

Ms.Emjay Constructions. Vs. the Assistant Commissioner and ors.

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Court : Chennai

Decided On : Mar-19-2012

Judge : K.Chandru, J.

Acts : Workmen's Compensation Act, 1923 - Section 30, 10-B, 17, 19, 20; Foreign Exchange Management (FEMA) Act - Section 35

Appeal No. : Writ Petition No.20626 of 2004 and WPMP.No.24838 of 2004

Appellant : Ms.Emjay Constructions.

Respondent : The Assistant Commissioner and ors.

Advocate for Pet/Ap. : Mr.V.Raghavachari, Adv.

Judgement :

ORDER

1. This writ petition came to be posted on being specially ordered by the Honourable Chief Justice, vide order dated 15.03.2012. In this case, the petitioner, who is the Engineering Contractor engaged by the fourth respondent viz., Neyveli Lignite Corporation aggrieved by the communication sent by the Deputy Commissioner for Labour, Labour II, Chennai-6 (wrongly shown as Assistant Commissioner of Labour II in the cause title) dated 16.03.2004 directing the petitioner to deposit a sum of Rs.4,25,475/- by issuing a cheque drawn in favour of the Commissioner within 30 days, failing which appropriate interest will be levied

on delayed payment has come before this Court.

2. In the communication dated 16.03.2004, which was impugned in the writ petition, it is stated that one Chellapandian, who was engaged for the construction of water treatment plant by the Neyveli Lignite Corporation capable of producing 60 million liters per day died in the course of accident arising out of his employment dated 13.12.2003. When the fatal accident was reported to the Commissioner, on getting the records, he passed an order computing a sum of Rs.4,25,475/-.

3. The writ petition was admitted on 27.09.2004. In the application for interim stay, the counsel for the petitioner stated that the amount towards compensation as ordered by the first respondent was already paid by the fifth respondent, which was also a Government of India company to the sixth respondent, who is the father of the deceased Chellapandian. In the light of the said statement, interim stay was granted.

4. The contention raised by the petitioner in this writ petition was two fold. The first contention is that the first respondent-Deputy Commissioner of Labour II has no jurisdiction to straight away pass the award of compensation without adjudicating the issue by not only making them liable to pay the compensation but also fixing the liability of compensation. The second contention was that the work was allotted by the Neyveli Lignite Corporation and therefore, the jurisdiction regarding determination of compensation vest only with the authorities under Central Government and not under the State Government.

5. Before ordering the compensation, earlier notice was given by the Commissioner on 06.02.2004 asking the employer as well as the claimant to appear with all records. Even otherwise, under the provisions of the Workmen's Compensation Act, 1923, the Workmen's Compensation Commissioner has a three-in-one role viz., that of an investigator, an adjudicator and an executor for enforcing his own orders.

6. In the present case, though it was contended that the impugned order is a final order, in which circumstances, the Act provides for appeal under Section 30 of the

Workmen's Compensation Act, 1923 before this Court, therefore, no writ petition will lie in respect of demand made by the Commissioner, the learned counsel for the petitioner Mr.V.Raghavachari, placed reliance upon the judgment of the High Court of Himachal Pradesh in the case of Sikkim Ayurvedic (Pvt.) Ltd Vs. Pyari Tamangni and Others reported in 1996 3 LLJ Supp 844 to contend that non filing of appeal under Section 30 of the Act, although an alternative remedy was onerous and burdensome, existence of such remedy did not bar the writ jurisdiction of the High Court. However, this Court, both Single Bench as well as Division Bench as a matter, of course held that when the parties have alternative remedy provided under the Act, the writ petition filed against the order of Commissioner is not maintainable. In one such judgment reported in 2002(1)CTC 675 (P.Mariappan Vs. The Deputy Commissioner for Workmen Compensation, Palayamkottai and another), this Court held that writ petition filed in order to avoid compulsory deposit of amount awarded and to overcome period of limitation is not maintainable. As held by the Supreme Court in the case of Raj Kumar Shivhare Vs. Assistant Director, Directorate of Enforcement reported in (2010) 4 SCC 772, merely because, a condition of pre-deposit was imposed, that by itself cannot be a ground to bypass a statutory alternative remedy. In the said judgment, in paragraphs 30 to 35 and 39, it was held as follows:- 30.The argument that writ jurisdiction of the High Court under Article 226 of the Constitution is a basic feature of the Constitution and cannot be ousted by parliamentary legislation is far too fundamental to be questioned especially after the judgment of the Constitution Bench of this Court in L. Chandra Kumar v. Union of India⁷. However, that does not answer the question of maintainability of a writ petition which seeks to impugn an order declining dispensation of pre-deposit of penalty by the Appellate Tribunal.

31.When a statutory forum is created by law for redressal of grievance and that too in a fiscal statute, a writ petition should not be entertained ignoring the statutory dispensation. In this case the High Court is a statutory forum of appeal on a question of law. That should not be abdicated and given a go-by by a litigant for invoking the forum of judicial review of the High Court under writ jurisdiction. The High Court, with great respect, fell into a manifest error by not appreciating this aspect of the matter. It has however dismissed the writ petition on the ground of lack of territorial jurisdiction.

32.No reason could be assigned by the appellant's counsel to demonstrate why the appellate jurisdiction of the High Court under Section 35 of FEMA does not provide an efficacious remedy. In fact there could hardly be any reason since the High Court itself is the appellate forum.

33.Reference may be made to the Constitution Bench decision of this Court rendered in *Thansingh Nathmal v. Supdt. of Taxes*⁸, which was also a decision in a fiscal law. Commenting on the exercise of wide jurisdiction of the High Court under Article 226, subject to self-imposed limitation, this Court went on to explain: (AIR p. 1423, para 7) 7. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up. (emphasis added)

The decision in *Thansingh*⁸ is still holding the field.

34.Again in *Titaghur Paper Mills Co. Ltd. v. State of Orissa*⁹ in the background of taxation laws, a three-Judge Bench of this Court apart from reiterating the principle of exercise of writ jurisdiction with the time-honoured self imposed limitations, focused on another legal principle on right and remedies. In para 11, at AIR p. 607 of the Report, this Court laid down: (SCC pp. 440-41, para 11) 11. It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in *Wolverhampton New Waterworks Co. v. Hawkesford*¹⁰ in the following passage: (ER p. 495) There are three classes of cases in which a liability may be established founded upon a statute. But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. The remedy provided by the statute must be

followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to. The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspapers Ltd.*¹¹ and has been reaffirmed by the Privy Council in *Attorney General of Trinidad and Tobago v. Gordon Grant and Co. Ltd.*¹² and *Secy. of State v. Mask and Co.*¹³ It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine.

35. In this case, liability of the appellant is not created under any common law principle but, it is clearly a statutory liability and for which the statutory remedy is an appeal under Section 35 of FEMA, subject to the limitations contained therein. A writ petition in the facts of this case is therefore clearly not maintainable.

39. In the instant case none of the aforesaid situations are present. Therefore, principle laid down in *Ratan case*¹⁵ applies in the facts and circumstances of this case. If the appellant in this case is allowed to file a writ petition despite the existence of an efficacious remedy by way of appeal under Section 35 of FEMA this will enable him to defeat the provisions of the statute which may provide for certain conditions for filing the appeal, like limitation, payment of court fee or deposit of some amount of penalty or fulfilment of some other conditions for entertaining the appeal. (See para 13 at SCC p. 408.) It is obvious that a writ court should not encourage the aforesaid trend of bypassing a statutory provision.

7. Thereafter, the counsel made alternative submission that even it is treated as provisional order, by which, subsequently parties will be allowed to lead evidence and also justify either the payment of amount already made satisfy the statutory compensation or there is no liability. The second contention merits acceptance. Hence, the writ petition is disposed of with a direction to the Deputy Commissioner of Labour-II, Chennai-6 to receive objections from the petitioner and thereafter to adjudicate the liability issue regarding making payment, determine the same after giving opportunity to exercise power under Section 19 and 20 of the Workmen's Compensation Act, 1923. In fact, under the said Act, in terms of Section 10-B of

the Act, in case of any fatal accident or serious bodily injuries, it requires the employer to give appropriate notice to the Commissioner and apart from the same, liability of the Principal employer in case of contractor failed to pay the same is also vested under the Act. The Contractor is prohibited from the payment of liability under Section 17 of the Workmen's Compensation Act and it has been declared as null and void and any settlement of compensation in respect of fatal injuries must be in satisfactory to the authorities.

8. The writ petition is disposed of with the above direction. No costs. Consequently, connected WPMP stands closed. 19.03.2012.

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