
(2010) 03 MP CK 0047
In the Madhya Pradesh High Court

Sevak Ram Patidar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-03-2010

Acts Referred:

Employees Compensation Act, 1923 — Section 30

Citation : (2010) 126 FLR 540 : (2010) 4 LLJ 40 : (2010) 3 MPHT 108

Hon'ble Judges : Ramesh Surajmal Garg, J;R.K. Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.S. Garg, J.—In the present petition, the petitioner against whom an award was made by the Commissioner under the provisions of the Workmen's Compensation Act, 1923 has challenged the third proviso appended to Sub-section (1) of Section 30 of the Workmen's Compensation Act, 1923.

2. Section 30 of the 1923 Act deals with the right of appeal. Sub-section (1) provides that an appeal shall lie to the High Court from certain orders of the Commissioner. The first proviso appended to Sub-section (1) says that no appeal shall lie against any order unless a substantial question of law is involved; the second proviso says that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner etc. while the third proviso says that no appeal by an employer under Clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.

3. The challenge formed by the petitioner is that the condition imposed under third proviso to Section 30(1) of the Act is not only onerous but is discriminatory and virtually cuts the very right of appeal by an employer. It is also submitted that in a given case the employer may not be in a position to deposit the compensation amount then he would stand disabled from filing appeal and

challenging the award. It is also submitted that the third proviso does not leave any discretion in favour of the Appellate Authority to exempt the appellant from depositing the amount or reduce the amount which is required to be deposited. The submission is that a perusal of the third proviso to Section 30(1) of the Act leads to an impossibility and therefore, is liable to be struck down. In the fairness learned Counsel for the petitioner, however, submitted that in the matter of Khemkaran Sanodiya Vs. Union of India (UOI) and Others, , a Division Bench has held against the interest of the petitioner but the said judgment requires reconsideration and the question that the third proviso is impracticable or can be made practicable was not considered by the Division Bench.

4. Shri Mohan Sausarkar, learned Counsel for the respondent-Central Government, on the other hand, submitted that once the question has been finally disposed of by the Division Bench of this Court then unless there are special/specific reasons to take a different view, the law of the land should be respected. His submission is that the Government in a Welfare Legislation if expects that the person who works as a workman is not required to run after the employer who wants to challenge the award, then the condition of full deposit would inure to the benefit of weaker section because in case certain exemptions are allowed then it would be difficult for the employee or the workman to recover the amount.

5. We have heard the parties at length.

6. In the matter of Khemkaran (supra), a Division Bench of this Court considered the right of appeal and the embargo put on the right of appeal under different provisions of law. The Division Bench placed reliance upon a judgment of the Supreme Court in the matter of Vijay Prakash D. Mehta and Another Vs. Collector of Customs (Preventive), Bombay, and in the matter of The Gujarat Agro Industries Co. Ltd. Vs. The Municipal Corporation of the City of Ahmedabad and Others Etc. Etc., , and held that the right to appeal is neither an absolute right nor an ingredient of natural justice the principles of which must be followed in all judicial and quasi-judicial adjudications. The Court also held that right of appeal is the creature of statute and it would always be for the Legislature to decide whether the right of appeal should be unconditionally given to an aggrieved party or it should be conditionally given. The Court also considered the scope of a statutory right as against a fundamental right or equitable right.

7. It cannot be gainsaid that the right of appeal is a statutory right. It has to be conceded that the right of appeal is neither a fundamental right nor an equitable right. In a given matter a particular statute may or may not provide for right of appeal. According to the Supreme Court, whenever right of appeal is conferred upon an authority then such right can be an absolute right or it can be a conditional right. In case of an absolute right, according to the Supreme Court, the person who has the right can always challenge the order passed by the Subordinate Court or the Tribunal before the Appellate Court or the Tribunal but, in case, where the right is a conditional right and it requires pre-deposit either in

full or in part then he has to deposit the amount either in full or in part. It would be altogether different that in a given statute the Appellate Authority is conferred a right to exempt from the full deposit or minimum deposit or extend the time for deposit. Non-conferral of such right on the Appellate Authority/Forum/Court shall not require the Court to construe that the provision wherein such right is not conferred upon the Appellate Authority, the provision would be bad. If the Legislation has the authority to make law in relation to pre-deposit to make the appeal competent then it would have a right to further enact or Legislate that such Appellate Authority would have or would not have a particular right to reduce the amount to be deposited or extend the time for making a deposit. In a given case, if such powers are not conferred upon the Appellate Authority, the provision which makes the right of appeal conditional would not become ultra vires the Constitution or ultra vires the Act nor the said condition would become onerous. If the petitioner wants to exercise his right of appeal then he has to observe the conditions attached to his right of appeal. A person cannot come to the Court and say that he would have a right to file a statutory appeal but he would not observe the other statutory conditions which make his appeal competent.

8. In the matter of Khemkaran (supra), the Division Bench has also considered the judgment of Kerala High Court in the matter of T. Narayanan Nair v. Union of India and Ors. 1990 ACJ 798, wherein a learned Single Judge of Kerala High Court rejected the challenge to third proviso to Section 30(1) of the Act observing that such provision of law is not ultra vires or unconstitutional. After bestowing its serious consideration the Division Bench in Para 9 of the judgment held that there is no constitutional invalidity in the provision.

9. At this stage it would also be necessary to refer to a Constitution Bench judgment of the Supreme Court in the matter of Lala Ram Vs. Supreme Court of India and Others, , wherein the constitutional validity of Order XL, Rule 2(2) of the Supreme Court Rules, 1966 was challenged. According to the said Rule, no application for review in a civil proceeding shall be entertained unless the party seeking review furnished to the Registrar of the Court at the time of filing the petition for review cash security to the extent of Rs. 2000/- for the costs of the opposite party. The Supreme Court after going through the provisions of law and after considering the rival submission came to the conclusion that if a right under the statute is conferred upon a party then a condition can be attached to the said right that on performance of such condition the right can be exercised.

10. The condition regarding pre-deposit can also be found in Employees State Insurance Act, Income Tax Act, Sales Tax Act, Payment of Wages Act and number of other Acts. True it is, that in some of the Acts the full deposit is not required to be made and in some of the matters the Appellate Authority/Forum has a right to reduce the quantum of the deposit or extend the time to make the deposit. However, in case of Payment of Wages Act the condition to file an appeal is identically worded. If there is a condition attached to the right of appeal then

such condition is required to be observed. One cannot say that the statute cannot put a condition of pre-deposit to make the right of appeal enforceable.

11. It is also to be noticed that the Workmen's Compensation Act is a Welfare Legislation and in such a Welfare Legislation, if such a condition is imposed then such condition cannot be held to be ultra vires the Constitution.

12. After going through the provisions of law and the earlier judgment of this Court and for the reasons aforesaid, we are of the opinion that the third proviso appended to Section 30(1) of the Workmen's Compensation Act, 1923 is not ultra vires the Constitution. The petition is dismissed.