
(1993) 05 AHC CK 0079
In the Allahabad High Court
Case No : C.M.W.P. No. 23462 of 1993

Reva Dry Cleaners

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-05-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10
Uttar Pradesh Industrial Disputes Act, 1947 — Section 5C(3)

Citation : (1994) 68 FLR 46 : (1994) 2 LLJ 1117

Hon'ble Judges : B.L. Yadav, J

Bench : Single Bench

Advocate : R.X. Saxena, for the Appellant;

Final Decision : Dismissed

Judgement

B.L. Yadav, J.—By this petition under Article 226 of the Constitution of India, prayer is that the order dated February 23, 1993 passed by the respondent No. 2, rejecting the application of the employer, the petitioner, for staying the proceedings before the Labour Court. 1, Kanpur, U.P. in adjudication case No.65 of 1992, Om Prakash Shukla (workman) v. . Reva Dry Cleaners, in a Reference u/s 4-K of U.P. Industrial disputes Act (compendiously the Act) may be quashed by issuing a writ of certiorari.

2. The factual matrix of the case is that respondent No. 3, Om Prakash Shukla, was working as Counter Boy in the petitioner's firm with effect from June 3, 1983. The services of the respondent No. 3 were terminated with effect from September 29, 1990. The respondent No. 3 raised an industrial dispute and State of U.P. made a reference u/s 4-K of the Act as follows:

"kya sevayojako dwara Sri Om Prakash Shukla putra Sri Pyare Lal Shukla counter man ko dinank November 20, 1990 se seva se prathak/vanchit kiya jana uchit evam vaidhanik hai, yadhi nahi to sabandhit sharamik kya hit labh/chattipurti pana ka adhikari hai, kis anya thithi yadhi kis vivran sahit."

3. The proceedings before the Labour Court are pending. The application moved by the employer, the petitioner, to stay the proceedings, having been rejected by the impugned order dated February 23, 1993, the present petition has been filed with the relief to quash the order. The criminal proceedings against the workman, respondent No. 3, were pending as he was alleged to have embezzled the amount of Rs. 6,000/- in between December, 1989 to July, 1990. The first information report was also lodged to that effect u/s 403 of the Indian Penal Code, and investigations have been completed and the charges has been submitted. Criminal Case (Crime No. 74 of 1991, State of V.P. v. Om Prakash Shukla) is pending in the Court of Metropolitan Magistrate, VII Kanpur. The question for consideration in this petition was as to whether during the pendency of the criminal proceeding, the proceeding before the Labour Court could be stayed?

4. Learned counsel for the petitioner urged that when criminal proceedings are pending, they must receive preference over the proceedings pending before the Labour Court, hence the latter proceedings be stayed till the decision of the criminal proceedings. Reliance was placed on Sheriff and another v. State of Madras and Ors. AIR 1984 SC 397. This case was on different facts where the scope of Section 439 of the Criminal Procedure Code 1898 (Old Code) was considered. The consideration under Sections 439 and 561 of the Old Code would not be decisive nor it would apply in respect of the proceedings pending before the Labour Court. The U.P. Industrial Disputes Act and Rules contain the procedure for expeditions disposal of the proceedings in reference u/s 4-K of the Act. The principles of the general civil law including Section 10 of Civil Procedure Code, or the Criminal law (i.e. Section 561-A or Section 482 of New Cr. P.C.) would not apply to the proceedings under the Act unless it is made applicable by the Legislature. It appears the employer has adopted a dilatory tactics to deprive or delay the remedy available to the workman.

5. In substance, the petitioner intends that jurisdiction of the Labour Court under the Act to render an award may be ousted. u/s 4-K the State Government makes reference to a Labour Court to pass an award.

6. As the Act and the Rules contain special procedure about Reference u/s 4-K of the Act read with Section 6, in case the industrial dispute exists or is apprehended, in that event the jurisdiction of the Civil Court or Criminal Court would be barred. The remedy under the Act is an efficacious and the effective remedy, hence there is no justification to stay the proceedings till decision by Criminal Court. For a workman, in case, there is an industrial dispute, there would be a presumption against ousting the jurisdiction of the Labour Court. For a workman remedy before Labour Court is an inalienable remedy and in the words of Lord Simons the inalienable remedy of Her Majesty's subjects to seek redress in her Courts- see Pys. Gravite Co. Ltd. v. Minister of Housing and Local Government. 1960. A.C.260

7. In case legislature wanted the proceeding before Labour Court to be stayed in

case any criminal proceedings in similar matters were pending, in that event some provision similar to Section 10 of CPC 1908 could have been enacted under the provision of the Act.

8. u/s 5-(C)(3) of the Act, the Labour Court shall have the same power as vested in the Civil Court under the Code of Civil Procedure, 1908 for enforcing the attendance of any person for examining him on oath, to require production of the documents, issuance of the commission for examination of the witnesses and inspection of any property etc. Section 6 provided that the Labour Court shall hold the proceedings expeditiously and shall reach the conclusion and submit its award to the State Government for implementation. The Act is a complete Code as regards the disposal of the reference on merit is concerned. The Labour Court is in no way either subordinate to the Criminal Court concerned nor it has to await the criminal proceedings against the workman.

9. In *John v. Coir Yarn Textile Ltd* 1960 I LLJ 304 it was held that the Labour Court need not await nor it was subject to the provision of Section 171 of the Companies Act, 1913 (Section 466 of the Companies Act, 1956). The Tribunal is to hold the proceedings expeditiously and the legislature only wanted that the Labour Court may not await the result of the criminal proceedings, nor it can stay the proceedings under reference till the disposal of the proceedings for embezzlement against the workman pending in the Criminal Court. In my opinion, the jurisdiction of the Labour Court is an absolute one, the same is unfettered, it can neither be curtailed nor it must await the disposal of the proceedings before the Criminal Court.

10. Under the circumstances of the case, even though the criminal proceedings are pending, that would not create a bar to the proceedings before the Labour Court in pursuance of the reference made u/s 4-K of the Act. The application for stay of the proceedings at the behest of the employer, the petitioner, has correctly been rejected.

11. There is no justification for stay of the proceedings. The petition lacks merit and the same is dismissed summarily.