

Rajkamal Kalamandir Private, Limited

v.

Indian Motion Pictures Employees' Union and Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE P.B. GAJENDRAGADKAR HON'BLE JUSTICE
K.C.DAS GUPTA

Civil Appeal No. 622 Of 1961 | 08-08-1962

Gajendragadkar, J.

1. This appeal has been brought to this Court by the appellant Rajkamal Kalamandir (Private), Ltd., with a certificate issued by the Bombay High Court against its order passed under Art. 227 of the Constitution and the narrow point which Mr. Phadke for the appellant has raised in support of the appeal is that the order under appeal is outside the jurisdiction of the High Court under Art. 227.

2. It appears that between the appellant and its employees, industrial disputes arose in respect of several items and they were referred to the industrial tribunal at Bombay for adjudication on 30 March, 1957. The tribunal first took up the question of dearness allowance, leave with wages, provident fund and other subsidiary matters for its decision, and on 4 June, 1958 it pronounced its award on these points. A claim for revised wage-structure and increase in wage had also been included in the reference and for dealing with this claim in a scientific way, the tribunal obtained the assistance of four assessors, two on each side. The assessors made their report on 2 February, 1959. This report was intended to assist the tribunal to ascertain the relative skill of workmen before classifying them into several categories. After receiving this report, the tribunal proceeded to pronounce its award in respect of the claim for wages and classification of workmen. This award was pronounced on 3 February, 1960. In this award, the tribunal considered the question as to whether the relief granted by it to the respondents in regard to dearness allowance and revised pay-scales should be retrospective. In respect of dearness allowance, it directed that the dearness allowance ordered to be paid by the award should take effect from 1 April, 1957. In regard to the wages, however, it held that the revised pay-scales shall be introduced as from 1 April, 1959. As invariably happens, after a new wage-

structure was directed by the award, an order had to be made in respect of adjustments of the several employees in different categories evolved by the award and so, an appropriate direction was given by the tribunal in respect of such adjustments. After this award was pronounced, the respondents moved the High Court by an application under Art. 227 of the Constitution on 13 June, 1960. On their behalf, it was urged that the tribunal had committed an obvious error in not directing the enforcement of the new wage-scale as from 1 April, 1957. This application has been allowed by the High Court and the award has been corrected in that behalf. Under the order passed by the High Court, the operation of the award which deals with the revised pay-scales has to come into force from 1 April, 1957. It is the validity of this order that Mr. Phadke challenges before us in the present appeal. The point raised by Mr. Phadke naturally lies within a very narrow compass. Indeed Mr. Phadke is in the very fortunate position of being able to cite a number of decisions of this Court which have consistently taken the view that in exercising its jurisdiction under Art. 227 of the Constitution, the High Court cannot sit in appeal over the orders of tribunals.

3. This question came to be considered by this Court as early as 1954, in the case of *Waryam Singh and another v. Amarnath and another* [1954 S.C.R. 565]. Das J., as he then was, who spoke for the Court, observed that the power of superintendence conferred by Art. 227, as pointed out by Harries, C.J., in *Dalmia Jain Airways, Ltd. v. Sukumar Mukherjee* [A.I.R. 1951 Cal. 193], should be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors.

4. In *Satyanarayan Laxminarayan Hegde and others v. Mallikarjun Bhavanappa Tirumale* [A.I.R. 1960 S.C. 137], this Court has observed that it has noticed that in the application to the High Court, the respondent asked that Court to exercise its power of superintendence under Art. 227 of the Constitution by the method of issuing a writ of certiorari or any other suitable writ. Das Gupta, J., who spoke for the Court, then proceeded to observe :

"Article 227 corresponds to S.107 of the Government of India Act, 1915. The scope of that section has been discussed in many decisions of Indian High Courts. However wide it may be than the provisions of S. 115 of the Code of

Civil Procedure, it is well established that the High Court cannot, in exercise of its power under that section, assume appellate powers to correct every mistake of law."

5. In other words, the principle laid down by this Court in Waryam Singh case [1954 S.C.R. 565] (vide supra), has been reiterated. It is somewhat surprising that the last paragraph of the judgment which enunciates the true position in law has not been, through oversight, reported in the judgment in the authorized series (Supreme Court Reports).

6. The same view has been expressed by this Court in the case of S. M. Sheik Jalaluddin and another v. S. K. Sheik Jalaluddin and others [Civil Appeal No. 602 of 1961 decided on 16 January 1962].

7. Therefore, there can be no doubt that in exercising its jurisdiction under Art. 227 the High Court cannot sit in appeal over the decision of the tribunal or the court which is brought before it and cannot upset its discretionary orders on the ground that if the matter had been raised before it, it might have exercised its discretion differently. In the present case. The tribunal had considered the question as to whether the revised pay-scale should take effect from 1 April, 1957 or not. It was urged before the tribunal that the demand in that behalf had been made by the respondents much earlier and that the reference itself had been made in pursuance of the said demands in March 1957 and so the argument before the tribunal was that like the dearness allowance, revised wage-structure should also be made effective from 1 April, 1957. The tribunal did not accept this contention. It held that unlike the dearness allowance, the revised wage-structure should take effect from 1 April, 1959. It would be noticed that the award was pronounced in February 1960 and ordinarily it would have been enforceable within a month after its publication. The tribunal, however, thought that the ends of justice required that the revised wage-structure should come into effect from an earlier date which it fixed as 1 April, 1959. The High Court has considered the question as to whether the reasons by the tribunal is valid or not; and it held that the tribunal and really given no reason worth the name. The High Court, in considering the propriety of the order, has referred to the fact that the dispute between the parties has been a long-drawn-out affair and that the appellant, according to the High Court, was responsible for the delay because it adopted an obstructive attitude. Then the

High Court has proceeded to observe that normally speaking, when a matter is referred to the tribunal for settlement of a dispute between the parties, the award should in fairness be effective at least from the date of the reference. Acting on these reasons, the High Court set aside the order passed by the tribunal and has directed that the revised pay-scale should come into force as from 1 April 1957. It is clear that in reversing the order of the tribunal, the High Court has in substance purported to exercise its appellate jurisdiction. Whether or not the award should be retrospective in its effect is a question that is usually to be determined by the tribunal in its discretion. Undoubtedly, like all matters left to judicial discretion, the question about the retrospective operation of the award must also be considered on reasonable grounds, but that is not to say that the matter is not one of discretion. Therefore, in interfering with an order which was within the discretion of the tribunal, the High Court has really purported to substitute its discretion for that of the tribunal and that clearly is outside its jurisdiction under Art. 227

8. There is another aspect of the matter to which attention of the High Court does not appear to have been drawn. If the revised pay-scale is made retrospective from 1 April, 1957, it does not mean only an additional burden on the appellant to pay an additional packet of wages to the respondents; it also involves necessarily a question of making necessary adjustments in fitting the workmen in the respective categories as from 1 April, 1957; and this aspect of the matter must have been borne in mind by the tribunal when it decided the date from which the revised pay-scale should take effect. The decision of the question did not depend merely on inquiring how much more the appellant should pay; it also involved other considerations. And if the tribunal did not set out those considerations in detail, it may perhaps be, because the tribunals are too familiar with those considerations. Therefore, in our opinion, the High Court exceeded its jurisdiction in entertaining the special civil application preferred by the respondents and reversing the discretionary order passed by the tribunal. It is somewhat unfortunate that the appellant was not represented before the High Court when the special civil application was argued. We were told by Mr. Phadke that the failure of the appellant to appear by its representative before the High Court was due to some default on the part of one of its officers and we are also told that, after the judgment was pronounced, an application for restoration was made, but was rejected. However, the High Court was then moved for a certificate and the appellant was granted the certificate. It may be that if the appellant had appeared before the High Court and invited its attention to the

relevant facts, the High Court may not have interfered with the discretionary order passed by the tribunal.

9. The result is, that the appeal is allowed, the order passed by the High Court on the special civil application filed by the respondent before it set aside and the impugned direction of the award restored.