

C.S. Gajendran and ors. Vs. the Management of Sri Gandiban Bus Service, Chingleput by Proprietor, A. Vedachala Mudaliar and ors.

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Court : Chennai

Decided On : Jul-03-1968

Reported in : (1969)2MLJ392

Appellant : C.S. Gajendran and ors.

Respondent : The Management of Sri Gandiban Bus Service, Chingleput by Proprietor, A. Vedachala Mudaliar and ors.

Judgement :

ORDER

M. Natesan, J.

1. These Writ Appeals from the common order of our learned brother Srinivasan, J , on two writ petitions for certiorari arise out of proceedings before the Labour Court, Madras, under Section 20 of the Minimum Wages Act, Central Act XI of 1948 The workers under two transport services, Sri Gandiban Bus Service and Sri Shanmughananda Bus Service through the Secretary, Chingleput District Motor Workers Union, filed applications under the Minimum Wages Act asking for directions by the Labour Court for the payment of the difference in wages payable to the workers of the two bus services There was considerable delay in filing the petitions, and applications were filed for condonation of the delay The period for

which condonation was claimed ranged from 12 to 165 months, while an application under the Act has to be made within six months of the day when the wages became due. The claim against Sri Gandiban Bus Service comes to about Rs. 2,63,260 and the claim against Sri Shanmughananda Bus Service comes to about Rs. 1,21,755, 35 workers being involved in the first case and 20 workers in the second case. The substantial ground on which condonation was claimed by the workers was that the workers were kept in ignorance of their rightful dues and that the managements had failed to give publicity to the minimum wages fixed by the Act by displaying notices as required under the relevant rules. The workers claimed that, as they were ignorant of their rights and the managements themselves were responsible for keeping them ignorant, they were entitled to have the delay in making the applications to the Labour Court for the difference in wages excused. The Labour Court took the view that, though the claim of the workers related to about 10 years from 1952 to 1962, the interest of the Workers involved was much, and, if the averments in their applications were true, then the two managements had deliberately disregarded the provisions of the Minimum Wages Act and failed to give effect to the provisions of the Act continuously for a period of over several years. As they were at fault it was said that they could not take advantage of their own fault and use it as a ground to non-suit the workers. The Labour Court observed that it was the duty of the managements to display notices and inform the workers of the rates fixed under the Minimum Wages Notifications. Remarking that not only the two bus services in question but other services in the State had failed to implement the provisions of the Minimum Wages Act it considered it proper that the question of non-compliance with the provisions of the Act be enquired into in full and not shelved for the reason that the petitions were belated. The management had opposed the petitions for condonation of the delay inter alia on the ground that the applicants were bound to explain the delay running to nearly ten years and the explanation submitted of ignorance of their rights would not avail them. The managements pointed out that it was only in August, 1961, workers moved the matter raising through the Chingleput District Motor Workers Union an industrial dispute but the Union had been started on 10th April, 1959 itself with Sri K. Veeravaghava Reddy, Advocate of Chingleput as Vice-President and Sri M. A. Wahid, Journalist, as Secretary and that it could not be

pleaded that with an Advocate as Vice-President and an experienced labour leader Sri M. A. Wahid as Secretary, the workers were not aware of their rights or were prevented by fear of dismissal from asserting their rights till August, 1961. After initiating the claim as an industrial dispute in August, 1961, the Union did not press the question reserving its right to raise it in the appropriate forum for relief. The applications in question were preferred only in March, 1962.

2. It is the condonation of the delay over-ruling the objections of the managements that led to the managements coming to this Court for relief by way of writ of certiorari. The excuse put forward for the delay is allegation of ignorance of rights conferred under law. Our learned brother Srinivasan, J , after noticing that bona fide ignorance of law may in certain circumstances constitute sufficient cause for condonation of delay referred to the absence of a finding that the alleged set of facts relied upon by the workers existed which justifiably could lead to the inference that the workers were ignorant of the law. He then observed:

Unless there is a finding that the workers were ignorant of their lawful rights or were prevented from putting forward their claims by reason of other circumstance, the decision that ignorance of the law could be regarded as a sufficient excuse in certain circumstances cannot apply.

In *Murugan Transport v. Radhakrishnan* I.L.R. (1961) Mad. 523 : (1961) 1 M.L.J. 251 : (1961)1 L.L.J. 283, Ramachandra Iyer, J , (as he then was), in a case under the Minimum Wages Act where the application had been preferred nearly 2 1/2 years after the wage had accrued due and became payable, observed:

Whether in a particular case a bona fide ignorance of law could be excused or not is one for the authority to decide and not a matter for interference in these proceedings (Writ).

Referring to this citation the learned Judge, Srinivasan, J., remarked:

As the passage cited above indicates, the mere allegation of ignorance of law is not sufficient. It is to be supported by a reference to surrounding circumstances before the authority could accept that as sufficient excuse within the meaning of

the section. There is no finding in that regard anywhere in the order of the Labour Court.

It was contended for the managements before the learned Judge, that apart from the above vitiating feature the Tribunal would have no jurisdiction to extend the time beyond a period of three years from the date on which wages accrued due. It was submitted that the claim for wages would be barred by limitation under Article 102 of the Limitation Act, 1908 and that the Minimum Wages Act had deliberately fixed a shorter period of six months and that the provision for condonation of the delay found in Sub-section (2) of Section 20, when the claim was made after six months, cannot be construed as giving an unlimited power to the authority to take cognizance of claims after the lapse of three years from the accrual of the cause of action. This aspect of the matter does not appear to have been placed before the Labour Court. Our learned brother was inclined to agree with this view of the law also. The learned Judge rejected the contention on behalf of the workers that under Rule 22 of the Madras Rules under the Minimum Wages Act the managements were enjoined to display notices, containing the minimum rates of wages fixed under the Act together with abstracts from such of the provisions of the Act and the Rules made thereunder, as the Government may specifying that behalf the rules made thereunder and other particulars. The learned Judge would hold that even assuming that the rule laid a duty on the managements to display such notices he could not agree that the failure to comply with the rule could be relied upon as a step taken by the managements in keeping the workers in ignorance of their rights. Holding that the Labour Court had merely rested upon allegations which had been contradicted and had not found as a question of fact on any evidence that was placed before it that the set of circumstances relied upon by the workers to account for the delay in filing the applications did in reality exist the learned Judge found that the orders of the Labour Court were vitiated both by errors of law and errors of jurisdiction. The learned Judge would also hold that the Labour Court had no jurisdiction to excuse the delay in respect of a period beyond the periods of limitation under the Indian Limitation Act.

3. Having heard learned Counsel on both sides we see no reason for not affirming the order of the learned Judge Srinivasan, J., quashing the impugned order of the

Labour Court. The learned Judge while quashing the order of the Labour Court has left it open for the Labour Court to examine the question afresh and reach appropriate conclusion. We have not the least hesitation in condemning the order of the Labour Court as ex facie unsustainable. The substantial ground on which the enormous delay has been condoned is the view that if the petitions should be thrown out for the reason that they had not been filed within a period of six months it would automatically amount to a negation of the rights of the workers under the Minimum Wages Act. Such an approach cuts at the root of all laws of limitation. To say that a defaulting party cannot plead the law of limitation is not a principle applied in our jurisprudence. Laws of limitation have an honoured place in our jurisprudence. They are founded on considerations of public policy and expediency to secure quiet and repose, and prevent oppression.

4. We shall not examine here the correctness or otherwise of the contention for the managements that, while three years had elapsed since the wages became due there could be no condonation of the delay and that no claim beyond three years from the date of the accrual of the wages could be entertained by the Labour Court under any circumstances. We shall leave open the question whether in proceedings under Section 20 of the Minimum Wages Act the provisions of the law of limitation can be taken note of to bar claims as barred under the general law.

5. The Minimum Wages Act, a Central Act, came into force in March, 1948. The public motor transport was brought within the ambit of the Act in March, 1952 itself. Under the first proviso to Section 20 (2) of the Act all claims arising out of the payment of less than the minimum rates of wages or in respect of payment of remuneration for days of rest or for overtime work etc. shall be presented within six months from the date on which the minimum wages or the amount became payable. The second proviso to the sub-section which provides for excusing delay runs thus:

Provided further that any application may be admitted after the said period of six months when the applicant satisfies the Authority that he had sufficient cause for not making the application within such period.

Applications under Section 20 are thus governed by a limitation period of six months and the proviso set out above is in substance similar to the provision in Section 5 of the Limitation Act. It is well settled that when a question of condoning delay under Section 5 of the Limitation Act arises, the party has to satisfy the Court that he had sufficient cause for not preferring the proceeding within the prescribed time, for the whole of the period of the delay. Every day's delay has to be explained. Construing a similar provision under the Payment of Wages Act, the Supreme Court in *Sitaram Ramacharan etc. v. M.N. Nagarshana and Ors.* : (1960)ILLJ29SC , held that the corresponding proviso in the Act could be availed of only by proving sufficient cause for the entire delay till the presentation of the application. In *Lonand Gram Panchayat v. Ramgiri Cosavi* (1967) 2 L.L.J. 780, a case under Section 20 (2) of the Minimum Wages Act the Supreme Court observed:

The authority has a discretion to condone the delay in presenting the application provided sufficient cause for the entire delay is shown to its satisfaction. This discretion like other judicial discretions must be exercised with vigilance and circumspection according to justice, commonsense and sound judgment. The discretion is to know through law what is just.

Pointing out that the wording of the second proviso to Section 20 (2) is similar to the provisions of Section 5 of the Indian Limitation Act, the Supreme Court referred to the decision of this Court in *Krishna v. Chathappan* I.L.R. (1890) Mad. 269, wherein it is indicated how the discretion under Section 5 of the Limitation Act, should be exercised. This Court had then observed:

We think that Section 5 gives the Courts a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised-upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant.

The Supreme Court observes that the second proviso to Section 20 (2) we are now concerned with, should receive a similar liberal construction and points out

that, while the High Court will not review the discretion of the authority judicially exercised, it may interfere if the exercise of the discretion is capricious or perverse or ultra vires. Having regard to the basis on which delay was condoned by the Labour Court we cannot agree with the argument of learned Counsel for the workers that this is a case in which this Court ought not to have interfered with the exercise of discretion by the Labour Court. Clearly there has been no judicial exercise of discretion in this case and the governing principles have been ignored. The error is apparent on the face of the record and the Labour Court has acted arbitrarily in not examining the circumstances and finding whether the workers were guilty of any negligence or inaction that would disentitle them to condonation of the inordinate delay which may, rather than promoting the ends of justice act oppressively.

6. While it is difficult to define precisely the meaning of the words ' sufficient cause ' and the scope of the expression cannot be crystallised by any rigid definition, the cause pleaded must be relevant and have relation to the delay. Of course, when the sufficiency of the cause is made out, the length of the delay may not count. In the present case the Tribunal will have to find that the workers could properly and legitimately plead ignorance of their lawful rights and that circumstances existed which could lead to the inference that the workers were bona fide unaware of their rights under the law. There may be other circumstances which can be regarded as sufficient excuse for not preferring the applications in time. These are matters to be judicially considered by the Tribunal which is called upon to condone the delay. Ignorance of rights and remedies conferred under the law must be bona fide. Bona fides and good faith may in certain circumstances get negated by inaction, carelessness or negligence. The Labour Court has to consider in this case the plea of ignorance or unawareness of the rights by the workers prior to the steps taken by them for the formation of the Union in 1949. An application has to be made within six months of the accrual of the wages and the Union in this case was started on 10th April, 1959. The Court has to consider whether even if a case is made out for condonation of the delay prior to the formation of the Union, a valid excuse could be found after the formation of the Union and there again for what period. These are questions which have to be determined in relation to the evidence placed before the Labour Court whether by way of affidavits or oral and

documentary evidence.

7. We agree with the view of Srinivasan, J., that by reason of the managements failing to comply with the requirements of Rule 22 of the Madras Rules under the Act the workers were not kept in ignorance of their rights and their ignorance was not referable to the conduct of the managements. Rule 22 of the Central Rules framed under the Act runs thus:

Notices in Form 9-A containing the minimum rates of wages fixed, together with abstracts from the Act, the rules made thereunder and the name and address of the Inspector shall be displayed in English and in a language understood by the majority of the workers in the employment, at such place as may be selected by the Inspector and shall be maintained in a clean and legible condition. Such notices shall be displayed on the notice boards of all sub-divisional and district officers.

The corresponding rule under the Madras Rules runs thus:

Notices containing the minimum rates of wages fixed under the Act together with abstracts from such of the provisions of the Act and the rules made thereunder, as the Government may specify in this behalf, the rules made thereunder, and the name and address of the inspector, shall be displayed in English and in a language understood by the majority of the workers in the employment at such place as may be selected by the Inspector and shall be maintained in a clear and legible condition. Such notices shall also be displayed on the notice boards of the officers of the Collectors, Revenue Divisional Officers, Tahsildars, and Deputy Tahsildars in all the districts. In the case of employment in Agriculture, the notices shall also be displayed in all the District Offices of the Agricultural Department and in the case of any other scheduled employment, such notices shall also be displayed in all the District Offices of the Industries and Labour and Factories Departments.

The rules require notices to be displayed at such places as may be selected by the Inspector. The rules do not in terms fix upon the managements the liability to display such notices. The notices have to contain the name and address of the

Inspector and the place for display has to be selected by the Inspector. We may take it that the management could be called upon to display such notices at specified places by the Inspector but the contention of the managements is that such directions have not been issued by the Inspector. The notices, besides at the places selected by the Inspector, have to be displayed on the notice boards of public offices like that of the Collector, Revenue Divisional Officer, Tahsildar etc. It is manifest that without orders from the appropriate authority the managements cannot go and display notices in these public offices and we are in entire agreement with the view of Srinivasan, J , that the natural inference from this part of the rule is that the authorities concerned with the enforcement of the Minimum Wages Act should take steps to cause such notices to be displayed in the public offices. Even assuming that there was a duty on the managements to display these notices clearly, that standing by itself cannot be relied upon as a step taken by the managements in keeping the workers in ignorance of their rights. As the questions whether there was sufficient cause for condonation of the delay and whether the delay beyond 3 years could be condoned are being left to be re-considered by the Labour Court, it is unnecessary to consider the matter in greater detail. It has been argued for the workers that they were afraid to agitate the matter and that it was only after the formation of the Union they could have the matter taken up. It is for the Labour Court to consider whether there are grounds for any such inference and whether, if the case of the workers is found, the entire period of delay is accounted for properly. It is urged for the workers that this is a social legislation and the position of the workers has to be kept in mind by the Labour Court when it is called upon to condone the delay. It may be that having regard to the position of the parties a liberal view has to be taken, but all the same the Tribunal cannot absolve itself of its duty to keep the scales even and exercise judicial discretion. It is made clear that the workers and the managements are free to urge their respective contentions before the Labour Court as to the applicability of the Limitation Act for an outer limit in the matter of condonation of delay. Both the parties may lead evidence if they desire on the other question at issue, namely, the sufficiency* of the cause. While confirming the order of our learned brother, Srinivasan, J , quashing the orders of the Labour Court in I.A. Nos. 211 and 212 of 1962, under Article 227 of the Constitution we direct the labour Court to

take up the proceedings and reconsider the applications for condonation of delay on their merits in the light of our observations herein. Subject to the reservations provided herein the Writ Appeals are dismissed. There will be no order as to costs.

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