

Pepsico India Holdings Ltd. Vs Mohmed Sayed

Court: Gujarat High Court

Date of Decision: April 13, 2005

Acts Referred: Constitution of India, 1950 " Article 226, 227

Citation: (2005) 3 LLJ 599

Hon'ble Judges: R.S. Garg, J; R.R. Tripathi, J

Bench: Division Bench

Advocate: K.S. Nanavaty and Jay Amin, for Singhi and Buch Asso. in Letters Patent Appeal No. 1566 of 1998, for the Appellant; G.M. Joshi, in Letters Patent Appeal No. 1566 of 1998, for the Respondent

Judgement

R.S. Garg, J.

Heard learned counsel for the parties.

2. Appellant-M/s. Pepsico India Holding Ltd., being aggrieved by the order dated 18.12.98 passed in Special Civil Application No. 10818 of

1998 by the learned Single Judge, whereunder the order dated 23.11.1998 passed by the authority under the Payment of Wages Act has been

confirmed, is before this Court under Clause-15 of the Letters Patent. It would be necessary to note that present is the second round of litigation at

the instance of the present appellant. The facts necessary for disposal of the present appeal are that the respondent made an application before the

authority constituted under the Payment of Wages Act (referred to as "authority" for the sake of brevity) for certain reliefs against the present

appellant. The appellant raised certain issues including that there was no relation of employer and employee and in view of the salary of more than

Rs. 1600/- being paid to the respondent, the authority would have no jurisdiction in the matter. On an earlier occasion, the contentions were

negatived, therefore, the appellant came to this Court in Special Civil Application No. 3930 of 1997, the application was finally disposed of on

10.7.97. The question raised before the Court was that the authority would have no jurisdiction to hear and decide the matter and therefore, the

application before the authority was not maintainable. The question of jurisdiction of the authority was also raised, to which, this Court observed

that the petitioner (the appellant) will be at liberty to raise the objection as a preliminary objection before the learned Payment of Wages Authority

and the authority will decide the same in accordance with law, though it will be for the learned authority to take its own decision as to whether the

objections should be decided as a preliminary objection or along with other issues in the matter.

3. After the orders were passed by this Court, application exh. 22 was again placed before the authority.

4. The authority, this time, by its order dated 23.11.98, rejected the application and directed to proceed further with the matter.

5. The appellant again being aggrieved by the order dated 23.11.98 is before this Court.

6. Submissions of Mr. Nanavaty are two-fold, firstly, that the order passed by the authority is a non-speaking order, therefore, it deserves to be

quashed and the matter deserves to be remitted to the authority for reconsideration in accordance with law, and secondly that, as the employee

was getting more than Rs. 1600/- per month as salary, the authority would have no jurisdiction under the provisions of the Payment of Wages Act.

7. On being asked as to how the appeal against an order passed by the learned Single Judge would be maintainable, it was submitted that the

petitioner-appellant had clearly mentioned in the memo of the writ application that it was a petition under Article 226 of the Constitution of India,

therefore, any order passed in the said proceeding would be amenable to the appellate jurisdiction of this Court.

8. It was further submitted that a writ of prohibition was sought against the Tribunal, therefore also, an appeal under Clause-15 of the Letters

Patent would be maintainable.

9. In our considered opinion, simply by giving a cover of Article 226 to any matter, the same would not become a subject matter for its

examination under Article 226 of the Constitution of India. True it is, that a writ of prohibition can be issued by the High Court under Article 226 of

the Constitution of India, but in the present matter, we cannot close our eyes to the order dated 10.7.97 passed between the same parties on an

earlier occasion in Special Civil Application No. 3930 of 1997. If on the earlier occasion, the petitioner had come to this Court, then, he could

have requested the High Court to look into the merits of the matter and decide the matter finally. On the earlier occasion, when this Court refused

to interfere in the matter and issued the directions that the question can be raised by the present appellant before the very same Tribunal, then, the

Tribunal alone has to decide the issue in accordance with law and at a particular stage as it deems fit. The writ of prohibition under the

circumstances cannot be issued.

10. Even otherwise, it would clearly appear that the appellant-petitioner is challenging the correctness, validity and propriety of the order dated

23.11.98 passed by the authority and this fact would be clear from paragraph-2 of the title of the writ application. The said authority has been duly

constituted under a Statute and it exercises its quasi-judicial functions. Realising that position when on the earlier occasion, the High Court directed

that question of jurisdiction can be raised before the authority and it would be competent for the authority to decide the issue as a preliminary issue

or not, then, under the set of circumstances, we must observe that the order challenged before this Court in Special Civil Application No. 10818 of

1998 is an order, which is passed by the authority exercising quasi-judicial functions. It is trite law that if the learned Single Judge interferes or

refuses to interfere in a matter under Article 227 of Constitution of India, then, Letters Patent Appeal under Clause-15 of the Letters Patent would

not be maintainable. At this stage, we hold that the appeal is not maintainable.

11. As we were taken to the merits of the matter, we would like to make our comments on the merits also. Submission was that the order is a non-

speaking order, reference to certain judgments of the Supreme Court was also made.

12. Present is not a case where rights of the parties are decided at an interlocutory or final stage where a Tribunal or a Court is required to pass an

order after giving reasons. In the present matter, by rejecting an application filed by the present appellant, the Court has simply deferred the

decision on the issues, which were to be decided as a preliminary issue in accordance with the prayer of the present appellant. The present is not a

case where the Tribunal has refused to exercise jurisdiction vested in it by law or has exercised jurisdiction which is not vested in it. The Tribunal

has simply rejected the application, rejection simply means that the issues raised by the present appellant would be decided and disposed of finally

along with other issues.

13. So far as the question of salary of Rs. 1600/- is concerned, we are even not required to interfere in the matter, firstly because, the Tribunal has

yet not decided anything nor the learned Single Judge proposed to interfere in the matter.

14. Taking into consideration the totality of the circumstances and in view of the discussion aforesaid, we are of the considered opinion that the

appeal is not maintainable and we are not required to interfere in the matter, because, no serious rather any prejudice is caused or occasioned to

the present appellant. The issue is still open and would be disposed of by the authority at an appropriate stage in accordance with law. The appeal

is dismissed with costs quantified to Rs. 5,000/(Rupees Five Thousand). Rule is discharged.

15. Learned authority is hereby directed to dispose of the matter finally within a period of four months from the date of appearance of the parties.

16. In view of the dismissal of the appeal, the Civil Application No. 12357 of 1998 is rejected.