Bhagwat Rai Vs Union of India (UOI) and Another

Court: Bombay High Court (Nagpur Bench)

Date of Decision: April 17, 1952

Acts Referred: Payment of Wages Act, 1936 â€" Section 15

Citation: (1953) 1 LLJ 484

Hon'ble Judges: Mangalmurti, J; Ded, J

Bench: Division Bench

Judgement

1. This is an appeal for revision u/s 25 Small Cause Courts Act by Bhagwat Rai who had filed Civil Suit No. 83 of 1950 in the Court of Sri S.L.

Sarma, First Civil Judge, (Class II), Bilaspur, empowered u/s 18 C.P. Courts Act.

2. Bhagwat Rai worked as a fitter-coolie under the Inspector of Works, Bengal-Nagpur Railway, Bilaspur, His case is that he was not paid a part

of his wages for the months of November 1948 and March 1949 amounting to Rs. 76-4-0 and that as he was illegally suspended on 22 March

1949 by defendant 2, L.C. Mehta, Inspector of Works, and reinstated on 22 April 1949, he was entitled to Rs. 53 on account of the wages for

the period of suspension. He, therefore, instituted a suit on 7 March 1950 for recovery of Rs. 137-3-3 inclusive of interest. The defendants filed

written statements on 27 April 1950 but they did not raise any objection about the jurisdiction of the court. On 19 July 1950, however, they filed

an application contending: that the court could not entertain the suit as it was for the recovery of wages which could have been recovered by an

application u/s 15, Payment of Wages Act. The plaintiff replied by saying that the defendants had waived the objection regarding jurisdiction by not

raising it in the written statement. The lower court held that it was not waived and after hearing arguments allowed it and dismissed the suit.

3. This case was set down for hearing by a Division Bench as V.R. Sen, J., who initially heard it held that the question of jurisdiction is of general

importance.

4. The learned Counsel for the applicant raised before us the following four contentions:

(i) that the sums claimed in the suit were neither deductions from the wages nor sums in respect of which there was delay in payment of the wages

but there was refusal either because payment was made or because it was not due and so they could not have been recovered by an application

u/s 15, Payment of Wages Act;

(ii) that they could also not be recovered u/s 15, Payment of Wages Act, on the date the suit was filed because six months had already elapsed

from the date on which the alleged deductions were made or the payment of wages was due to be made and so no application could be made on

that date u/s 15 ibid;

(iii) that the application u/s 15, Payment of Wages Act, is an additional remedy to the ordinary remedy of a suit and not a remedy which has been

substituted by law for the ordinary remedy of a suit;

(iv) that the defendants had waived this objection as to jurisdiction by not raising it in the written statements.

5. The sums claimed by the applicant are:

(a) Rs. 10-4-0 wages for November 1948;

(b) Rs. 66 wages for March 1949 ; and

(c) Rs. 53 wages for the period of suspension from 22 March 1949 to 22 April 1949.

6. The defence is that the amount of Rs. 10-4-0 and the wages for March up to 22 March 1949 have been paid and that the plaintiff remained

absent from duties without permission from 22 March 1949 to 22 April 1949 and is not consequently entitled to wages for this period.

7. The applicant thus says that the payment is due to him and it is delayed beyond the time fixed by Section 5, Payment of Wages Act, while the

defendants deny it. There is thus a dispute as to the amount payable to the employed person and its consideration is within the competence of the

authority appointed u/s 15 of the Act as would appear from Clause (a) of the proviso to Sub-section (3) thereof. The learned Counsel for the

applicant contended that these were not delayed payments and cited in support--Simplex Manufacturing Company, Ltd. v. Alla-ud-Din AIR 1945

Lah. 195, which contains the following observations at page 196:

There seems to be no authority directly to the point; but it seems to me clear that delayed wages can only mean wages which are admittedly due,

but the payment of which has been postponed on some excuse or another. This view seems to be confirmed by the proviso to Sub-section (3) of

Section 15 in which it is said that a direction should not be made when the delay in the payment of wages is due to a bona fide dispute as to the

amount payable to the employed person. This seems to suggest that any bona fide disputes as to the amount payable are to be tried by the civil

courts, for otherwise there would be no authority capable of making an order for payment when the amout is in fact due. For these reasons, I hold

that the jurisdiction of the civil courts is not barred in case like thisÃ¯Â¿Â½.

With the greatest respect we find ourselves unable to accept this view. It is not warranted by the proviso to Sub-section (3) of Section 15 which

reads thus:

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

Thus the proviso prohibits only the making of a direction for the payment of ""compensatio"" in the case of delayed wages and does not prohibit the

making of a direction regarding the refund of the amount deducted or the payment of the delayed wages laid down in Sub-section (3) of Section

15. The proviso also does not suggest that any bona fide disputes as to the amounts payable are to be tried by the civil courts. On the other hand it

wants the authority to satisfy itself if the delay was due to a bona fide error or bona fide dispute as to the amount payable to the employed persons.

In The Modern Mills Ltd. Vs. V.R. Mangalvedhekar, , vide p. 469 ante their lordships of the Bombay High Court treated such a refusal to pay as

deductions and after referring to Sub-section (2) of Section 15 observed:

Therefore it is competent to the authority appointed u/s 15(1) to determine whether any deduction has been made from the wages of an employed

person contrary to the provisions of the ActÃ¯Â¿Â½.

Their lordships of the Bombay High Court further observed at page 343:

The contention of Mr. Rege is that the Modern Mills refused to pay the bonus to the employee because they were required not to pay that bonus

under the award of the industrial court. But it is for the authority u/s 15(2) to determine whether such a deduction made by the employers was an

authorised deduction u/s 7. If the contention of the employer is that he is required by the award not to pay the wages, it is for the authority to be

satisfied that such a contention is a valid one, and in order to determine that he must construe the award and be satisfied that the award on which

the employer is relying requires the employer not to pay the bonus. It is impossible to contend, in my opinion, that it is not open to the authority

under the Payment of Wages Act to construe the award in order to determine whether the deduction made by the employer was an authorised

deduction or not.

In A.R. Sarin Vs. B.C. Patil and Another, we get the following observations of their lordships of the Bombay High Court at pages 425 and 426:

We would like to make it clear, as the matter is of considerable importance, as to what we think is the jurisdiction of the authority under the statute.

It is certainly competent to the authority to construe the terms of the contract of employment in order to determine what wages are to be paid, and

even if the contract of employment has been terminated, it is open to him to contrue its terms in order to determine whether, any sums are payable

by reason of the termination. It would also be open to him to determine whether a person has been employed or not, because the question of

contract of employment and the terms of the contract can only arise provided the person seeking relief was employed. The mere denial of the

factum of employment cannot oust the jurisdiction of the authority. If the employer denies or disputes the fact that the servant was employed by

him, it will be for the authority to decide that question and it is only after the question of employment has been decided that the question would

arise as to what are the terms of the contract and what is the liability of the master under the terms with regard to wages. It has been suggested by

Mr. Seervai that this construction of the statute really confines the jurisdiction of the authority only to cases where wages are admitted, and Mr.

Seervai says that if the legislature intended that the authority should only try cases of admitted wages, there was nothing easier than for the

legislature to have so stated. It is not correct that our decision leads to the conclusion that the jurisdiction of the authority is so limited or restricted

because there may be various cases within its jurisdiction where the liability to wages is denied or disputed and which the authority would still be

competent to decide. The question as to whether X amount or Y amount is due under the terms of the contract is a case where wages may not be

admitted. The employer may say that X amount is due and the servant might say that Y amount is due, and the authority would have to decide on a

true construction of terms of the contract as to what is the amount due. Therefore, the jurisdiction of the authority really is to determine the terms of

the contract in so far as they relate to the payment of wages and in so far as he has to decide the liability of the employer to pay wages under the

terms of the contract.

We respectfully agree with this view, and hold that the sums claimed by the applicant could have been recovered by an application u/s 15,

Payment of Wages Act.

8. The learned Counsel for the applicant next contended that the jurisdiction of civil court is not excluded as the remedy under the Payment of

Wages Act is an additional remedy and was not available on the date of the suit. We do not agree. Section 22(d) excludes the jurisdiction of a civil

court to entertain a claim which could have been recovered by an application u/s 15 of the Act. This exclusion is absolute and does not depend on

the choice of the claimant. The jurisdiction of the civil court is not revived by his omission to make an application u/s 15 within the time allowed by

law.

9. Their lordships of the Bombay High Court in A.R. Sarin v. B.C. Patil, supra, after looking at the purpose of the Payment of Wages Act and also

its general provision observed at page 424:

Therefore the jurisdiction of the authority appointed under this section is clearly limited to (1) all claims arising out of deductions from wages and

(2) delay in payment of the wages. It must be borne in mind that Section 22 ousts the jurisdiction of civil courts in respect of all claims which can

be entertained by the authority u/s 15. Therefore, the scheme of the Act is to set up a special tribunal, confer a special jurisdiction upon that

tribunal, and to the extent that special jurisdiction is conferred upon that tribunal, to oust the jurisdiction of the ordinary civil courts.

These contentions therefore, fail.

10. The learned Counsel for the applicant then contended that the defendants had waived this objection as to jurisdiction by not raising it in the

written statements, dated 27 April 1950. They, however, raised it by an application on 19 July 1950. This is not an objection as to the place of

suing, and Section 21, Civil Procedure Code, has no application. Moreover, Section 21 deals with the powers of appellate and revisional courts

and not of the court of first instance. In this case the objection was decided against the applicant by the original court itself. The objection in the

present case is about the want of inherent jurisdiction over the subject-matter, i.e., inherent incompetency of the court itself and such an objection

cannot be waived. Lord Waston in delivering the judgment of the Board in Ledgard v. Bull 9 All. 191 P.C. said:

Ã¯Â¿Â½(But) when the judge has no inherent jurisdiction over the subject-matter of a suit, the parties cannot, by their mutual consent, convert it into a

proper judicial process, although they may constitute the judge their arbiter, and be bound by his decision on the merits when these are submitted

to him.

The principles laid down in Ledgard v. Bull, supra, were reiterated by their lordships of the Privy Council in Meenakshi Naidu v. Subramania

Sastri 14 Ind. App. 160 : 11 Mad. 26 (P.C.) in which their lordships in the course of their judgment said:

In the present case there was an inherent incompetency in the High Court to deal with the question brought before it and no consent could have

conferred upon the High Court that jurisdiction which it never possessed.

So this contention of the learned Counsel for the applicant also fails.

11. The application for revision is, therefore, hereby dismissed with costs. Counsel''s fee Rs. 25.