

In Re: Shyamali Roy

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SooperKanoon Citation : sooperkanoon.com/874707

Court : Kolkata

Decided On : Aug-30-1991

Reported in : 96CWN522,(1994)IIILLJ699Cal

Judge : Mitra, J.

Acts : West Bengal Shops and Establishments Act, 1963 - Sections 2(13) and 4(1)

Appeal No. : No.

Appellant : In Re: Shyamali Roy

Advocate for Def. : C.R. Chakraborty, Adv.

Advocate for Pet/Ap. : Birendra Kr. Bhowmick, Adv.

Judgement :

Mitra, J.

1. The short but interesting question involved in this case is, whether an employee of a Street Milk Depot/Booth under the authority of the Milk Commissioner, West Bengal comes within the purview of the West Bengal Shops and Establishments Act, 1963.

2. The facts of the case, inter alia, are that the petitioner filed an application in Form No. 'N' under the West Bengal Shops and Establishment Act, 1963 for recovery of wages for the period from 18.2.1981 to 13.4.1981 as leave wages and from 14.4.1981 to 30.4.1981 as earned wages amounting to Rs. 140/- and compensation amounting to Rs. 1,400/- being 10 times of the due wages treating such non-payment of wages as deduction of wages, against the Milk Commissioner, West Bengal. Such application was filed on 8th of December, 1982. Notice in Form No. 'O' under the West Bengal Shops and Establishment Rules, 1964 was duly served upon the Milk Commissioner, West Bengal who appeared and opposed the said application of the petitioner both on the ground of limitation and also on the ground of maintainability. It was contended inter alia on behalf of the Milk Commissioner, West Bengal that under the law the petitioner should have filed such application within 6 months from the date when the deduction of wages had been made or from the date as referred to in Sub-section (1) of Section 14 of the West Bengal Shops and Establishments Act, 1963 as the case may be, and admittedly the application having been filed on 8th of December, 1982 claiming for wages from 18.2.81 to 30.4.81, was time-barred. The second contention on behalf of the opposite party was that since the petitioner worked in an office of the State Government, the West Bengal Shops and Establishments Act, 1963 would not be made applicable so far as the petitioner was concerned in view of the specific provisions of Section 4(1) of the said Act. It was, however, contended on behalf of the petitioner before the authority concerned that since he was appointed to work at a Milk Booth at Amherst Street, where commercial transactions took place, such booth could not be held to be an office of the State Government and as such his application was very much maintainable under the Shops and Establishments Act, 1963. The referee, before whom the said application was heard, however, by his order dated 18th July, 1983 rejected the same, holding inter alia, that the application was time-barred and the petitioner did not also file any application for condonation of delay and the aforesaid Act was not applicable in the case of the petitioner. An appeal against the said order was preferred by the petitioner in the Court of Small Causes of Calcutta being W.B.S.E.A. No. 57 of 1983 and the learned Chief Judge, Court of Small Causes, Calcutta by his order dated 18th July, 1987 dismissed the said

appeal by confirming the findings of the referee. An application under Section 115 of the Code of Civil Procedure read with Sections 5 and 12 of the Limitation Act, 1963 has been filed by the petitioner challenging the said appellate order.

3. So far as the delay in filing the present revisional application is concerned, the petitioner sought to explain the delay in paragraph No. 8 of the application and going through the averments made therein, it appears to me that the petitioner has been able to explain such delay effectively. Accordingly, the delay in moving the present revisional application is condoned.

4. Let it be seen now whether the revisional application has got any merit. Section 14 of the aforesaid Act deals with the payment and recovery of wages. The relevant sub-sections of the said Section 14 namely Sub-sections (1) and (2) are quoted below for our purpose:-

'(1) All wages payable to a person employed in a shop or an establishment shall be paid not later than the tenth day of the month immediately succeeding that in respect of which such wages are payable.

(2) Where any deduction has been made from the wages of any person employed in a shop or an establishment or any payment of wages to such person has not been made within the date referred to in Sub-section 1) such person may, within a period of six months from the date on which the deduction from the wages was made or from the date referred to in Sub-section 1), as the case may be, make an application to such officer or authority as the State Government may by Notification, appoint in this behalf for an order under Sub-section 3):

Provided that an application under this section may be admitted after the said period of six months if the applicant satisfies the officer or authority that he had sufficient cause for not making the application within such period.'

5. From the above provisions of Section 14(1), it is thus clear that all wages payable to a person employed in a shop shall be paid not later than the tenth day of the month immediately succeeding that in respect of which such wages are payable, and Sub-section 2) states, inter alia that where any deduction from the

wages of any such person was made or where payment of wages to such person was not made within a period of six months from the date when such deduction was made or from the date when such wages was not paid, make an application before the authority concerned for recovery of such wages. Proviso to subsection (2), however, gives power to such authority to condone the delay in making such application after the expiry of the said period of six months, on sufficient grounds being shown.

6. The petitioner filed the application for recovery of wages as provided in Section 14(2) of the Act on 8th December, 1982 praying for condonation of delay on the ground of financial crisis. The referee, however, decided the question of limitation against the petitioner solely on the ground that he had not submitted any application for condonation of delay and the Appellate Court also confirmed the said finding of the referee holding inter alia that there was no material placed before the referee to satisfy him that the applicant had shown sufficient cause for not making the application within the period as prescribed under the aforesaid Act.

7. In the present case, it would appear from Annexure-'A' to the revisional application that the Milk Commissioner, West Bengal, by his Memorandum dated 21st of May, 1982 informed the petitioner that salary for the period from 18.2.1981 to 13.4.81, therefor, was made by the authority concerned only on 21st May, 1982 as would appear from Annexure-'A'. Undoubtedly, the petitioner ought to have made the application within the statutory period as provided in Section 14(2) of the aforesaid Act for recovery of her wages alleged to have not been paid as per the provisions of the said Section 14(1) but the petitioner had not done the same and accordingly, her such application filed on or about 8th December, 1982 was admittedly time-barred. Again if 21st May, 1982, being the date of refusal by the authority concerned to pay the petitioner's salary as would appear from Annexure-'A' be taken to be the starting point of limitation as per the provisions of Section 14(2), even then the petitioner's application for recovery of wages filed on 8th December, 1982 would be out of time. The petitioner, however, in her application, had sought to explain the delay referring to her adverse financial condition. Accordingly, the finding of the referee that the petitioner had not: made any application for condonation of delay is wrong and so also that of the lower

appellate Court that nothing was produced before the referee to prove that the petitioner was prevented by sufficient reasons for not: filing the application in time. Considering the facts and circumstances, and also applying the principle of law as enunciated by the Supreme Court regarding the liberal interpretation of Section 5 of the Limitation Act, 1963 in the case of Collector, Land Acquisition, Anantnag and Anr. v. Mst. Katiji and Ors. : (1987)ILLJ500SC , in, my view, the petitioner had explained the reasons for filing the application out of time before the referee and the delay in filing such application accordingly, should have been condoned and it is thus condoned.

8. So far as the other finding of the; referee as well as of the lower appellate Court that the petitioner's case was not covered under the West Bengal Shops and Establishments Act, 1963 inasmuch as, since the petitioner worked in an office of the; State Government, the said Act would not apply in view of the provisions of Section 4(1) of the Act is concerned, in my view such finding is also erroneous because of the reasons given hereinafter.

9. Section 2(13) of the West Bengal Shops and Establishments Act, 1963 defines 'shop' as follows:

'(13) - 'shop' means any premises used wholly or in part for the sale of services to customers or for the wholesale or retail sale of commodities or articles, either for cash or on credit, and includes any offices, store-rooms, godowns or warehouses whether in the same premises or elsewhere, used in connection with such sale or with the storage of commodities or articles for the purpose of such sale: and also includes such other class or classes of premises as the State Government may, after taking into consideration the nature of the work carried on there, by notification, declare to be shops for the purposes of this Act, but does not include an establishment'.

Explanation : If any doubt arises as'-to whether any premises is a shop or a commercial establishment or an establishment for public entertainment or amusement, the question shall be referred to the State Government by the registering authority suo motu or on application and the decision of the State Government thereon shall be final'.

10. According to the aforesaid definition, therefore, a shop is to be taken to mean a premises where trade or business is carried on in the shape of sale of services or commodities or articles to customers. It is rather axiomatic that in all trades it is the buying or selling which is going on in one form or the other in present or in future or even on speculative basis. But in a shop the buying and selling takes place at the premises or in other words on the spot for cash consideration or may be barter, or on credit. The significant factor is the availability of the goods there and then and so also of services. The crux of the definition of the word 'shop' is that the business or trade vis-a-vis the shop is the actual buying and selling of goods and that must take place in the premises.

11. No doubt, commercial transactions take place at the Milk Depot where the petitioner is employed, as the petitioner delivers milk to the card-holders who have already paid the amount and even accepts money from them for the purpose of renewal of their cards and such fact has also been observed by the referee in his decision as he had held inter alia, that it is no denying that commercial activities are carried on in the Milk Depot, i.e. consumers pay money for purchasing the milk. At the same time, the referee and the lower appellate Court have rejected the petitioner's application on the ground that since the petitioner was employed in an office of or under the State Government, she was not entitled to get protection of the West Bengal Shops and Establishments Act, 1963 because of Clause (a) of Sub-section (1) of Section 4 of the said Act shall not apply to offices of or under the Central or State Government, as both according to the referee and the lower appellate Court, the office of the Milk Commissioner is exempted from the operation of the aforesaid Act since, such an office is an office of or under State Government.

12. The office of the Milk Commissioner, West Bengal forms part of the Milk Directorate and the employees under the Milk Commissioner are employees of such Directorate and the Milk Commissioner is the supreme authority so far as such employees are concerned including employees in Milk Booths and/or Depots. The Milk Directorate: may be a body over which the State Government may have some or even effective control, but a Milk Booth or Depot is not an office of or under the State Government because such office is neither run by the: State

Government itself nor is being run under the direct control of the State Government. In order to be an office of or under the State Government, it either must be one of such offices which is directly owned by the State Government or the office is directly under the control of the State Government. Reference may be made to the decision of the Madras High Court in the case of Madras State Electricity Board v. Commissioner of Labour and Ors. 1960 II LLJ 357 wherein it was held that the clerical staff of the Madras State Electricity Board were covered under the Madras Shops and Establishments Act. Reference may also be made to the case of Canara Bank v. Appellate Authority 1978 I LLJ 324 wherein it was held that even the nationalized banks are not establishments owned by the Government and employees of such banks are not exempted from the provisions of Shops and Establishments Acts and as such banks are neither offices of nor under the Central Government.

13. Thus in my estimation, the petitioner being in employment in a Milk Booth or Depot under the Milk Commissioner, does not fall within the exempted category as provided under the provisions of Section 4(1)(a) of the West Bengal Shops and Establishments Act for the reasons and analogies as stated in the preceding paragraphs. The orders of the referee and also of the lower appellate Court are accordingly set aside and the matter is remitted back to the referee for re-hearing of the matter in accordance with the law and in the light of the observations made hereinabove. The referee, however, shall dispose of the said application positively within 10 weeks from the date of receipt of this order. The revisional application is thus disposed of without any order as to costs.

14. Let this order be sent down to the referee forthwith and such decision should be made by the referee after giving prior and sufficient notices to the parties concerned.

Revisional application disposed of.