
(1988) 09 DEL CK 0005

In the Delhi High Court

Case No : Civil Writ Appeal No. 2827 of 1987

The Cooperative Store Limited

APPELLANT

Vs

K.S. Khurana and Others

RESPONDENT

Date of Decision : 22-09-1988

Acts Referred:

Citation : (1988) 36 DLT 294 : (1988) ILR Delhi 153 : (1989) 1 LLJ 584

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : R.M. Bagai and Ashok Aggarwal, for the Appellant;

Judgement

P.K. Bahri, J.

(1) This writ petition has been brought under Articles 226 & 227 of the Constitution of India seeking quashment of order April 16, 1987, made by respondent No. 1.

(2) The facts, in brief, are that the petitioner is running Super Bazars and respondents 2 to 67 are its workers. They were being paid wages on piece-rate basis for packing of various commodities being sold at various branches of Super Bazars owned by the petitioner. Respondents 2 to 67 had filed petitions u/s 33 C(2) of the Industrial Disputes Act (for short "the Act") claiming payment of amounts alleged to be due to them on account of weekly holidays. These claim petitions were filed before the Labour Court under the Act. The claim petitions were opposed by the petitioner, inter alia, on the ground that the Labour Court had no jurisdiction to entertain the claims which allegedly arise under The provisions of Delhi Shops and C Establishments Act, 1954, and the claims are also not cognizable u/s 33 C(2) of the Act and more over respondents 2 to 67 were not entitled to any such payments for weekly off days inasmuch as their wages had been fixed in compliance with the notification issued by the Delhi Administration dated December 31, 1979, under the Minimum Wages Act which clearly provided that no, separate .payment is to be made for weekly off days. It

was also pleaded that the claims were barred by time and could be enforced only u/s 21 of the Delhi Shops and Establishments Act (for short "Delhi Shops Act") before the authority constituted under Delhi Shops Act.

(3) The petition is contested by the respondents who have pleaded that their claims are very much covered by the provisions of Section 33 C(2) of the Act and that the said notification issued by the Delhi Administration under the Minimum Wages Act was not applicable to their case and that the provisions of Delhi Shops Act did not bar the jurisdiction, of the Labour Court under the Act to entertain such a claim and that there is no limitation prescribed for bringing the claims u/s 33 of the Act. They also pleaded that even before the filing of the writ petition a final order has been made by the Labour Court on July 23, 1987, allowing the different amounts to respondents 2 to 67. However, it was agreed before me that the petitioner may be allowed to even impugn the said final order in this writ petition because that order has to obviously go if the preliminary order passed by the Labour Court is set aside, it is, indeed, not in dispute that the claim of respondents 2 to 67 put up before the Labour Court was based on provisions of Sections 17 & 18 of the Delhi Shops Act Section 17 contemplates observance of one weekly holiday in every week which is to be treated as a paid holiday. It was clearly mentioned in Section 18 that if an employee is paid on piece rates he shall receive the average of the wages received during the week for a weekly holiday. Counsel for the petitioner has contended that provisions of Section 33 C(2) of the Act did not contemplate entertainment of disputed claims. He has cited *Central Inland Water Transport Corporation Limited Vs. The Workmen and Another*, in which it has been laid down that "a proceeding u/s 33 C(2) is a proceeding, generally, in the nature of an execution proceeding wherein the Labour Court calculates the amount of money due to a workman from his employer or if the workman is entitled to any benefit which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money. This calculation or computation follows upon an existing right to the money or benefit, in view of its being previously adjudged, or, otherwise duly provided for.", do not understand how these observations of the Supreme Court are of any help to the petitioner to show that the claim put up by the respondents before the Labour Court was not of the nature contemplated by Section 33 C(2) of the Act. It has been duly provided in Sections 17&18 of the Delhi Shops Act as to how much amount is liable to be paid for weekly off day. It was only question of computing the amount due to each of the respondents. Hence, there was no question of any determination of the nature of the claim which could preclude the applicability of provisions of Section 33 C(2) of the Act in the present case.

(4) It has been then argued by the learned counsel for the petitioner that in the present case the wages of the respondents have been fixed on the basis of a notification issued by the Delhi Administration, under the provisions of Minimum Wage Act, 1948 copy of which is at page 16 of the writ petition, which notification clearly provided that the daily rates of wages include the wages for

weekly off days for which no separate payment would be necessary. I have gone through this particular notification and find that this notification does not cover the case of respondents 2 to 67 because no minimum rate has been fixed in respect of the wages to be paid on the basis of piece rates. Respondents 2 to 67 admittedly were being paid wages at the different rates of packing commodities as per 100 packets as indicated by the petitioner in its replies to the claim petition, one of such replies being Annexure -P-2". So, these wages of respondents 2 to 67 have not been fixed under the provisions of Minimum Wages Act. Hence, the aforesaid notification of Delhi Administration is not at all applicable. So, there is no merits in this contention also. Counsel for the petitioner has, however, vehemently argued that as the right has been created by the Delhi Shops Act, the respondents could enforce the aforesaid right only by taking resort to the machinery created under the Delhi Shops Act and by implication the provisions of the Act should be deemed to be not applicable to the remedies and reliefs made available by virtue of Delhi Shops Act. He has made reference to the principle of law "generalia specialibus non derogant" which means that the general provisions must always yield to the special provisions if there is contradiction between the two provisions and he has cited State of Gujarat and Another Vs. Patel Ramjibhai Danabhai and Others, Life Insurance Corporation of India Vs. D.J. Bahadur and Others, and State of Bihar Vs. Dr. Yogendra Singh Col (Retired) and Others, . The question of applicability of aforesaid principle of interpretation could arise only if there is any conflict between the provisions of general law with those of special law. Counsel for the petitioner has failed to point out any such conflict between the provisions of the Delhi Shops Act and the Industrial Disputes Act vis-a-vis the claim set up by respondents 2 to 67, rather in the present case the Delhi Shops Act appears to be supplement and complementary to the provisions of the Act. Both these legislations are social legislations for giving succor to the weaker sections of the society. Admittedly, respondents 2 to 67 are covered by the definition of Workman given in the Act and petitioner is the employer engaged in the industry. It was fairly not argued by the learned counsel for the petitioner that the provisions of the Act are not applicable to respondents 2 to 67. His only contention is that as the Delhi Shops Act is a special legislation, so, the same should take precedence over the provisions of the Act particularly when a particular relief has been granted by the special Act, the said relief should be enforced- by taking resort to the machinery created under the special Act. However, as already mentioned by me above, the general principle that the special should overrule the general law is not applicable to the present statutes inasmuch as there is no conflict between the provisions of Delhi Shops Act and the Industrial Disputes Act with regard to the nature of the claim set up by respondents 2 to 67 before the Labour Court.

(5) The matter is not rest integra because a similar question was raised before a Division Bench to this Court in *bharat Steel Tubes Limited v. Labour Court & Another*, 1985(2) Elj (L&S) 169 (Min)(5). In the said case, the facts, in brief,

were that a claim had been put up u/s 33 C(2) of the Act for recovery of overtime payment. The payment of overtime is provided under the Delhi Shop's Act. It was contended before the Division Bench that after a claim like overtime arises from the provisions of Delhi Shops Act, then the machinery provided under the said Act alone can be resorted to even if the employee is a workman covered under the Industrial Disputes Act. This contention was repelled and following the judgment given by this Court in two other cases, it was held that the provisions of Section 33 C(2) of the Act can be taken resort to even through the Delhi Shops Act also gives a right to the workman to put up the claim before the machinery established under the Delhi Shops Act. I have no option but to follow the ratio laid down by the Division Bench in the aforesaid case. Apparently, the provisions under the Delhi Shops Act and the Industrial Disputes Act are meant for weaker sections of the society and they are not working in any contradictory fields so as to hold that one legislation would supersede the other legislation. In *Delhi Consumers Cooperative Wholesale Stores Ltd. v. Secretary, Labour and Others*, (1983) 63 Fjr 14(6), it was clearly, laid down that the Delhi Shops Act is complementary to Industrial Disputes Act and it does not exclude the applicability of any other Act. It was also held that the Industrial Disputes Act is a specific Act dealing with the rights and obligations of the employer and employee and once the workmen are covered by the Industrial Disputes Act the provision of Industrial Disputes Act would prevail over the provisions of any other Act in case of conflict. However, it was held that there is no conflict between the Delhi Shops Act and the Industrial Disputes Act which supplement each other. So, I do not find any merit in this contention as well.

(6) It has been further argued by the learned counsel for the respondent that the claims made by the respondents were barred by limitation inasmuch as under the Delhi Shops Act the claims should have been brought in within one year of the accrual of the dues whereas the claims in the present case relate to periods varying between 10 years or less. It is now settled law that the provisions of Limitation Act, 1963, are not applicable to the claims brought u/s 33 C(2) of the Act. A similar contention was raised in the case of *Bharat Steel Tubes Ltd.* (supra) but the same was negated. The Supreme Court has consistently taken the view that there is no period of limitation for bringing a claim u/s 33C(2) of the Act. (See *Bombay Gas Co. Ltd. Vs. Gopal Bhiva and Others*, , *Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others*, , *Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc.*, , *The Management of State Bank of Hyderabad Vs. Vasudev Anant Bhide etc.*,) and *Nityananda, M. Joshi and Others Vs. Life Insurance Corporation of India and Others*, . It has been held that the provisions of Article 137 of the Limitation Act would apply to the applications being made in a court and not to the applications being made before a Labour Court under the Industrial Disputes Act. There was a conflict of law with regard to the interpretation of Article 137 of the Limitation Act, 1963, as to whether that would apply only to the applications being made under the provisions of CPC or would also apply to the applications to be made

under any other law. That has been now set at rest by the Supreme Court in the judgment reported as *The Kerala State Electricity Board, Trivandrum v. T. K. Kunhaliumma*, Air 1977 Sc 283(12), by laying down authoritatively that Article 137 of the Limitation Act, 1963, would apply to all petitions or applications made under any statute and not merely to the applications arising under the Code of Civil Procedure. But it is made clear in the aforesaid judgment of the Supreme Court that Article 137 would apply only to the applications being moved in court and not before any Tribunal like the Labour G Court constituted under the Industrial Disputes Act. So, the claims of respondents 2 to 67 cannot be held to be time barred.

(7) Lastly, it has been argued by the learned counsel for the petitioner that there was no material or evidence available before the Labour Court to allow the claims of respondents 2 to 67 because it is not proved as to whether respondents 2 to 67 have worked for minimum number of day in every week so as to be entitled to be paid for weekly off day. The petitioner had taken up the plea before the Labour Court that the petitioner had not preserved the record of the period prior to 1981. The Labour Court had based its findings in its award on the material produced by respondents 2 to 67 which was but rebutted by the petitioner. The mere fact that the petitioner is not having the old record, does not mean that the Labour Court was not justified in basing its findings on the material produced by respondents 2 to 67.

(8) So, I find no merit in this writ petition which I. hereby, dismiss but in view of the peculiar facts of the case I leave the parties to bear their own costs.