# Agra Electric Supply Co. Ltd vs The Labour Court, Meerut & Anr on 8 November, 1968

## Equivalent citations: 1970 AIR 806, 1969 SCR (2) 676, AIR 1970 SUPREME COURT 806, 1970 LAB. I. C. 769, 1970 (1) SCJ 441, 1969 2 SCR 875, 20 FACLR 147, 1970 (1) LABLJ 1

## Author: C.A. Vaidyialingam

## Bench: C.A. Vaidyialingam, J.M. Shelat, Vishishtha Bhargava

PETITIONER:
AGRA ELECTRIC SUPPLY CO. LTD.

Vs.

RESPONDENT:
THE LABOUR COURT, MEERUT & ANR.

DATE OF JUDGMENT:
08/11/1968

BENCH:
VAIDYIALINGAM, C.A.
BENCH:
VAIDYIALINGAM, C.A.
SHELAT, J.M.
BHARGAVA, VISHISHTHA

CITATION:
1970 AIR 806 1969 SCR (2) 676
1969 SCC (1) 243

ACT:
Industrial Dispute-Non-appearance of party-Dismissal of application by Labour Court--Second application--Maintainability.
Uttar Pradesh Industrial Disputes Rules, 1957 R. 16(1)--Scope of.

HEADNOTE:
The second respondent originally filed an application for certain reliefs against its employer (the appellant-company). The Labour Court dismissed the application as not having been prosecuted for the default of the appearance of the applicants. The second respondent filed a second

application claiming the same reliefs. The management objected to the maintainability of the second application contending that if the workmen were aggrieved by the earlier order, the proper remedy that should have been adopted by them was by taking action under r. 16(2) of the Uttar Pradesh Industrial Disputes, Rules, 1957. The Labour Court rejected the objection, and the appellant challenged the decision in a writ petition to the High Court. The High Court dismissed the writ petition.

HELD: An order dismissing a case for default or non-prosecution, does not come under sub-r. (1) of r. 16 and to such an order sub-r. (2) has no application.

Neither the Act nor the rules empower a Tribunal or Labour Court to dismiss an application for default of appearance of a party. Rule 16(1) is the only provision providing for what is to be done when a party is absent. That provision, which clearly enjoins the Labour Court or Tribunal in the circumstances mentioned therein "to proceed with the case in his absence", either on the date fixed or on any other date to which the hearing may be adjourned, coupled with the further direction "and pass such order as it may deem fit and proper", indicates that the Tribunal or Labour Court should take up the case and decide it on merits and not dismiss it for default. The necessity for filing an application for setting aside an order passed in the case in the absence off a party, as contemplated under sub-r. (2) of r. 16 will arise only when .an order on merits affecting the case has been passed in the absence of a party, under sub-r. ( 1 ) of r. 16. [680 E; 681 A--B]

JUDGMENT:

CIVIL APPELLATE/JURISDICTION: Civil Appeal No. 1631 of 1967. Appeal by special leave from the order dated May 11, 1967 of the Allahabad High Court in Civil Misc. Writ Petition No. 1647 of 1967.

S.V. Gupte 'and D.N. Mukherjee, for the appellant. M.K. Ramamurthi, Shayamala Pappu and Vineet Kumar for respondent No. 2.

The Judgment of the Court was delivered by Vaidialingam, J. In this appeal, by special leave, the appellant challenges the order of the Allahabad High Court dated May 11, 1967 dismissing Civil Miscellaneous Writ Petition No. 1647 of 1967.

The facts leading up to the filing of the said writ petition by the appellant under Art. 226 of the Constitution, may be briefly stated. The appellant is an existing company under the Companies Act, 1956 and has its registered office at Calcutta. The company was and is being managed by Martin Burn Ltd., Secretaries and Treasurers. The company carries on the business of generation, distribution and supply of electricity within its licensed area in the city of Agra and its environs in

the State of Uttar Pradesh On a reference made by the Government of Uttar Pradesh regarding a dispute that had arisen between the electricity undertakings managed by Martin Burn Ltd., of which the appellant was one, and their workmen about the demand of the workmen for supply of uniforms, free of charge, the Chairman, Martin Electricity Supply Company Adjudication Board made an award on February 20, 1947 in and by which certain types of workmen were directed to be supplied with uniforms. The said award remained operative till April 15, 1950 on which date it was terminated. Though the award had been terminated, the appellant continued the practice of supplying uniforms to its workmen. Subsequently, again, a dispute was raised by the employees of the electricity undertakings managed by Martin Burn Ltd., regarding the supply of uniforms to some categories of workers. The said dispute was referred by the Government of Uttar Pradesh, by order dated March 15, 1951, for adjudication to the State Industrial Tribunal, Uttar Pradesh, Allahabad. The said Industrial Tribunal passed an award dated November 29, 1952 holding that the same categories of workmen to whom uniforms had to be supplied as per the award dated February 20, 1947 were entitled to be supplied with uniforms. Though this award remained in operation only for a period of one year, the appellant continued to supply uniforms till 1953 after which year the supply of uniforms was discontinued. Nevertheless, the appellant again resumed supplying uniforms from May 1961. On December 31, 1961 twenty-three employees of the appellant, including the second respondent herein, filed a joint petition before the Labour Court, Meerut,. under s. 6- 1-1(2) of the Uttar Pradesh Industrial Disputes Act, 1947 (hereinafter referred to as the Act) claiming that they were entitled to recover the money equivalent to the cost of uniforms which had not been supplied to them during the period 1954 to 1960. The said petition was numbered as Case No. 1 of 1962. According to these employees, the employer had failed to supply them uniforms which they were entitled to get and in consequence of such failure the workmen had been put to expense by purchase of clothes to be used while rendering service in the company. They claimed that the benefits which they were entitled to get should be computed in terms of money to enable them to recover the cost of uniforms from the appellant. The appellant filed a written statement on January 27, 1962 disputing the claim of the workmen and denying its ii, ability to either supply uniforms or pay the money value of the On February 22, 1964 the application filed by the workmen was taken up by the Labour Court for heating, but as none appeared on behalf of the workmen who were the applicants when the case was called on for hearing the Labour Court Meerut dismissed the application for non- prosecution. The actual order passed by the Labour Court was as follows:

> "Case called on for hearing. No one is present on behalf of the applicant, nor 'any request for adjournment has been received.
>
> The application is dismissed as not having been prosecuted. No order as to costs."

On or about January 1, 1965 seven employees of the appellant, including the second respondent herein, filed seven separate applications before the Labour Court, Meerut, again under s. 6-H(2) of the Act. The seven applications had been numbered as Case Nos. 217 to 223 of 1965. The application filed by the second respondent was Case No. 217 of 1965. The second respontdent, in particular claimed that he was a mains coyly from April 13, 1950 to September 15, 1959 'and that he was entitled to be supplied uniform by the appellant. As the uniform had not been so supplied he pleaded that he was entitled to recover a sum of Rs. 390/- as cost of the uniforms which the

management should have supplied during those years. All the applicants, including the second respondent, had also stated in their respective applications that they had moved before the Labour Court a similar application, under s. 6-H(2) of the Act, but, unfortunately that had been dismissed for default on February 21, 1964 and hence the fresh applications were being filed.

The appellant flied on or about April 7, 1965 separate objections denying the claim made by the applicants. We are not, at this stage, concerned with the various pleas taken either by the employees, in support of their claim, or by the appellant, in denial thereof. It is only necessary to state that the appellant pleaded that the fresh applications, filed by the workmen, were not maintainable in view of the fact that identical applications, claiming the same reliefs, had been dismissed on February 21, 1964 by the Labour Court. If the workmen were aggrieved by that said order, the proper remedy that should have been adopted by them was by taking action under r. 16(2) of the Uttar Pradesh Industrial Disputes Rules, 1957 (hereinafter referred to as the rules). Not having adopted the procedure indicated therein, the management pleaded that it was no longer open to the workmen to file a second application and the Labour Court had no jurisdiction to entertain the same.

The Labour Court had, by its order dated August 27, 1965 consolidated all the seven applications. On the basis of the objection raised by the appellant to the maintainability of the applications filed, issue no. 5 was framed in the following terms:

> "Whether the present applications of the workmen under s. 6-H(2) are not maintainable for the reasons given in para 5 of the written statement of the employers ?"

and this issue was treated as a preliminary issue 'and arguments heard on the same By order dated February 10, 1967 the Labour Court held that the applications filed by the seven workmen, including the second respondent were maintainable. The Labour Court has expressed the view that the order passed on February 21, 1964 was one dismissing the applications, filed by the workmen, for default and such an order was not contemplated by sub-r. (1 ) of r. 16 of the rules, and hence the workmen were not bound to take 'action under sub-r. (2) of r. 16. In consequence the Labour Court held that the applications filed by the workmen were competent and directed the applications to be posted for further hearing. Though the order had been passed in Case No. 217 of 1965, the Labour Court directed that the finding given on issue no. 5 would govern Cases Nos. 218 to 223 of 1965 also. The 'appellant challenged this finding of the Labour Court before the High Court of Allahabad in Civil Writ No. 1647 of 1967. A Division Bench of the High Court, by its order dated May 11, 1967 summarily dismissed the writ petition.

Mr. Gupte, learned counsel for the appellant and Mr. Ramamurthy, learned counsel for the second respondent, urged the same contentions that were urged on behalf of their clients before the Labour Court. Therefore the question that arises for consideration is whether the view of the Labour Court that the second application filed by the second respondent herein is maintainable, is correct. Section 6-H of the Act deals with recovery of money due from an employer. Section 6-H more or less corresponds to s. 33-C of the Industrial Disputes Act, 1947. Sub-s. (2) of s. 6-H, with which we are concerned, is as ,follows:

> "(2) Where any workman is entitled to receive from the employer any benefit which is capable of being computed in terms of money, the amount at which such benefit should be computed may, subject to any rules that may be made under this Act, be determined by such Labour Court as may be specified in this behalf by the State Government, and the amount so determined may be recovered as provided for in sub-section (1 )."

As we have already mentioned, the second respondent, along with certain others, had filed an application on December 31, 1961 claiming identical relief that is now claimed in Case No. 217 of 1965. That application was dismissed as not having been prosecuted, on February 22, 1964. The second application was filed on January 1, 1965.

We shall now refer to the relevant rules. Rule 9 empowers a Tribunal or Labour Court to accept, admit or call for evidence at any stage of the proceedings before it and in such manner as it may think fit Rule 10 relates to the issue of summons for production of any books, papers or other documents as the Labour Court, Tribunal or Arbitrator feels necessary for the purpose of investigation or adjudication. Rule 12 relates to procedure at the first hearing. It states that 'at the first sitting of a Labour Court or Tribunal, the Presiding Officer shall call upon the parties in such order as he may think fit to state their case. Rule 16 provides for the Labour Court or Tribunal or Arbitrator proceeding ex parte, as follows:

> "( 1 ) If, on the date fixed or on ,any other date to which the hearing may be adjourned, any party to the proceedings before the Labour Court or Tribunal or an Arbitrator is absent, though duly served with summons or having the notice of the date of hearing, the Labour Court or Tribunal or the Arbitrator, as the case may be, may proceed with the case in his absence and such order as it may deem fit and proper.
>
> (2) The Labour Court, Tribunal or an Arbitrator may set aside the order passed against the party in his absence, if within ten days of such order, the party applies in writing for setting aside such order and shows sufficient cause for his absence. The Labour Court, Tribunal or an Arbitrator may require the party to file an affidavit, stating the cause of his absence. As many copies of the application and affidavit, if any, shall be filed by the party concerned as there are persons on the opposite side. Notice of the application shall be given to the opposite parties before setting aside the order."

Sub-rule (1 ) deals with the absence of a party on the date fixed, or on any other date to which the hearing may be adjourned, though he has been served with summons or he has notice of the date of hearing. Under the circumstances it provides that the Labour Court, Tribunal or Arbitrator, as the case may be "may proceed with the case in his absence and pass such order as it may deem fit and proper". It is to the setting aside of such an order that may have been passed under sub- r. (1 ), that the procedure is indicated in sub-r. (2). According to Mr. Gupte, learned counsel for the appellant, the order passed on February 22, 1964, by the Labour Court is one contemplated by sub-r. (1) of r.

16, in which case the provisions of sub-r. (2) are attracted and the second respondent, if he felt aggrieved by that order, should have filed an application under sub-r. (2), within time, to set aside that order.

We are not inclined to 'accept this contention of Mr. Gupte. As pointed out earlier by us, the order passed on February 22, 1964, is one dismissing the application as not having been prosecuted, for default of appearance of the second respondent. We will presently show that the order of February 22, 1964 cannot be considered to be one contemplated to have been passed under sub-r. ( 1 ) of r.

16. Sub-r. ( 1 ) refers to a party being absent on the date fixed, or on any other date to which the hearing has been adjourned, and such party having been duly served or having notice of the date of hearing. The said sub-r. (1 ) indicates as to what is to be done .under such circumstances. We have referred to r. 12 which provides for what the Labour Court or Tribunal should do at the first hearing. Neither the Act nor the rules empower a Tribunal or Labour Court to dismiss an application for default of appearance of a party. Rule 16 (1 ) is the only provision for what is to be done when a party is absent. That provision, which clearly enjoins the Labour Court or Tribunal in the circumstances mentioned therein "to proceed with the case in his absence" either on the date fixed or on any other date to which the hearing may be adjourned, coupled with the further direction "and pass such order as it may deem fit and proper", clearly indicates that the Tribunal or Labour Court should take up the case and decide it on merits 'and not dismiss it for default. Without attempting to be exhaustive, we shall just give an example. Where a workman, after leading some evidence in support of his claim, absents himself on the next adjourned date with the result that he does not lead further evidence, the Tribunal is bound to proceed with the case on such evidence as has been placed before it. It cannot dismiss the application on the ground of default of appearance of the workman. This will be an instance of "proceeding with the case in the absence of a party" and giving a decision on merits. If such an order is passed by the Tribunal in the absence of one or other of the parties before it, a right is given to such party to apply under sub-r. (2) for setting aside the order that has been passed in his absence in the case in terms of sub-r. (1). The application must be filed within the period mentioned in sub-r. (2) and the party will have also to satisfy the Tribunal or Labour Court that he had sufficient cause for his absence. The necessity for filing an application for setting aside an order passed in the case in the absence of 'a party, as contemplated under sub-r. (2) of r. 16 will only arise when an order on merits affecting the case has been passed in the absence of a party, under sub-r. (1 ) of r. 16. An order dismissing a case for default or non- prosecution, does not come under sub-r. ( 1 ) of r. 16 and to such an order sub-r. (2) has no 'application. We have already indicated that the order passed on February 22, 1964 by the Labour Court cannot be considered to be an order contemplated under sub-r. (1 ) of r. 16. If that is so, the second respondent was not bound to file an application within the time mentioned in sub-r. (2) for setting 'aside the order dated February 22, 1964. Therefore the fact that a previous application, filed by the second respondent, was dismissed for non-prosecution on February 22, 1964 is no bar under r. 16(2) to the filing of the present application, Case No. 217 of 1965. It follows that the objections raised by the appellant to the maintainability of the application filed by the second respondent have been rightly rejected by the Labour Court and the High Court.

The appeal fails and is dismissed. The appellant will pay the costs of the second respondent.

Y.P. Appeal dismiss