

(1994) 08 AP CK 0025

In the Andhra Pradesh High Court

Case No : Letters Patent Appeal (SR) No. 68172 of 1993

S. Smmaiah and Others

APPELLANT

Vs

Andhra Pradesh State Electricity Board and Others

RESPONDENT

Date of Decision : 04-08-1994

Acts Referred:

Arbitration Act, 1940 — Section 39

Constitution of India, 1950 — Article 136, 226

Contempt of Courts Act, 1971 — Section 10, 11, 12, 19, 19(1)

Industrial Disputes Act, 1947 — Section 12(3)

Citation : (1994) CriLJ 3830

Hon'ble Judges : P.L.N. Sarma, J; Motilal B. Naik, J

Bench : Division Bench

Advocate : G. Bikshanpathy, G. Vidyasagar and V. Viswanatham, for the Appellant; Standing Counsel and C.V. Mohan Reddy, for the Respondent

Judgement

P.L.N. Sarma, J.—This matter has been placed before us on Office note as to the maintainability of the Letters Patent Appeal sought to be filed by the appellants.

2. The relevant facts are as follows :

Appellants filed Writ Petition No. 16523 of 1991 under Art. 226 of the Constitution of India seeking a direction to the respondents to implement the settlement arrived at dated 26-10-1991 entered into by the respondents with the Union under S. 12(3) of the Industrial Disputes Act before the Officer-cum-Assistant Commissioner of Labour, Warangal. The said writ petition was disposed of by a learned single Judge of this Court on 20-4-1992 in the following terms :

"In view of the above, there will be a direction that the respondents shall consider the claims of the petitioners for appointment as Helpers in terms of the Settlement dated 26-10-1991 which the respondents had entered into with the Trade Union representing the petitioners. I make it absolutely clear that I am not pronouncing upon the entitlement of the petitioners to be treated as workmen directly employed by the State Electricity Board. I rest this decision entirely on

the basis of the Industrial agreement which is enforceable as long as it lasts. I also make it clear that this Judgment will not in any manner effect the right, if any, of the respondents to seek modification or termination of the agreement in any manner known to law. Writ petition is allowed as above. There will be no order as to costs."

3. Alleging that the respondents have wilfully disobeyed the directions issued by this Court mentioned above, appellants herein moved an application C.C. No. 501 of 1992 under sections 10 - 12 of Contempt of Courts Act, 1971 for punishing the respondents. The said case was dismissed by N. D. Patnaik J. on 14th October, 1993 on the ground that no contempt has been committed by the respondents. While doing so, the learned Judge observed in the Judgment that the original settlement was called for and looked into and that it says that "the absorption of the petitioners as Helpers is based on principles of recruitment"

4. This appeal is sought to be filed under Clause 15 of the Letters Patent Act by the appellants questioning the dismissal of contempt petition. Office raised an objection that no appeal lies under S. 19(1) of the Contempt of Courts Act, 1971, hereinafter referred to as "The Act". Learned counsel for the appellants stated that the Judgment under appeal affected their rights and it amounts to a "Judgment" within the meaning of Clause 15 of Letters Patent and though no appeal lies under S. 19(1) of "The Act", an appeal shall lie under Clause 15 of Letters Patent. Accordingly, this matter is placed before us for orders by the Office.

5. Sri Bikshapathi, learned counsel appearing on behalf of the appellants strongly contended that even though no appeal is provided under S. 19(1) of "The Act" to a Division Bench against the order of a learned single Judge dismissing the application filed for punishing the respondents, an appeal lies under Clause 15 of Letters Patent as the Judgment affected the rights of the appellants and, therefore, it is a "Judgment" within the meaning of the said clause. In support of the said contention, the learned counsel relied upon the Judgments reported in *Mohendra Lall Mitter v. Annundo*, *Coornar Mitter* ILR (1898) Cal 236 and *Hem Bala Dassi Vs. Sundar Shaw and Others*, .

6. On the other hand, learned counsel appearing on behalf of the respondents placed before us a Judgment of the Supreme Court reported in *D. N. Taneja v. Shri Bhajan Lal* (1988) 3 SCJ 88 in support of his contention that the appeal does not lie under S. 19(1) of "The Act" when an application filed for punishing the respondents is dismissed by the learned single Judge.

7. The Judgment in *Bhajan Lal's* case (supra 3) squarely, in our opinion, covers the situation. In the said case, a similar question was raised and answered by the learned Judges of the Supreme Court. In the said case, an application was filed in the Punjab and Haryana High Court for punishing the respondent therein for contempt of Court. The allegation was that the petitioner along with eleven

others filed a writ petition questioning an Ordinance No. 44 of 1982 and that the respondent therein brought pressure on the officers to withdraw the writ petition, pursuant to which eleven writ petitioners withdrew from the petition leaving the lone petitioner-appellant before the Supreme Court in the field. It was alleged by the appellant before the Supreme Court that he was criminally intimidated to withdraw the said writ petition by the respondent. Alleging that it amounts to criminal contempt, he filed an application before the Punjab and Haryana High Court for punishing the respondent therein for the alleged criminal contempt. A learned single Judge of the said High Court dismissed the said application. Questioning the said order, the petitioner therein preferred an appeal to the Supreme Court under S. 19(1) of "The Act". A preliminary objection was raised before the Supreme Court that no appeal, as a matter of right, lies against an order dismissing an application filed for punishing the contemnor for contempt of Court. The argument was that appeal lies only against an order punishing the contemnor and not against an order dismissing the application. The learned Judges referred to the language of S. 19(1) of "The Act" and stated as under :

"As has been noticed earlier, an appeal will lie under S. 19(1) of the Act only when the High Court makes an order or decision in exercise of its jurisdiction to punish for contempt."

The learned counsel appearing for the appellant therein contended that the jurisdiction to punish for contempt includes also the jurisdiction to dispose of the case either by punishing the contemnor or by acquitting him by dismissing the application and, therefore, even when the Court dismissed an application filed for punishing the contemnor for contempt of Court, it exercised the jurisdiction to punish for contempt and, therefore, an appeal lies. The said argument was repelled by the learned Judges of the Supreme Court. The learned Judges categorically held that

"When the High Court acquits the contemnor, the High Court does not exercise its jurisdiction for contempt, for such exercise will mean that the High Court should act in a particular manner, that is to say, by imposing punishment for contempt."

The learned Judges also held in that connection as under :

"Even though no appeal is maintainable under S. 19(1) of the Act, the petitioner in such a case can move this Court under Art. 136 of the Constitution. Therefore, the contention, as advanced on behalf of the appellant, that there would be no remedy against the erroneous or perverse decision of the High Court in not exercising its jurisdiction to punish for contempt, is not correct. But, in such a case there would be no right of appeal under S. 19(1), as there is no exercise of jurisdiction or power by the High Court to punish for contempt."

In fact, the learned Judges referred to the earlier decision reported in *Baradakanta Mishra Vs. Justice Gatikrushna Misra*, Chief Justice of the Orissa High Court, and held that their view finds support in the said decision also. In the

said Judgment, the learned Judges categorically held as follows (at page 6; of Cri LJ) :

"Where the Court rejects a motion or a reference and declines to initiate a proceeding for contempt, it refuses to assume or exercise jurisdiction to punish for contempt and such a decision cannot be regarded as a decision in the exercise of its jurisdiction to punish for contempt. Such a decision would not therefore, fall within the opening words of S. 19, sub-section (1) and no appeal would lie against it as of right under that provision."

To a similar effect is the Judgment reported in Purshotam Dass Goel Vs. Hon^{ble} Mr. B.S. Dhillon and Others, .

8. In coming to the said conclusion, the learned Judges took into consideration that the right of appeal is a creature of the statute and that S. 19(1) provides a right of appeal as well as restricts right of appeal and any person who moves the machinery of the Court for contempt will be governed by the provisions of S. 19(1) of "The Act" in respect of right of appeal. Learned Judges further stated that any person who moves the machinery of the Court for contempt only brings to the notice of the Court the relevant facts which according to him or her constitute contempt of Court. After furnishing such information, the matter is left between the Court and the contemnor. It may be that the applicant may also assist the Court, but that does not mean that he is an aggrieved party and that weighed with the Legislature in not conferring any right of appeal on the applicant who files an application for contempt against the order dismissing his application. In fact the learned Judges specifically stated that for any contempt proceedings there are only two parties viz., the Court and the Contemnor. This is one of the reasons for restricting the right of appeal by the Legislature.

9. Having regard to the above Judgment, which is directly in point, we are of the opinion that, no appeal lies to a Division Bench against the order of a learned single Judge dismissing the application filed for contempt of Court.

10. A Division Bench of this Court in T. Vasantha Lakshmi v. Prl. A.P.S.W.R. School 1992 (2) APLJ 77 following the Judgment in Bhajan Lal's case (supra 3) held that the similar appeal filed by the petitioner whose application for punishing the respondent for contempt was dismissed, was incompetent.

11. The next contention raised by the learned counsel, Sri Bikshapathi, is that even though no appeal lies under S. 19(1) of "The Act" against the order of a learned single Judge dismissing the application filed for contempt of Court to a Division Bench, an appeal lies under Clause 15 of Letters Patent (Madras). He also contended that the order of the learned single Judge, in the instant case, affected the rights of the appellants and it amounts to a "Judgment" within the meaning of Clause 15 of Letters Patent (Madras) and, therefore, appealable under the said clause.

12. In this connection, the Judgment of the Madras High Court in Shantha V. Pai

Vs. Vasanth Builders, Madras, brought to our notice by the learned counsel appearing for the contesting respondents appears to hold that the applicant whose application filed for punishing the contemnor under the Contempt of Courts Act, is dismissed, can have recourse for filing an appeal under Clause 15 of the Letters Patent (Madras), even though no appeal lies under S. 19(1) of "The Act".

13. A similar contention fell for consideration in the said case. The learned Judges while holding that such an applicant can have recourse to Clause 15 of the Letters Patent (Madras) for filing an appeal, held that such an appeal is not maintainable because it is not a "Judgment" within the meaning of Clause 15 of the Letters Patent (Madras). In coming to the said conclusion the learned Judges relied upon the fact that the applicant whose application is dismissed, is not an aggrieved party and he "cannot be treated as a party-juris, entitled to any order of commitment of the opponent as of right". The learned Judges held that he is only an informant of the Court. We have already referred to the Judgment of the Supreme Court in the fore-going paragraph wherein it was held that such an applicant is not an aggrieved party and after furnishing the information to the Court the facts which according to him constitute contempt of Court, there will be only two parties in the proceedings viz., the Court and the contemnor and that is the reason why the Legislature restricted the right of appeal only to the party who is punished.

14. We are in agreement with the view of the Division Bench of the Madras High Court that the applicant who files the application for punishing the contemnor is not an aggrieved party and that he is not a party-juris and he cannot insist or entitled to any order of commitment of the contemnor, as of right.

15. However, we respectfully disagree with the view of the Division Bench that though such an applicant is not entitled to file an appeal u/s 19(1) of "The Act", he can still have recourse to Clause 15 of the Letters Patent (Madras) for filing an appeal; But that appeal cannot be entertained since it is not a "Judgment" within the meaning of the said clause. It must be noted that Clause 44 of the Letters Patent itself makes the provisions of Letters Patent subject to the Legislative power of the legislatures. The Parliament by enacting Section 19(1) of "The Act" intended to provide appeal only in case of exercise of jurisdiction by the High Court for punishing for contempt. By necessary implication, and having regard to the Judgment of the Supreme Court (supra 3), the right of appeal in other cases is taken away. In other words, the right of appeal is restricted by Section 19(1) of "The Act" to the contemnor. When once the competent legislature restricted the right of appeal, that restriction applies or prevails over Clause 15 of the Letters Patent (Madras), as the said clause is subject to the provisions prescribing right of appeal provided under the Act. Restrictions and limitations with regard to the right of appeal in respect of contempt proceedings are prescribed u/s 19 of "The Act" as laid down by the decisions of the Apex Court and those restrictions and limitations will prevail over Clause 15 of the Letters

Patent (Madras). Where right of appeal is not provided u/s 19(1) of "The Act", the applicant cannot have recourse to Clause 15 of the Letters Patent (Madras) for filing an appeal. Holding otherwise will lead to anomalous situation. In the view we have taken that no appeal lies under Clause 15 of the Letters Patent (Madras), it is not necessary for us to express any opinion on the question whether the order dismissing an application filed for punishing the contemnor for contempt of Court is a "Judgment" within the meaning of Clause 15 of the Letters Patent (Madras).

16. In this connection, we may refer to the Judgment of the Supreme Court reported in Union of India (UOI) Vs. Mohindra Supply Company, . The question there was whether a Second Appeal lies against the appellate order u/s 39(1) of the Arbitration Act, 1940. One of the arguments advanced before the learned Judges was that still an appeal lies under Clause 10 of the Letters Patent (Lahore) which is in pari materia to Clause 15 of the Letters Patent (Madras). The learned Judges rejected the said contention holding that the provisions of Letters Patent are declared by Clause 37 therein (Clause 44 of Madras Letters Patent) to be subject to the legislative power of the Governor General-in-Council and also Governor-in-Council under the Government of India Act, 1915 and that the Legislature having enacted the Arbitration Act providing for appeals in certain contingencies will prevail over Clause 10 of the Letters Patent (Lahore) therein. In other words, the learned Judges stated that Clause 10 of Letters Patent (Lahore) is subject to the provisions, providing for appeal enacted by the Legislature in the Arbitration Act. It is no doubt true that there is a specific provision appears in respect of filing of a Second Appeal in sub-clause (2) of Section 39 of the Arbitration Act. But that makes no difference in the instant case for, the restriction on the right of appeal is laid down by the Supreme Court in the decisions referred to supra while construing Section 19(1) of "The Act".

17. Similarly, in the instant case also Clause 15 of the Letters Patent (Madras) is specifically made subject to legislative power by Clause 44 of the Letters Patent. Parliament while enacting the Contempt of Courts Act, 1971 restricted that right of appeal and that restriction prevails over Clause 15 of the Letters Patent and, therefore, we are of the opinion that appeal does not lie under Clause 15 of Letters Patent.

18. The Judgments cited by the learned counsel for the appellants in Mohendra Lall Mitter's case and Hem Bala Dassi's case (supra 1 and 2) were rendered prior to the coming into force of Act 70 of 1971. Either in the Contempt of Courts Act, 1926 or in the Contempt of Courts Act, 1952, no provision similar to Section 19 of Act 70 of 1971 was incorporated providing for appeals. For the first time, in Act 70 of 1971 the provision for appeal viz., Section 19 was incorporated. Having regard to the absence of any provision providing for appeal in the earlier Acts of 1926 and 1952, the decisions (supra 1 and 2) referred to by the learned counsel, considered the appealability of the orders under Clause 15 of Letters Patent. The Judgments will not be of any help after the enactment of Act 70 of

1971 providing for filing of appeal u/s 19 of the said Act. Therefore, the decisions rendered prior to 1971 Act under Letters Patent holding that appeal lies under Letters Patent will not be of any help after the Parliament enacted Act 70 of 1971.

19. For the reasons mentioned above, we are of the opinion that the appeal is incompetent and we accept the objection of the Office. It is always open to the appellants to take appropriate proceedings in accordance with law for the redressal of their alleged grievance.

20. Appeal dismissed.