

(1980) 02 RAJ CK 0046
In the Rajasthan High Court
Case No : Civil Writ Petition No. 390 of 1980

State of Rajasthan

APPELLANT

Vs

Dhapoo

RESPONDENT

Date of Decision : 20-02-1980

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Rajasthan Workmens (Costs and Fees) Rules, 1959 — Rule 3
Workmens Compensation Act, 1923 — Section 30

Citation : (1982) ACJ 604

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Advocate : Shivraj Behari Mathur, A.G.A, for the Appellant;

Final Decision : Dismissed

Judgement

G.M. Lodha, J.—A brutal, shameless, daylight rape on social and substantial justice by none else but the State is the genesis, of this frivolous and vexatious writ petition.

2. Mahamanya Rashtrapati's visit at Jaipur was preceded by the accidental death of "kamgar" (workman, labourer) Beldar Kalyan Meena, who died in harness while making the arrangements for reception. The socio-economic pragmatic approach exhibited by labour laws, expressly provides for compensation. It is customary and traditional for the State or its functionaries, on such occasions to act on humanitarian grounds and grant ex-gratia monetary relief to the deceased's family. But as an antithesis and anticlimax of it, the State contested the claim of compensation first.

To add fuel to fire, when awarded, it has challenged it now by invoking extraordinary and equitable jurisdiction, for a most unequitable relief, depriving the widow of this token monetary relief also, when she has been deprived of her husband by cruel fate.

3. With the above preface, which is the outcome of an instantaneous and spontaneous reaction of the judicial conscious of the Court; wedded to "social and substantial justice", by acting as "watch dogs" of the Constitution; let me now narrate the facts of this case.

4. This writ application has been filed by the State of Rajasthan and the Assistant Engineer against the judgment of the Workmen's Compensation Commissioner awarding compensation of Rs. 18,000/- and penalty of Rs. 9,000/- to the widow of the deceased Kalyan who was working as Beldar in Public Works Department of Government of Rajasthan.

5. Under the provisions of the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act") an appeal is provided to this Court from an order awarding compensation u/s 30 of the Act. This appeal can be filed within 60 days. Such an appeal can be entertained only on a substantial question of law. Yet another requirement of entertainment of such an appeal is that the memorandum of appeal should be 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.

6. It is surprising that the State has chosen to file the writ application inspite of all these express provisions of law. The judgment was given on 5.2.1979 and the certified copy was given on 24.3.1979. It appears that since the appeal was not filed within time prescribed by the law, this device has been adopted, by none else than the State itself, to circumvent plea of limitation which may be taken by the widow and thus committed a fraud both on the widow of the deceased workman and this Court.

7. Is this the respect shown by the State which in its directive principles have proclaimed that the workmen should get participation and share in the management and legal aid should be provided to the poor? Is this the homage which this State is paying to the Preamble of the Constitution which was made the "bed rock" and the "Gangotri" of the Constitution by "founding fathers", in the following high sounding and inspiring words:

We, The People of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure all its citizens:

Justice, social, economic and political; Liberty of thought, expression belief, faith and worship;

Equality of status and of opportunity; and to promote among them all;

Fraternity assuring the dignity of the individual and the unity and integrity of the Nation;

In Our Constituent Assembly this twenty-sixth day of November, 1949, do Hereby Adopt, Enact and Give to Ourselves this Constitution.

8. A welfare State committed to ultimate objection of eradication of poverty and

making a tall claim of providing utmost priority to protect, the poor and downtrodden, has dragged. Beldar's widow to the High Court by adopting this questionable method of filing as writ after the appeal has become time barred. That this has been done in a case, where the workman died in harness while making arrangements for reception of the highest dignitary, the President of India, exhibits a very sad and chaotic state of affairs, where not only mockery has been made of all the high sounding directive principles, but a day light rape is being committed by the State on the basic human rights of the poor, downtrodden, rule of law, directive principles, the fundamental rights and the elementary values and norms which are well established in this age, where every day emphasis is increasing on "social justice" and "substantial justice".

9. I had occasion to point out this explosive situation, when a similar attempt was made by the State against the grant of compensation to the legal representatives of two workmen who died in harness while working in the Rajasthan canal. In Executive Engineer, R.C.P. Vs. Smt. Rukman, it was observed as under (per G.M. Lodha J.):

6. The sole contention of the State is that Rule (3) of the Rajasthan Workmen's (Costs and Fees) Rules, 1959 provides for payment of Rs. 10/- only which can be reduced to Rs. 5/- and increased to Rs. 50/- as the maximum fee in the cases arising under the provisions of Workmen's Compensation Act. The provision putting a ceiling of Rs. 50/- as counsel fee requires consideration for revision by those who can do it. It means that a workman can not avail of services of a good lawyer at all because it will be impossible to have a counsel for Rs. 10/- only and even for Rs. 50/-. The labour legislations like Workmen's Compensation Act, Minimum Wages Act, Payment of Wages Act, Factories Act etc. all have been enacted for the socio-economic purpose of providing relief to the workmen and regulating their relations with their masters. The compensations which are allowed to the workmen also are fairly low in comparison to the compensation which are allowed by the railways and airlines in case of other accidents which is Rs. 50,000/- and Rs. 1 lac respectively. The human life is the same whether one dies in harness while functioning as a workman in a factory or on canal or while travelling in aeroplane or train. However, it is not my domain to make any comment over it because it is exclusively for the Legislature to legislate.

8. As already mentioned above, the writ application is liable to be dismissed on the short point that appeal lies u/s 30 of the Workmen's Compensation Act and was not filed in this case. Even if it would have been done, the jurisdiction under Article 226 should not be invoked in matter of this nature where all that has been done is to allow costs to the deceased workmen's legal representatives as per the civil court rules although it may not be in accordance with the Workmen's Compensation (Costs and Fees) Rules as discussed above. Article 226 of the Constitution further requires that the Petitioner should show that substantial injury would be caused if the impugned order is not set aside and I fail to appreciate the nature of such substantial injury in this particular case at least.

10. I had occasion to reiterate, whatever I have said above earlier, while dealing with the quantum of compensation for a human life in *New India Assurance Co. v. Zor Kanwar S.B.* Civ. First. App. No. 59 of 1968, decided on 7.8.1979, while expressing shock and surprise at the difference in approach to the human life by the State, violating equality of law and equal protection of all classes. It was observed as under:

By contesting even bona fide and genuine claim of the dependants of deceased, who are overwhelmed with grief and sorrow on account of the death of their family head, the insurance company adds to the grief and misery and also spends good deal of time, energy and money which can be avoided. This also shakes the utility of insurance.

In the present case undoubtedly insurance policy existed and the amount allowed by the Tribunal being Rs. 18,000/-, was also very meagre.

I have held in earlier judgment that when the airlines and railways, give compensation of 1 lakh and Rs. 50,000/-, respectively for loss of human life by pure accidents, the scale of compensation is very meagre under Workmen's Compensation Act and other laws.

The life of a truck driver, who dies in harness is in no way less valuable than a person going for a pleasure trip to enjoy "honey moon" in Kashmir, in aeroplane or train. Though technically Article 14 cannot be applied, it is for the legislature to consider why equality of law and equal protection clause should not be applied in spirit also.

11. It is not only unfortunate but a matter which requires prompt attention of the State, as to why the poor peoples money which forms the coffers of the public exchequer, should be allowed to be wasted in such avoidable litigation. In addition to the wastage of money, the time of the Court and the Law Officers is wasted in filing such frivolous writ application. A situation will come when this Court may be compelled to direct the State Government to realise the entire costs from the officer concerned who sanctions filing of such frivolous writ application, against a widow whose husband died while on duty for attending the arrangement of Rashtrapati's visit, instead of respecting the observation of this Court in such cases, for refraining from it.

12. In this instant case, the workman was a "Beldar". Beldar even amongst the workmen is lowest in the ladder. He works hard on road side in scorching heat, intolerable chilly winter and that too, without any protection from any side except sky above and the earth below. Such being the pathetic plight of the poor kamgar (labourer, workman), it is most tragic state of affairs for the State to persist on litigation instead of volunteering in paying compensation to the widow.

13. In series of judgments, I have highlighted the view, that Workmen's Compensation Act and such labour legislations are to be construed in liberal manner in favour of the workman, so that the poor, downtrodden labourer, who

is lowest in the ladder of the society and is always fighting for two square meals in a day, can get the speedy benefit and advantage of these beneficial socio-economic laws. If that is not done and the Courts start picking up loopholes in workmen's cases, by microscopic examination of technicalities, by cutting the t's and dotting i's enforcing technical rules of pleadings, it would not only be great injustice to the preamble, directive principles and fundamental rights enshrined in the Constitution, but it would be reducing them to ridiculous state of becoming words of platitudes high-sounding mottos only to be kept in the closed shelves of the libraries without having any intention to implement them or enforce them.

14. In a welfare State, a liberal interpretation, free from technicalities in favour of kamgar i.e., majdoor would really accomplish the human and socio-economic purpose of legislation, which have been made and enacted for the economic need of emancipation of the labour from exploitation.

15. This recognition and requirement of the Constitution it writ large on the street walls, in every workman's colony where half-naked, half-starved people, live mostly on earth, below roof of the sky, having shabby, dirty unhygienic stinking road-side or pavement space, hardly enough to stretch and release the tension of the bones of the body, which have worked day and night in sun, winter and rains, around furnace, canal waters, dams and roads, bridges and factory with all perspiration and faulting and failing respiration, with the sole inspiration to somehow provide half or at least one time meal to the weeping and crying children and family members who wait for him restlessly. A generous humanitarian approach is therefore needed both by the Courts and the State in implementation of such labour welfare legislations for giving the relief speedier and cheaper.

16. It is of utmost importance, that neither the State nor judicial or quasi-judicial Officer, should treat such cases as cases of contracts or mortgages, preemption or the easements, but appreciate the legislative intent to provide relief to the poor, down-trodden labourers and workmen. For that, the only anxiety of the Court should be that substantial justice, real justice, speedy justice and effective justice should be imparted and administered to them and no technicalities or rules of procedure should come in the way. If that is not done, the very object of such labour welfare legislation would be defeated.

17. The present case is a classical example of the negation of all, what I have said above. The welfare State functionaries never thought that a beldar who was coming to make arrangement for reception of President of India was knocked by a vehicle and apart from humanitarian consideration which there should have been in such cases, even the legal and legitimate benefit of compensation was not offered to his widow, who, instead of receiving the happy news of arrival of the President of India in her State, received the tragic news and dead body of her husband. The Petitioner-State functionaries did not only pay compensation voluntarily but put impediment in its determination before the Workmen's Compensation Commissioner by putting all legal and technical defences, re-

enacting "Merchant of Venice" of Shakespear where Portia put the classical defence, "not a drop of blood". They challenged that he died while on duty and then they put up all the technical defences. When the defence of the State was found to be untenable, compensation was awarded along with the penalty.

18. The levy of the penalty should have resulted in commencing of the proceedings against the officer who made delay in the payment of the compensation resulting in the burden on the public exchequer. If once a while, the State starts such proceedings and after holding person responsible, realises this penalty from him, then a frivolous defence in such labour welfare legislation cases would stop. However, instead of that, as mentioned above, the State and the Engineer concerned knowing it very well, that it was not a case worth filing appeal, did not file any appeal, but instead of that, after the appeal became hopelessly time barred, filed a writ application, thinking that the writ jurisdiction is "Allauddin's Lamp" which would give them all unwarranted relief.

19. Such a questionable conduct of the State functionaries who are responsible for filing this frivolous writ application, deserves certainly to be deprecated as they forgot the law repeatedly laid down by this Court and the Supreme Court in such matters and forgot the very beneficial and liberal approach which is required to be made in such cases. Those who forget such important constitutional mandates, writing on the walls, legislative pronouncements and the rule of law and further wants to have this luxurious litigation, at the cost of weeping children and cries of agony of a widow of workman, cannot be forgiven and should not be forgiven.

20. Such avoidable wasteful litigation which helps none and destroys very foundation of welfare State, socio-economic legislation, further wastes the valuable time of the Courts by depriving the thousands of the needy litigants who are standing the queues for the last more than, one decade, cannot be entertained. In *Bharti v. State of Rajasthan* S.B. Civ. Writ Pet. No. 770 of 1978 referred to D.B. on January 2, 1979 and in *Manzoor Ahmed v. Regional Transport Authority* 1979 W.L.N. 310 . I have invited the attention of all the litigants, State and the judiciary on compelling need of the day for avoiding such avoidable litigations in the following words:

It appears to me that the express addition of the above two phrases in Clauses (b) and (c) in Article 226 was not without significance. The Parliament must have intended to oust and exclude the cases of "academic interest" only so that the precious time of Court is saved for being utilised for deciding those matters which effect and involve the rights of citizens. The Parliament was conscious of the fact that this country cannot afford to waste the Court's time for deciding academic or luxurious litigation.... The High Court should not be required to enter into controversies of academic interest although they may certainly be very useful and of great interest to the professors and students of law in the universities. They would be injurious and detrimental to other litigants who are waiting in queue for a decade and are impatient to get justice from the High Court.

Are we to convert sacred and pious temples of justice into "legal gymnastic clubs", legal debating societies, or even luxurious research centres of law? Are we to wait and watch helplessly the gimmicks of talented logic and brilliant feats of oratory of those fortunate few, who can afford, at the cost of thousands litigants who are either waiting in jail cells for the last 5 or 6 years to get their guilt or innocence decided or those thousand of civil servants or industrial workmen, petty shopkeepers or farmers whose fundamental rights have been invaded by unscrupulous employer or the State functionaries and who want to have "justice according of law" at least if not real justice or social justice, but who are not getting their turn of hearing due to heavy cause list and arrears of cases? A lakh of such disappointed, helpless, impatient, gloomy faces, of litigants involved in about 1,0000 pending cases, are staring at me and remind me to the great importance of giving effect to the riders of "substantial injury" "substantial failure of justice", "to make room for deciding their waiting fates and to liberate them from coma" caused due to suspense of pending cases for more than a decade.

Again can we shut our eyes and become blind to the hard reality that lakhs of poor, down-trodden, less privileged citizens are those who are still outcaste from the realms of courts, justice and law, as they cannot afford to reach and stand in competition of the privileged, resourceful, educated and enlightened litigants : nor can they afford to wait in long "queues". That being so, even though they deserve consideration and relief from the Courts, we are helpless to act as "watch dogs and sentinel" of the Constitution and give justice to them. While I am sitting in the Court room, my eyes are observing the unending stream of tears rolling from the eyes "of Saharies of Shahbad" and others (tillers of Shahbad, subdivision Kota District) who with their empty bellies and naked skeletons of bone and starving body are helplessly watching their farms being encroached, trespassed and cultivated and crops being harvested by rich, resourceful invaders; but they can never afford to even weep and cry in protest and cannot imagine of either going to a Court of law or to obtain relief of getting back possession in spite of tall talk of "legal aid to poor" and its inclusion in the Constitution. It may be that, if I describe the above tragic functioning of our law Courts of justice enumerating the hard realities, I may for a while take a role of a poet, philosopher or reformer, rather than a Judge; but it is this restraint which is responsible for the wide-spread feeling that "Judge live in ivory towers" a feeling which even if untrue or partially true, should be repelled by "imparting speedy, cheap, social, ready and real justice" to the lowest in the ladder, i.e. a tiller, a workman, a cobbler etc. and not by using handy sword of "contempt" only.

21. Whatever I have said above in Chaturvedi's case and Manzoor Ahmed's case 1979 W.L.N. 310 applies equally to the facts of the present case, where the State has tried to drag a widow of deceased Beldar who died while on duty; in most unwarranted available litigation in this Court and that too after repeated pronouncement in the case of Executive Engineer, R.C.P. Vs. Smt. Rukman, where in almost in similar terms I deprecated this practice. In spite of the

judgment of this Court and inspite of deprecation of it, the same questionable technique has been adopted not by any ordinary litigant but by mighty State, which is supposed to respect the judicial verdict both in letter and spirit. It is high time that the State should take proper steps to avoid recurrence in future and that would be in consonance with the spirit of the Constitution and the law of the social welfare labour legislation mentioned above.

22. I, therefore, refuse to examine the merits of the writ petition, which cannot be entertained at all.

The result is that the writ application fails and is dismissed in limine. A copy of this judgment should be sent to the Cheif Secretary, State of Raiasthan.