of the State

Government for purposes of that section to determine the amount made payable under the award and to recover the same as arrears of land revenue. In order to appreciate the point raised on behalf of the petitioner It is necessary first to notice the words of Section 6H. We shall be concerned with the first two sub-sections of this section and, therefore, we would quote only the first two Sub-sections of Section 6H of the Uttar Pradesh Industrial Disputes Act and not the whole of that section. The relevant portions of Section 6H are in these words:

6H. (1) Where any money is due to a workman from an employer under the provisions of Sections 6J to 6R under a settlement or award, or under an award given by an adjudicator or the State Industrial Tribunal appointed or constituted under this Act, before the commencement of the Uttar Pradesh Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956, the workman may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the money due to him, and If the State Government is satisfied that any money is so due It shall Issue a certificate for that amount to the Collector who shall proceed to recover the same as if It were an arrear of land revenue.

(2) Where any workman is entitled to receive from the employer any benefit which is capable of being computed in terms of money, the amount at which such benefit should be computed may, subject to any rules that may be made under this Act, be determined by such labour court as may be specified in this a behalf by the State Government, and the amount so determined may be a recovered as provided for In Sub-section (1).

(3) * * *

10. We have already noticed that the Industrial tribunal in its award stated that the work-men would be restored to their old or equivalent jobs, given continuity of service and paid fifty per cent of their back-wages for the period they were forcibly kept out of employment The tribunal did not, as would be obvious from what we have Just said indicate the actual amount to which each workman, who was a party to the dispute and whoso in name appeared in the annexure attached to d the industrial tribunal's award, was entitled, So that, somebody or some authority required to enforce the award and to see to the recovery of the moneys payable to the workmen had to determine the amount. Section 6H of the Industrial Disputes Act, which we have quoted, Indicates that there was power in the State Government under the first sub-section of Section 6H to determine the "money due" and thereafter to issue a certificate for the amount to the Collector for purposes of recovery of the amount. The second sub-section of Section 6H deals with a situation where a workman entitled to some benefit which was capable of being computed in terms of money has to get that benefit so computed. In the case of the aforementioned computation the amount has to be determined by a labour court-a Court which could be specified by the State Government. In the instant case, the workmen made their claim to the determination of the amounts due to them under the first sub-section and made

the necessary prayer to the State Government, and the State Government did, accepting the position taken by the workmen, determine the figure and issued the necessary certificate. In this connexion we may remind ourselves of the fact that chronologically two certificates were issued. We have already referred to those-but for our present purposes we shall deal with the Question on the assumption that the second certificate, namely, the one which was issued on the 9 September 1959 was the only and the relevant certificate. We shall consider the question as to whether or not it was possible to issue successive certificates. The contention put forward on behalf of the company before the learned single Judge was that the computation in terms of money which the workmen wanted could only be effected under the provisions of Sub Section (2) of Section 6H. The contention of the company prevailed with the learned single Judge, for he held that the word "money " in Sub-section (1) of Section 6H of the Act referred to a determined sum of money-a sum determined and stated in the award-and that the position in the instant case being that the award did not actually determine and state a sum, the sum could only be determined under Sub-section (2) as a benefit which was capable of being computed in terms of money. In this appeal the point that was raised both on behalf of the State and the workmen was whether the power conferred on the State Government under Sub-section (1) was wide enough to Include a case like the one before us, namely, where the amount could easily be found by resorting to mere arithmetical calculation; where it was not necessary for the State Government to arrive at its satisfaction, as required under that sub-section, to determine any rights of the parties not already determined under the award, or where it had not, to equate a benefit, like free quarters, or free electricity, etc., in terms of money.

11. The actual words of Sub-section (2) of Section 6H which required close scrutiny were "entitled to receive from the employer any benefit which is capable of being computed in terms of money." What needs attention is that whatever the scope and connotation of the word "benefit," the same has to be received by the employee from the employer.

12. James Murray's New English Dictionary. Vol. I, gives, among others, the following meaning to the word "benefit":

A kind deed, a kindness; a favour, gift.

The other meaning given to the word in James Murray's Dictionary was:

A thing well done; a good or noble deed.

The word is also indicated to mean "a pecuniary advantage, profit, gain."

13. None of the above meanings given to the word "benefit" indicates that it can appropriately refer to wages or salary, for both in the case of wages and salary it is not something which a person receives as an advantage or a gift or as a benefaction, or even as a gain or profit; a person earns wages or salary, a scrutiny of the meanings attached to the word "benefit" makes it perfectly plain

that one could not speak of something that one earned through his labour as a benefit within the meaning of the sub-section.

14. A large number of decisions were cited at the bar to substantiate one or the other point of view In respect of this question. We have examined those decisions and we need only notice just a few, for the majority of the decisions cited do not touch the question which pointedly has arisen for our decision.

15. The Supreme Court had occasion to consider a similar question in 1958 twice. The first case decided by the Supreme Court is that of S.S. Shetty Vs. Bharat Nidhi, Ltd., In this case their lordships of the Supreme Court indicated what was a "benefit" of reinstatement. Shetty's case primarily concerned itself with the interpretation of Section 20(2) of the Industrial Disputes (Appellate Tribunal) Act, 1950. That action was practically In the same words as Section 33C(2) of the Industrial Disputes Act, 1947, as amended by Act XXXVI of 1958, and in relation to the words of those sections their lordships observed as follows:

The benefit of reinstatement which is awarded to a workman under the terms of the award does not become a term or condition of the contract between him and the employer.

Their lordships further went on to say that

Where any benefit which is not expressed in terms of money is awarded by the tribunal to the workman under the terms of the award, It will be necessary to compute In terms of money the value of the benefit before the workman can ask the appropriate Government to help him in such recovery.

16. This decision of the Supreme Court, in our Judgment, underlines the meaning to be attached to the word " benefit" as used in Statute dealing with industrial disputes. On a careful reading of this decision it becomes plain, in our opinion, that the computation In terms of money of a benefit was something different from merely resorting to arithmetical calculation in order to know the exact sum. "Wages" which a workman gets could not, in our judgment, be equated with "benefit." Any calculations, obviously arithmetical. In regard to wages could not be the determination of the money equivalent to a benefit which a workman enjoys or has apart from his wages.

17. The other case in the same year of the Supreme Court was that of Kasturi & Sons (Private), Ltd. v. N. Salivateswaran and Anr. 1968 I L.L.J. 827. This was a decision given under Working Journalists (Conditions of Service and Miscellaneous provisions) Act, 1955. Their lordships were in this case concerned with the interpretation of Section 17 of the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act, 1955, which was in these words:

Where any money is due to a newspaper employee from an employer under any of the provisions of this Act, whether by way of compensation, gratuity or wages, the newspaper employee may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the money due

to him and if the State Government or such authority as the State Government may specify in this behalf is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector and the Collector shall proceed to recover that amount in the same manner as an arrear of land revenue.

It is to be noticed that Section 17 in terms refers to money due In respect of wages also Therefore, what could be said in respect of a determination u/s 17 of the money due would be different from what the requirements of the determination or satisfaction in regard to the money due would be u/s 6H of the Uttar Pradesh Industrial Disputes Act.

18. In 1962 the Supreme Court had again occasion to consider the scope and meaning of the word "benefit" in Section 33C(2) of the Industrial Disputes Act (Central Act) in the case of Punjab National Bank Limited Vs. K. L. Kharbanda, The controversy in this case arose out of the application of the award given by, what was popularly known as, the Sastri tribunal. The question in respect of which their lordships had occasion to consider the meaning of the word "benefit" arose when the question of fixing the pay of the employees of the bank in the new scale provided in the Sastri award and dealt with in Para. 292(7) of it arose. Their lordships put the matter thus:

In the present case we are concerned with those who joined the service of the banks after 31 January 1950. The relevant provision with respect to such employees it Clause 7 of Para. 292 which reads as follows:

(7) The workman shall be fitted into the new scale of pay on a point-to-point basis as though it had been in force since he Joined the service of the bank, provides that his adjusted basic pay is not less than what it would be under a point-to petit adjustment on the corresponding pre-Sen scale.

19. It may be noticed that when Kharbanda was appointed as supervisor by the Punjab National Bank In April 1951 his appointment, Was on a basic salary of Rs. 120 and the basic scale for supervisors was Rs. 120-3-200-EB-10-300. The basic scale for graduate clerks at that time was Rs. 75-5-120-8-200. Kharbanda, as we said, was appointed on a basic salary of Rs. 120 per mensem, and what lie contended was that he was entitled to the basic salary in accordance with what was provided for by Para. 292(7) quoted above. Kharbanda applied for awarding him the benefit to the tribunal to which such applications could be presented under the enabling Section 330(2) of the Act. The tribunal awarded Kharbanda what he wanted and the Question that was agitated before the Supreme Court was whether the tribunal could do so under the provisions of Section 33C(2) of the Act. In the aforementioned context their lordships of the Supreme Court went on to interpret the meaning of the expression "any benefit which is capable of being computed in terms of money." Their lordships observed that:

The word "benefit" is of wide import, and the dictionary meaning thereof is "advantage," "profit" This would naturally include monetary advantage or monetary profit. There is no reason therefore for excluding "monetary benefits"

from the word "benefit used in this sub-section, unless it is clear from the words used that monetary benefits are not intended to be Included in the wide word "benefit" used therein.

What is to be clearly understood from the decision in Punjab National Bank Limited Vs. K. L. Kharbanda, is that what their lordships laid down was that in order to be a "benefit" it had not to be, so to a peak, non-monetary. Their lordships were not concerned, in that case with a situation like the one in the case before us, which, as we pointed out earlier, only entailed arithmetical calculation and required no decisions in regard either to the extent or to the nature of a benefit whether it was monetary or otherwise. We are, therefore, of the view that this decision of their lord-Ships of the Supreme Court also renders no assistance to the respondents to support their contention.

20. We need next notice a decision of the Madras High Court given in the case of Rajamani Transports, Ltd., Pudukkottai v. Collector of Tiruchirappalli and Ors. 1956 I L.L.J. 37. In this case Mr. Justice Rajagopalan held that the word "benefit" in Section 20(2) of the Industrial Disputes (Appellate Tribunal) Act was wide enough to include the benefit which accrued to a workman when his salary was on a graded scale. The question which fell for actual determination before Mr. Justice Rajagopalan in Rajamani Transport case was in our opinion, slightly different from the question that falls for our determination in the instant case and, therefore, the decision was not really one which could, as the expression goes, be said to be on all fours, but nevertheless we are noticing this decision because of the fact that the decision indicates that where the salary of a workman or the wages of a workman were on a sliding scale or were dependent upon the number of hours that he put in or any other circumstances which could vary or alter the amount payable to him as wages or salary, then in such contingencies or in such circumstances the wages or the salary of a workman could also fall within the category of the word "benefit" as used either in the Industrial Disputes (Appellate Tribunal) Act or as used in Section 6H(2) of the Industrial Disputes Act. The reason for this is not far to seek, for it appears to us that the reason for this lay in the fact that in order to determine the money due to the workman in the contingencies noticed above more than mere satisfaction of the sum due was necessary, for in such a case the sum due had to be determined not merely on arithmetical calculation but on a quasi judicial determination of certain facts and circumstances. We have no hesitation In saying, In agreement with the views expressed by most courts in India, that where It was necessary in order to know the sum due or the money payable to a workman to enter into questions calling for "determination" apart from mathematical calculations, then such determination had to be dope under the Uttar Pradesh Act u/s 6H(2), and that in such, cases the Sub-section (1) of Section 6H would not apply.

21. We may next notice a decision of the Bombay High Court in Shree Amarsinhji Mills Ltd. Vs. Nagrashna (M.N.) and Others, In this case a Bench of the Bombay

High Court, while interpreting the scope of Section 33C(1) of the Industrial Disputes Act (Central Act), expressed the opinion that the word "benefit" occurring in Sub-section (2) of that section was a word of wide amplitude. They further held that the words "the benefit which is capable of being computed in terms of money" could include a money claim. They repelled the contention put forward by learned counsel in that case that under the sub-section I.e., u/s 33C(2), what was computable was benefit other than monetary benefit, but this decision did not go the length of saying that "wages," the amount of which was certain, and further, the period for which those wages were to be paid was certain, could fall under the category of "benefit" as contemplated by Sub-section (2). The narrow question which we have to determine was not the question that called for determination in *Amarsinhji Mills 1961 I L.L.J. 681* before the Bombay High Court. So that, this case was not authority which supported the respondents' contention before us.

22. In *Burhanpur Tapti Mills Ltd. Vs. Labour Officer, Govt. of Madhya Pradesh and Others*, the Madhya Pradesh High Court had also to consider the scope of Section 33C of the Industrial Disputes Act (Central Act), but that decision too did not touch directly the question that we have to determine.

23. As we Indicated earlier, we considered all the decisions that were cited before us but, in our view, none of those decisions was really directly in point. What help, however, could be had from the decisions cited before us we have taken and we are of the opinion that in view of judicial pronouncements and particularly in view of the words used in the Section 6H of the Industrial Disputes Act it could not legitimately be contended that the State Government or its delegate had no power to feel "satisfied" in regard to the money due to a workman for the purpose of issuing a certificate by resorting to simple arithmetical calculation. In this particular case all that was done was that resort was taken to simple arithmetic in order to work out the actual sum payable to each workman who was mentioned in the annexure attached to the industrial tribunal's award. There was no determination of any question of rights or any benefits as contemplated by Sub-section (2) of the section.

24. The next contention which we need notice now is the contention that the State Government, having once Issued a certificate on 21 July 1958, had no further power to issue a second certificate on 9 September 1959-the certificate in respect of which the recoveries" in this particular case were sought to be made. We have already quoted the relevant portions of the two certificates. In the first certificate the amount mentioned was Rs. 1,66,588-6-6 while in the second certificate the sum mentioned was Rs. 50,654-9-6. On the words of the second certificate it is clear that the second certificate was in partial modification of the first one, namely, the one issued on 21 July 1953, and the reasons also for the modification appeared on the certificate inasmuch as it said that order regarding the rest of the dues would be issued "after re-verification of the same very shortly." The aforequoted words indicate¹ that re-verification appeared necessary

and re-verification could appropriately be also in respect of arithmetical calculations. It is common knowledge that even simple arithmetical calculations need re-checking for they are oftener than not inaccurate. There was nothing in Section 6H to indicate that once a certificate has been issued under Sub-section (2) the State Government was functus officio, so to speak, in respect of the matter and that its power to make corrections was not there. It is an established principle of law that unless there was a prohibition to a tribunal, Court or an authority to do something, then it had the power for obviously it was expected of it to do it right, to correct mistakes and errors. No authority was cited on behalf of the respondents to substantiate the contention raised and consequently we are not troubled any further to proceed with the consideration of this point in respect of which we have expressed our opinion above.

25. Sri K.C. Saxena, appearing on behalf of Kays Construction Company (Private), Ltd., the respondent 1 in this appeal, raised many an ingenious question, but most of them were, in our view, irrelevant or far too ingenious to deserve either notice or acceptance and therefore we have not considered it necessary to even state those contentions, but we have thought it desirable to notice one such contention which stood out of the category, namely, his contention that in the certificate were included moneys found due in respect of workmen who either had already been paid or who were not really workmen on the rolls of the company but were fictitious individuals. This question was never canvassed before. Indeed, when opportunity was given by the regional conciliation officer to the respondent-company to say what it had to in respect of the calculation of wages of workmen mentioned in the annexure appended to the Industrial tribunal's award, the respondent did not choose to appear or assist in any manner. The point was not argued before the learned single Judge, and we have before us no decision of the learned single Judge or even a reference to this point. The point was not even pointedly taken in the grounds set out in the writ petition which was filed by the respondent company under Article 226 of the Constitution. We have, therefore, felt unable to launch on an enquiry for the first time in appeal in respect of this matter.

26. In the end we should like to say that the jurisdiction which the respondent-company invoked in regard to this matter was a discretionary jurisdiction exercisable by this Court under very special circumstances. It was not a jurisdiction which this Court is to exercise for determining the rights of the litigants in an ordinary court of law in respect of contracts, etc. Therefore, this court, in our opinion, was not trammelled by any hyper-sensitive considerations in regard to interpretations of the rights of parties under the Industrial Disputes Act, and this too was an additional ground on which, in our judgment, the writ petition of respondent 1 could legitimately fail before the learned single Judge.

27. For the reasons given above we allow this appeal by setting aside the order of the learned single Judge in respect of the certificates and hold that the certificate under which proceedings in attachment, etc, had been initiated was a

valid certificate. Under the circumstances of the case, however, we are of the opinion that the parties should bear their own costs of the petition as also of the appeal in this court and we order accordingly.