

(1993) 08 AHC CK 0031

Allahabad High Court

Case No: C.M.W.P. No. 5050 of 1982

Saru Smelting Pvt. Ltd.

APPELLANT

Vs

Authority under Payment of
Wages Act and Others

RESPONDENT

Date of Decision: Aug. 25, 1993

Acts Referred:

- Constitution of India, 1950 - Article 226
- Payment of Wages Act, 1936 - Section 15(1), 15(2), 3

Citation: (1994) 68 FLR 393 : (1995) 1 LLJ 90

Hon'ble Judges: B. Dikshit, J

Bench: Single Bench

Advocate: Vijay Ratan Agrawal, for the Appellant;

Final Decision: Allowed

Judgement

B. Dikshit, J.

By this petition, the petitioner has challenged the maintainability of an application filed by Respondent No. 2 Tilak Ram Gupta u/s 15(2) of the Payment of Wages Act, 1936 (in short "Act"). Admittedly, the application has been moved before Regional Conciliation Officer, Meerut. In the application the claim made by respondent Tilak Ram Gupta is that the wages of two days have been wrongly deducted by the petitioner,

2. This writ petition has been filed against decision on a preliminary question whereby the respondent No. 1 Regional Conciliation Officer, Meerut has held in its order dated April 17, 1982 that the application of Tilak Ram Gupta is maintainable.

3. Learned counsel for petitioner has argued that the Respondent No. 1 who is Regional Conciliation Officer, Meerut has not been authorized by any notification u/s 15(1) of the Act to hear and dispose of applications in respect of claims made u/s 15(2) of the Act. Learned counsel for petitioner during course of argument has

submitted that the petitioner has also made payment to Tilak Ram Gupta of the amount which he claimed from petitioner and petitioner is not particular about getting the amount back by this writ petition but the petition is being pressed for the reason that the employees of petitioner company are approaching Regional Conciliation Officer, Meerut regularly to adjudicate their claims on application u/s 15(2) of the Act which has necessitated filing of this writ petition and its being pressed on merits.

4. The argument advanced on behalf of petitioner has much more. The petitioner has specifically stated in paragraph 9 of writ petition that there is no notification by the State Government in Official Gazette u/s 15(1) of the Act appearing Regional Conciliation Officer Meerut as the authority u/s 15(1) of the Act. In reply to averments made in paragraph 9 of the writ petition, it has been stated in paragraph 10 of the counter-affidavit of Sri T.N. Naik, the Conciliation Officer, Allahabad, that Conciliation Officer, Meerut being the Conciliation Officer of the Region, he stands appointed as Commissioner for Compensation under Workmen compensation Act and as such he has also been appointed as Prescribed Authority u/s 15 of the Act. It is relevant to mention Paragraph 4 of the counter-affidavit also wherein it has been asserted on behalf of respondent Conciliation Officer that he has been conferred with the power of Prescribed Authority under Sub-section (1) of Section 15 of the Act by notification No. 2940/36 IV dated September 26, 1979. However, on perusal of said notification which is Annexure-CA-1 to the counter-affidavit, it appears that by said notification power u/s 20 of the Workmen's Compensation Act alone has been conferred on Conciliation Officer, Agra Region, Agra, it is neither a notification in respect of Conciliation Officer, Meerut Region, Meerut before whom application giving rise to this writ petition is pending nor it is notification in respect of conferment of power u/s 15(1) of the Act on any one. It only confers powers on Conciliation Officer u/s 20 of the Workmen's Compensation Act and not the power to hear and decide applications moved u/s 15(2) of the Act.

5. Sub-sections (1) (2) and (3) of the Payment of Wages Act relevant for the purposes of present case reads as follows.

15. Claims arising out of deduction from wages or delay in payment of wages and penalty for malicious or vexatious claims:

(1) The State Government may, by notification in the Official Gazette, appoint (A presiding Officer of any Labour Court or Industrial Tribunal constituted under the Industrial Disputes Act, 1947 (14 of 1947), or under any corresponding law relating to the, investigation and settlement of industrial disputes in force in the State of any Commissioner for Workmen's compensation or other officer with experience as a judge of a civil court or as a stipendiary Magistrate to be the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages (of persons employed or paid in that area), including all matters incidental to such claims .

Provided that where the State Government consider it necessary so to do, it may appoint more than one authority for any specified area and may, by general or special order, provide for the distribution or allocation of work to be performed by them under this Act.

(2) Whereas contrary to the provisions of this Act any deduction has been made from the wages of an employed person or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector under this Act, or any other person acting with the permission of the authority appointed under Sub-section (1), may apply to such authority for a direction under Sub-section (3).

Provided that every such application shall be presented within (twelve months) from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be; provided further that any application may be admitted after the said period of (twelve months) when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

(3) When any application under Sub-section (2) is entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages u/s 3 or give them an opportunity of being heard, and, after such further inquiry (if any) as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former cases and (not exceeding twenty five rupees in the latter, and even if the amount deducted or the delayed wages are paid before the disposal of the application, direct the payment of such compensation, as the authority may think fit, not exceeding twenty five rupees).

Provided that no direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to:

(a) a bona fide error or bona fide dispute as to the amount payable to the employed person or (b) the occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment or (c) the failure of the employed person to apply for or accept payment."

6. In view of provisions of Section 15(1) of the Act unless the State Government confers power by a notification on an officer mentioned in said sub-section, which does not include conciliation officer, no person can exercise power u/s 15(1) of the Act. As there is neither notification u/s 15(1) of the Act nor power can be conferred on a Conciliation Officer under said provisions. The Conciliation Officer took cognizance of the application filed u/s 15(2) of the Act by respondent No. 2 Tilak Ram

Gupta in excess of his power and, therefore, a writ of prohibition is liable to be issued prohibiting him from entertaining the application on merit.

7. For aforesaid reasons, the petitioner is entitled for writ of prohibition and the respondent No. 1 is prohibited from proceeding with application dated January 28, 1991 (Annexure 1 to the writ petition) for payment of wages filed by Tilak Ram Gupta, against Sam Smelting Private Limited, u/s 15(2) of Payment of Wages Act, 1936. The petitioner will not be entitled to get back the wages which stand paid to respondent No. 2 by the petitioner, The writ petition is allowed. Cost on parties.