

(2011) 128 FLR 94

Jharkhand High Court

Case No: L.P.A. No. 28 of 2010

Ajit Kumar Yadav

APPELLANT

Vs

State of Jharkhand and
Another

RESPONDENT

Date of Decision: Oct. 26, 2010

Acts Referred:

- Constitution of India, 1950 - Article 19(1), 21, 226, 32
- Workmens Compensation Act, 1923 - Section 2, 30

Citation: (2011) 128 FLR 94

Hon'ble Judges: D.K. Sinha, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

D.K. Sinha, J.

Heard learned Counsel for the parties.

2. This appeal is directed against the order of the learned Single Judge of this Court in WP(C) No. 5229 of 2008 dated 11.12.2009. The writ petition was filed to challenge the order passed under the Workmen's Compensation Act by the Labour Commissioner. The learned Single Judge has held against the order of the Labour Commissioner, an appeal is provided u/s 30 of the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act") and therefore, the learned Single Judge was of the opinion that where there is a remedy provided under the Act, entertainment of a petition under Article 226 of the Constitution of India obviously would defeat the intended purpose of the Legislature. Therefore the writ petition was dismissed.

2. Learned Counsel for the Appellant urged that the approach of the learned Single Judge in dismissing the writ petition only on the ground that an appeal is provided u/s 30 of the Act is not the correct appreciation of the provision of law. According to the learned

Counsel, proviso 3 to Section 30 of the Act requires that a pre-deposit has to be made and that pre-deposit defeats the right of the Appellant because it takes away a valuable consideration out of the pocket of the Appellant. The learned Counsel for the Appellant further urged on the strength of certain decisions rendered by the various High Courts such as Orissa High Court, Sikkim High Court and apart from the decisions herein referred to above of the various High Courts, the learned Counsel for the Appellants placed reliance on a Supreme Court decision rendered in the matter of [Himmatlal Harilal Mehta Vs. The State of Madhya Pradesh and Others](#), . and relied on the following observations as contained in paragraph 9:

In our opinion, the contentions raised by the learned Advocate-General are not well founded.

It is plain that the State evinced an intention that it could certainly proceed to apply the penal provisions of the Act against the Appellant if it failed to make the return or to meet the demand and in order to escape from such serious consequences threatened without authority of law, the infringing Fundamental Rights, relief by way of a writ of mandamus was clearly the appropriate relief.

In [Mohammad Yasin Vs. The Town Area Committee, Jalalabad and Another](#), it was held by this Court that a licence fee on a business not only takes away the property of the licensee but also operates as a restriction on his fundamental right to carry on his business and therefore if the imposition of a licence fee is without authority of law it can be challenged by way of an application under Article 32, "a fortiori" also under Article 226. These observations have apposite application to the circumstances of the present case.

Explanation II to Section 2(g) of the Act having been declared "ultra vires", any imposition of sales tax on the Appellant in Madhya Pradesh is without the authority of law, and that being so a threat by the State by using the coercive machinery of the impugned Act to realize it from the Appellant is a sufficient infringement of his fundamental right under Article 19(1)(g) and it was clearly entitled to relief under Article 226 of the Constitution. The contention that because a remedy under the impugned Act was available to the Appellant it was disentitled to relief under Article 226 stands negated by the decision of this Court in [The State of Bombay and Another Vs. The United Motors \(India\) Ltd. and Others](#), , above referred to.

There it was held that the principle that a Court will not issue a prerogative writ when an adequate alternative remedy was available could not apply where a party came to the Court with an allegation that his fundamental right had been infringed and sought relief under Article 226. Moreover, the remedy provided by the Act is of an onerous and burdensome character. Before the Appellant can avail of it he has to deposit the whole amount of the tax. Such a provision can hardly be described as an adequate alternative remedy.

On the strength of the above decision, learned Counsel urged that as and when fundamental rights are involved, the reliefs sought under Article 226 of the Constitution should be granted. He further urged that the condition of pre-deposit is a condition which is onerous one and in the face of the condition of pre-deposit, it cannot be said that the remedy provided u/s 30 of the Act is an adequate alternative remedy.

3. Per contra, learned Counsel for the State submitted that as and when there is an involvement of fundamental rights, the Rule of alternative remedy has been relaxed by the Courts in appropriate cases but this is not a case where such relaxation is called for because no fundamental right is involved as has been canvassed by the learned Counsel for the Appellant. The argument advanced by the learned Counsel for the State that no fundamental right can be said to be involved in the case because the case has been decided by the Labour Commissioner on merits after considering the provisions of law and in that view of the matter, if there is any procedural illegality or irregularity, which is not, therefore even if it is permitted to be present for the sake of argument, that would not engulf itself the ambit of fundamental right and therefore the application of law as rendered by the Supreme Court in the case of Himmatlal (supra) will not be available to the learned Counsel for the Appellant. The learned Counsel for the State further relied on a case decided by the Hon"ble Supreme Court in the matter of H. B. Gandhi v. Gopi Nath and Sons wherein the Hon"ble Supreme Court has held that there are limits of exercise of jurisdiction under Article 226 of the Constitution and that power is not akin to the power of appeal i.e. the power of judicial review and the purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches on a conclusion which is correct in the eyes of the law or not. The re-appreciation of evidence under Article 226 of the Constitution is a matter which is not engulfed within the scope of Judicial review. It was urged that there being no such illegality indicated on merits and it is only on the preliminary ground that the arguments are advanced, that in view of the onerous provision of pre-deposit, filing of the appeal should not have been insisted. It cannot be said that it was the right approach of the Appellant and therefore entertainment of writ petition by the learned Single Judge was rightly refused.

4. The learned Counsel for the Appellant in rejoinder submitted that Article 21 of the Constitution engulfs in itself the right to life and when the money is taken away from the pocket of an individual, then the fundamental right of the individual is violated and therefore the case of the Appellant is governed as held by the Supreme Court in the matter of Himmatlal (supra).

5. We have considered the rival submissions and we have given our thoughtful consideration. The Legislature in its wisdom u/s 30 of the Act imposed condition of pre-deposit. When a legislative mandate is made, it cannot be said that the condition of pre-deposit being onerous be sidelined. One who lives in society has to go by the society and when the Legislature makes rules for proper orientation of the individual of the society then in that view of the matter, if the condition of pre-deposit has been made, in

beneficial Legislature to the labourer under the Workmen's Compensation Act, then such providence cannot be considered to be one which may be said to be of any such intendment where the fundamental right of the Appellant was intended to be taken away. This provision has been enacted in the Workmen Compensation Act to secure some safeguard for the labourers. We do not think that the condition of pre-deposit as contained in Section 30 of the Act has any effect whatsoever of taking away the fundamental rights of the Appellant. In any case, the Supreme Court case, as relied upon by the learned Counsel, i.e. Himmatlal (supra) was rendered in the background where the Hon"ble Supreme Court considered the case earlier decided in the matter of Md. Yasin where there was an imposition of licence for without the authority of law. Fee was being charged without there being any sanction of law. Here it is not a case where there is no sanction of law. The other illustration contained in the judgment relates to the imposition of tax under a statute which was declared ultra vires. Therefore here was no law at all and if any coercive mechanism was undertaken in relation to a law which has been declared ultra vires then the levy itself would become illegal and that illegality can be taken care of under Article 226 of the Constitution, therefore the case will not govern the facts of the present case.

6. In the instant case the compensation as awarded by the Labour Commissioner is under the Act. Nothing has been indicated that the Labour Commissioner lacks jurisdiction or there was no law warranting the imposition of compensation as ordered by the Labour Commissioner. In that view of the matter we do not think that the law as laid down and as canvassed by the learned Counsel for the Appellant referring the case of Himmatlal (supra), covers the facts of this case. We do not think that the learned Single Judge has committed any illegality in refusing to invoke his jurisdiction under Article 226 of the Constitution.

7. In that view of the matter, we do not find any force in this appeal which is accordingly dismissed.