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Court : Chennai

Decided On : Sep-21-1956

Reported in : 1957CriLJ399

Judge : Somasundaram, J.

Appellant : Vasudeva Bhat and anr.

Judgement :
ORDER

Somasundaram, J.

1. This is a revision against the conviction of the petitioners for an offence under Section 41 (1) read with Section 45 of the Madras Shops and Establishments Act, XXXVI of 1947. The petitioners are the Joint Managers of the Joint Booking office at Kodailtaail. They dismissed an employee by name Venkatesa Bhat, who was examined as P.W. 2 in the case by an order dated 16th June 1953. Ex. P. 2. This was communicated to the Commissioner for Workmen's Compensation. P.W. 2 appealed to the Commissioner against the order of these employers and the Additional Commissioner after holding an enquiry held by his order dated 25th September 1954 that the dismissal of P.W. 2 was not valid and also communicated the same to the office of the accused.

Notwithstanding the decision of the Commissioner, the accused did not reinstate P.W. 2 and this prosecution is launched therefore for not complying with the order

of the Commissioner. The Sub-Magistrate, without going into the question as to whether the dismissal of P.W. 2 was justified or not, held that the decision of the Commissioner according to the provision of Clause (3) of Section 41 is final and therefore the criminal court cannot go into the question again and find the petitioners guilty of the offences charged. The appellate court acquitted the petitioners of the offence under Section 41 (3), but confirmed the conviction under Section 41 (1).

2. The main question in this revision is whether the court can refuse to go into the question about the legality or illegality of the dismissal of P.W. 2. Section 41 of the Act provides the procedure to be adopted by the employer before he dismisses an employee, that is under Clause (1). Under Clause (2) a right of appeal is given to the authority prescribed under the Act, that is, the Commissioner of Labour. Under Clause (3) the decision of the appellate authority shall be final and binding on both the employer and the person employed. It is the provision of this Clause (3) which has given trouble in this case. The question is whether on account of this clause, the court can refuse to go into that question. In connection with this, it is necessary to compare the provisions of Section 51 of the same Act. Section 51 is as follows;

If any question arises whether all or any of the provisions of this Act apply to an establishment or to a person employed therein or whether Section 50 applies to any case or not, it shall be decided by the Commissioner of Labour and his decision thereon shall be final and shall not be liable to be questioned in any court of law.

Under Section 51 therefore the decision given by the Commissioner of Labour cannot be questioned in a court of law. There is no such prohibition in Clause (3) of Section 41. It merely lays down that the decision is final. It does not say that such a decision shall not be questioned in a court of law. Where in the same Act the decisions under two sections are final with respect to the matters mentioned therein and in one of the sections it is specifically stated that that decision cannot be questioned in a court of law and in the other section there is no such prohibition, the ordinary and legitimate inference is that where there is no such prohibition in a section the court of law can question the legality, although the

decision may be final as between the parties. There are other Acts in which such decisions of statutory bodies are made final and the question as to whether the finality of the decision affects the jurisdiction of the courts to go into the legality of it has been considered in several decisions of this Court.

3. In Ramaswsmi lyengar v. Sivakasi Municipality 1936 M.W.N. 221 (A), a Bench of this Court consisting of Pandrang Row and Venkataramana Rao JJ. was considering a prosecution under the District Municipalities Act for non-payment of profession tax. The provisions of the District Municipalities Act laid down that under certain conditions where an assessment has not been objected to or on objection the assessment has been confirmed, it is treated as final, and yet when a prosecution has been launched for non-payment of the profession tax, it was held by the Bench that,

The said finality is only for the purpose of the Act and it has been held that the said finality would not prevent a person from impeaching the legality or validity of the assessment in a civil court : So far as the right of the municipality to levy any tax is concerned, they must strictly conform to the provisions of the Act. If they do not do so, they have no right to enforce the tax. In fact Section 354 says that a charge can be validly imposed if the provisions of the Act are substantially complied with. If not, there is no jurisdiction to levy it. The imposition of a tax on a person not taxable under the Act would be a substantial disregard of the provisions of the Act and in a suit for refund of the tax it is open to a person to prove that he is not taxable under the Act. We do not see why a different principle should apply in the case of a criminal prosecution and how a person can be convicted of a criminal offence for non-payment of a sum which he is not legally liable to pay.

The Bench followed the decision of Krishnan J., in - 'Smith in re', 45 M.L.J. 731 : (AIR 1924 Mad 389)(B), which decision was approved of by Devadoss J., in - 'Chairman, Municipal Council, Chidambaram v. Tiruparayana Aiyangar' I.L.R. Mad 876 : AIR 1928 Mad 847 (C).

4. The decision in 1936 Mad WN 221 (A), was followed by Govinda Menon J., in - 'Narasingamuthu Chettiar v. King' 1948 Mad WN Cr 138 : AIR 1949 Mad 116(D). That was a case under the General Sales-tax Act. According to the provisions of

Clause (4) of Section 11 of the Act every order pending by appeal under that section shall be final. In that case the assessee was prosecuted for non-payment of tax and Govinda Menon J., after referring to the decision in 1936 M.W.N. 221 (A), and to another decision in - 'Public Prosecutor v. Kondappa 1947 M.W.N. 325 : 1947 M.W.N. Cr 65 : AIR 1947 Mad 397(E), a judgment of Yahya Ali J., held that the prosecution must establish a prima facie case of the liability to pay tax.

5. It is, therefore, clear from the above decision that although under the Act, the decision of a particular authority may be said to be final, . still when a prosecution is launched for the disobedience of the provisions of the section, it is open to the criminal court to go into the question whether the act of the accused is an offence or not. It is not bound by the mere finality of the decision given by the particular authority mentioned in the section. Both the lower courts have therefore erred in not permitting the accused to go into that question and the conviction therefore has got to be set aside.

6. The conviction and sentence of the petitioners for the offence under Section 41 (1) are therefore set aside. The petitioners are acquitted and the fine, if paid, will be refunded. The dismissed employee will have his remedies in a civil court.