

(2007) 02 AHC CK 0264

Allahabad High Court

Case No: C.M.W.P. No. 24394 of 1996

Triveni Engineering and
Industries Ltd. Sugar Unit

APPELLANT

Vs

1st Addl. District Judge and
Others

RESPONDENT

Date of Decision: Feb. 15, 2007

Acts Referred:

- Constitution of India, 1950 - Article 226
- Payment of Wages Act, 1936 - Section 15, 17, 2(1)

Citation: (2007) 6 AWC 6572

Hon'ble Judges: Arun Tandon, J

Bench: Single Bench

Advocate: C.P. Ghildyal, for the Appellant; K.P. Agrawal, Shyam Narain, Sudhanshu Narain, Sumati Rani Gupta, Suman Sirohi and SC, for the Respondent

Final Decision: Dismissed

Judgement

Arun Tandon, J.

Heard Sri C.P. Ghildyal, advocate on behalf of the Petitioner, Sri K.P. Agarwal, senior advocate assisted by Smt. Sumati Rani Gupta, advocate and Sri Shyam Narain, advocate on behalf of workmen.

2. Petitioner is a Company duly incorporated under the Companies Act. It has established a sugar industry in the name and style of M/s Triveni Engineering and Industries Ltd. Sugar Unit Khatauli. On 19th September, 1991, an inspection of the Petitioner's factory was made and certain violations were noticed by the Factory Inspector. Accordingly, a notice was issued to the employers to submit their explanation vide letter dated 8th October, 1991. A reply was filed to the notice so issued by the Petitioner on 25th November, 1991.

3. Not being satisfied with the explanation furnished, the Factory Inspector filed a report u/s 15 of the Payment of Wages Act, before the Prescribed Authority, wherein it was stated that 11 workers (Respondent Nos. 3 to 13 in the present writ petition) have not been paid their wages in full and there had been illegal deduction to the tune of Rs. 60,202.95 by the employers.

4. On the report so filed, notices were issued to the employers. Objections were filed on their behalf on 5th May, 1992 (copy whereof has been annexed as Annexure-8 to the writ petition).

5. After hearing the parties and having gone through the documents filed on their behalf, the Prescribed Authority by means of the order dated 30th November, 1994 came to the conclusion that the employers have illegally deducted the amount of Rs. 60,202.95 from the salary payable to the aforesaid Respondents. The Prescribed Authority, therefore, directed payment of the said money alongwith penalty, which was calculated at three times the money deducted.

6. Feeling aggrieved by the order of the Prescribed Authority, the Petitioner filed an appeal u/s 17 of the Payment of Wages Act, which was numbered as Appeal No. 18 of 1995. The appeal so filed by the Petitioner has been dismissed under orders of the Additional District Judge, Muzaffar Nagar on 23rd July, 1996. It is against these two orders that the present writ petition has been filed.

7. On behalf of the Petitioner, it has been submitted that in the written statement as well as in the Memo of Appeal, it was, specifically, contended that the proceedings u/s 15 of the Payment of Wages Act were totally misconceived, inasmuch as the Respondents-workmen were not the employees of the Petitioner's factory. There was no relationship of master and servant between the Petitioner and Respondent. It had been further stated that the employees concerned were in fact employed by one Mr. Abdul Aziz, who was a contractor and, therefore, the entire proceedings initiated under the Payment of Wages Act were wholly without jurisdiction.

8. The aforesaid contentions has been reiterated before this Court by Sri C. P. Ghildayal and reliance has been placed upon the judgment of the Hon'ble Supreme Court in the case of [Shri Ambica Mills Co. Ltd. Vs. S.B. Bhatt and Another](#),

9. On behalf of the workmen the same judgment has been relied upon and with reference to paragraph 4 of the judgment, it is submitted that mere denial of the relationship of master and servant by the employers is not sufficient. In exercise of powers u/s 15 of the Payment of Wages Act, the Prescribed Authority has competence to decide the issue, which may arise incidentally with regard to the relationship of master and servant between the employers and the workmen concerned, while considering their applications in respect of illegal deductions made from salary. Even otherwise, it is submitted that having regard to the evidence led by the parties, the Prescribed Authority as well as the Appellate Authority have categorically held that the Respondents were employees of the Petitioner's factory.

Such findings of fact cannot be subject matter of reconsideration in proceedings under Article 226 of the Constitution of India.

10. Lastly, it is contended that even workers employed through a contractor answer the description of workmen under the Payment of Wages Act, reference in that regard has been made to Section 2(1) of the Factories Act.

11. Learned Counsel for the workmen has placed reliance upon the judgment of the Hon'ble Supreme Court in the case of [Chief Mining Engineer East India Coal Co. Ltd. Vs. Rameswar and Others](#), [The Central Bank of India Ltd. Vs. P.S. Rajagopalan etc.](#), and para 16 and paragraph 12 of the judgment in the case of Shri Ambica Mills Co., Ltd. (supra).

12. I have heard learned Counsel for the parties and have gone through the records of the present writ petition.

13. The power conferred upon the Prescribed Authority, under the Payment of Wages Act is summary in nature. The purpose is to provide speedy solution to the grievance of the workmen, whose wages are illegally withheld or deducted. Such a power cannot be extended for resolving a serious dispute qua relationship of Master and Servant between the contesting parties. At the same time, it cannot be said that the employers can defeat the purpose of the Act by raising a frivolous dispute qua relationship, so as to avoid the proceedings under the Act, if such frivolous pleas are raised, the Payment of Wages Authority can look into the grievance of the workmen and will have the power to find out, as to whether the defence taken by the employer, is plausible one or not.

14. Since the learned Counsel for both the parties have placed reliance upon the judgment of the Hon'ble Supreme Court of India in the case of Shri Ambica Mills Co. Ltd. (supra), it would be relevant to reproduce paragraph-12 of the said judgment, which reads as follows:

12. In dealing with claims arising out of deductions or delay made in payment of wages the authority inevitably would have to consider questions incidental to the said matters. In determining the scope of these incidental questions care must be taken to see that under the guise of deciding incidental matters the limited jurisdiction is not unreasonably or unduly extended. Care must also be taken to see that the scope of these incidental questions is not unduly limited so as to affect or impair the limited jurisdiction conferred on the authority. While considering the question as to what could be reasonably regarded as incidental questions let us revert to the definition of wages prescribed in Section 2(vi). Section 2(vi) as it then stood provided, inter alia, that "wages" means all remuneration capable of being expressed in term of money which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and it includes any bonus or other additional remuneration of the nature aforesaid which would be so

payable and any sum payable to such person by reason of the termination of his employment. It also provided that the word "wages" did not include five kinds of payments specified in Clauses (a) to (e). Now, if a claim is made by an employee on the ground of alleged illegal deduction or alleged delay in payment of wages several relevant facts would fall to be considered. Is the applicant an employee of the opponent? and that refers to the subsistence of the relation between the employer and the employee. If the said fact is admitted, then the next question would be: what are the terms of employment? Is there any contract of employment in writing or is the contract oral? If that is not a point of dispute between the parties then it would be necessary to enquire what are the terms of the admitted contract. In some cases a question may arise whether the contract which was subsisting at one time had ceased to subsist and the relationship of employer and employee had come to an end at the relevant period. In regard to an illegal deduction a question may arise whether the lockout declared by the employer is legal or illegal. In regard to contracts of service sometimes parties may be at variance and may set up rival contracts, and in such a case it may be necessary to enquire which contract was in existence at the relevant time. Some of these questions have in fact been the subject-matter of judicial decisions vide: [A.R. Sarin Vs. B.C. Patil and Another](#), [Viswanath Tukaram Vs. General Manager, Central Railway and Others](#), and [Maharaja Shri Umaid Mills Ltd., Pali \(Marwar\) Vs. The Textile Labour Union \(Red Flag\), Pali and Others](#), but we do not propose to consider these possible questions in the present appeal, because, in our opinion, it would be inexpedient to lay down any hard and fast or general rule which would afford a determining test to demarcate the field of incidental facts which can be legitimately considered by the authority and those which cannot be so considered. We propose to confine our decision to the facts in the present case.

15. Thus, under the judgment of the Hon"ble Supreme Court of India, no hard and fast or general rules can be laid down for determining or for demarcating the field of incidental facts, which can be legitimately considered by the authority under the Payment of Wages Act. Each case has to be decided on its own facts. Similar, are the judgments of the Hon"ble Supreme Court of India relied upon by the learned Counsel for the workmen, it is not necessary to refer to the same again. Therefore, this Court has to be examined as to what are the facts qua the case at hand.

16. The Court may refer to the findings recorded in respect of master and servant's relationship by the first appellate court in its order dated 23rd July, 1996 relevant portion whereof reads as follows:

It is thus obvious that the overwhelming documentary and oral evidence from the side of the Appellants on record would lead to the conclusion that the Respondents. were infact used to work in the sugar mill of the Appellant. The pay sheet and disbursement of salary paper Nos. 2/1 to 2/9, photo extract of the Attendance register Exts. 3 and 4 of the Triveni Engineering Works Appellant would lead to the

only conclusion that infact the Respondents were used to work in the factory of the Appellant in the individual capacity and not on the basis of contract as alleged by the Appellants. Apart from it there is no evidence either documentary or oral that the Respondents were used to work under any agreement of contract and they used to sit outside the premises of the sugar mill. A. K. Sharma, Factory Manager (P.W.A. 1) stated that Abdul Aziz was a contractor, but he does not know as to since when he was a contractor of the sugar mill. Abdul Aziz has not been registered as a contractor of the sugar mill while there is a provision in the Labour Act that every contractor should be registered in accordance with the procedure prescribed. Therefore, the statement of the Factory Manager clearly belies the theory of contract labour as set up by the Appellant. In this respect I have gone through the reasonings given by the learned court below before coming to the conclusion and I am of the view that the conclusion arrival at by the learned court below is quite in accordance with the evidence available on record and also in accordance with law applicable to it. The question of jurisdiction of the learned court below has been raised for the first time before this Court. The question of jurisdiction was not pleaded before the learned court below has not decided the question of jurisdiction. It is an established law that the question of jurisdiction should be availed of at an earliest opportunity available, but in this case the question of jurisdiction has been raised for the first time before this Court and the same is not tenable in view of the overwhelming documentary evidence like pay Register, disbursement of salary register and attendance register of the sugar mill of the Plaintiff. Therefore, the contention raised by the learned Counsel is not at all tenable in the eye of law. As regards the second and third questions with regard to the authority deciding the incidental questions of claimants of deduction of payment of wages and that of the contract basis or on the basis of a workman, in this respect I have again gone through the reasonings given by the learned court below and the conclusion arrived at. The only question raised before the learned court below was that the Appellant has wrongly deducted the amount of wages of the Respondents. for the period of January, 1991 to September 1991. In this respect the Factory Manager has filed photostat copies of Form No. 12 for the month of September, 1991, January 1991 of the attendance register wherein all the 11 Respondents. have been shown as mazdoor of the workshop in shift "D". They have worked as a mazdoor in the workshop during the aforesaid disputed period. Therefore, the documentary evidence adduced from the side of the Appellant would lead to the only conclusion that the Respondents infact did work in the sugar mill of the Appellant from January, 1991 to September, 1991 and the Appellant has wrongly deducted their wages. Consequently the appeal has got no force and the same is liable to be dismissed in the interest of justice.

17. In the opinion of the Court, the findings so recorded by the first appellate court, which dealing with the contention raised on behalf of the Petitioner (subject matter

of challenge in the present writ petition), cannot be said to be perverse nor same suffers from any infirmity in law, so as to warrant interference under Article 226 of the Constitution of India.

18. The writ petition is devoid of merits and is accordingly dismissed.