

KERALA HIGH COURT

Hon'ble Justice V. R. Krishna Iyer

K. C. SUNDARAM v. THE AUTHORITY UNDER THE PAYMENT OF WAGES ACT

Citation(s) : 1968 KLT 610 : ILR 1968 (2) Ker. 453: 1968 KLR 323

ORDER

1. The question raised in this Civil Revision Petition filed under S.115, Civil Procedure Code, is as to whether under the Minimum Wages Act a worker is entitled to wages during a period he has not been in employment, even if that was as a result of being denied employment by the employer. A preliminary objection has been rightly taken in these proceedings as to whether a revision would lie at all. This, in turn, depends upon whether the authority functioning under S.20 of the Minimum Wages Act is a Court subordinate to the High Court. The argument for the petitioner was to the effect that the functions of the said authority were judicial, that rights were being adjudicated upon and that such a decision must be deemed to be one rendered by a Court. No doubt, the authority under the Minimum Wages Act is discharging quasi-judicial functions, as distinguished from administrative duties. But the question is does every tribunal become a Court? I am clearly of the view that under S.20 of the Minimum Wages Act, or for that matter, under S.15 of the Payment of Wages Act, the authority concerned may be a tribunal but is not a Court. The expression "Court", if I may adopt with great respect the language of the Supreme Court in a decision reported in *Associated Cemam Companies Ltd. v. P. N. Sharma* AIR 1965 SC 1595), "denotes a tribunal constituted by the State as a part of the ordinary hierarchy of Courts which are invested with the State's inherent judicial powers. A sovereign State discharges legislative, executive and judicial functions and can legitimately claim corresponding powers which are described as legislative, executive and judicial powers. Under our Constitution, the judicial functions and powers of the State are primarily conferred on the ordinary Courts which have been constituted under its relevant provisions. The Constitution recognised a hierarchy of Courts and to their adjudication are normally entrusted all disputes between citizens and citizens as well as between the citizens and the State. These Courts can be described as ordinary Courts of civil judicature. They are governed by their prescribed rules of procedure and they deal with questions of fact

and law raised before them by adopting a process which is described as judicial process. The powers which these Courts exercise, are judicial powers, the functions they discharge are judicial functions and the decisions they reach and pronounce are judicial decisions". Again, the Supreme Court drew a clear distinction between tribunals and Courts. Gajendragadkar C. J. expressed himself as follows:

"Tribunals which fall within the purview of Art.136(2) occupy a special position of their own under the scheme of our Constitution. Special matters and questions are entrusted to them for their decision and in that sense, they share with the Courts one common characteristic; both the Courts and the tribunals are 'constituted by the State and are invested with judicial as distinguished from purely administrative or executive functions. (Vide Durga Shankar Mehta v. Raghuraj Singh, 1955 (1) SCR 267 at p. 272: (AIR 1954 SC 520 at p. 522). They are both adjudicating bodies and they deal with and finally determine disputes between parties "which are entrusted to their jurisdiction. The procedure followed by the Courts is regularly prescribed and in discharging their functions and exercising their powers, the Courts have to conform to that procedure. The procedure which the tribunals have to follow may not always be so strictly prescribed, but the approach adopted by both the Courts and the tribunals is substantially the same, and there is no essential difference between the functions that they discharge. As in the case of Courts, so in the case of tribunals, it is the State's inherent judicial power which has been transferred and by virtue of the said power, it is the States inherent judicial function which they discharge. Judicial functions and judicial powers are one of the essential attributes of a sovereign State, and on considerations of policy, the State transfers its judicial functions and powers mainly to the Courts established by the Constitution; but that does not affect the competence of the State, by appropriate measures, to transfer a part of its judicial powers and functions to tribunals by entrusting to them the task of adjudicating upon special matters and disputes between parties. It is really not possible or even expedient to attempt to describe exhaustively the features which are common to the tribunals and the Courts and features which are distinct and separate. The basic and the fundamental feature which is common to both the Courts and the tribunals is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign State."

It is clear from what I have extracted above that tribunals may share common features with Courts but are not full-fledged Courts. Every adjudicating authority is not a Court. But every Court adjudicates as a matter of course. I am, therefore, of opinion that the authority under the Minimum Wages Act is a tribunal but not a Court strictly so called. What is more, it must be found that the adjudicating agency under S.20 of the Minimum Wages Act is a

civil court if its orders are to be revisable under S.115 CPC. It is impossible to conclude that the authority whose order is sought to be revised in the present case is a civil Court. I am fortified in my view by a ruling reported in Kuriakose v. Thomas (1959 KLT 460) where the character of an authority appointed under the Payment of Wages Act was considered and the Court held that there may be tribunals with many of the trappings of a Court which, nevertheless, are not Courts in the strict sense and that, therefore, S.115 CPC. would not apply. The reasoning in 1959 KLT 460 applies fully to the case on hand since the two statutes, the Payment of Wages Act and the Minimum Wages Act, adopt similar phraseology in designating and delineating the authorities and powers of such authorities.

2. Counsel for petitioner rightly drew my attention to two rulings of the Assam High Court which are directly in point and in his favour. But there is no adequate discussion of the various aspects of the matter. What is more, their Lordships did not choose to rest their right to interfere with the order of the authority only on S.115 CPC. In both the rulings, even the constitutional powers of the High Court were apparently invoked and it was observed in the later of the two rulings, i. e., in the one reported in Cachar Cha Sramik Union v. Manager, Majhegram Tea Estate (AIR 1960 Assam 123) that the powers of superintendence under the Indian Constitution were also available for the High Court. Their Lordships observed:

"The following observation however, in the decision of this Court in the case of H. G. Henson v. M. Sultan AIR 1958 Assam 1 will be apposite: 'I may as well point out that apart from the powers vested in this Court under Art.226 and 227 of the Constitution, the order of the authority is subject to the revisional jurisdiction of this Court under S.115 of the Code of Civil Procedure. For the purposes of this case however, it is enough to point out that even if no revision under S.115 lies, there is ample power of this Court to examine the validity of the order under Art.226 of the Constitution.'"

Learned counsel for the petitioner strongly relied upon the elaborate discussion of an allied question by the Madras High Court in the ruling reported in Kalavagunta Sriramaruo v. Kulavagunta Suryanarayanamurthi (AIR 1954 Mad. 340). A close reading of the said decision will reveal that the point, which arose for decision there, was different from the one that has been raised here. Indeed, the only question there was as to whether the Registrar functioning under the Madras Cooperative Societies Act was a civil Court within the meaning of that expression in S.25, Madras Debt Conciliation Act 11 of 1936. It would be seen that even the learned Judge, Venkatarama Aiyar J. when confronted with the rulings of the Madras High Court that the Civil Procedure Code did not apply to the

proceedings taken before the Registrar, accepted that position and confined himself to the narrow issue as to whether an award under the Madras Cooperative Societies Act would be a debt coming within the ambit of the Debt Conciliation Act, and as to whether the Registrar would not be a civil Court within the meaning of S.25 of the Debt Conciliation Act. That ruling is therefore no authority for the proposition that the revisional power under the Civil Procedure Code will be attracted to a case decided under the Minimum Wages Act or the Payment of Wages Act.

3. I therefore hold that this Civil Revision Petition is incompetent and is liable to be dismissed. However, it was represented to me by petitioner's counsel that he should be given an opportunity to convert his present petition into an Original Petition Invoking Art.226 and / or 227 of the Constitution. If he files such a petition in the course of a week from today, it will be placed for orders before me again. The CRP. is not formally dismissed now. It is a separate question as to whether a writ petition on the facts of the present case should be admitted at all. In the circumstances of the case, I direct that both parties will bear their costs.