

(1995) 09 AHC CK 0102
In the Allahabad High Court
Case No : C.M.W.P. No. 19051 of 1994

Elgin Mills Co. Ltd. and Another

APPELLANT

Vs

Add. Regional Commissioner and Others

RESPONDENT

Date of Decision : 28-09-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Uttar Pradesh Factories Welfare Officers Rules, 1955 — Rule 22

Uttar Pradesh Industrial Peace (Timely Payment of Wages) Act, 1978 — Section 3, 4

Citation : (1996) 2 LLJ 439

Hon'ble Judges : S.R. Singh, J

Bench : Single Bench

Advocate : Rakesh Tewari, for the Appellant;

Final Decision : Allowed

Judgement

S.R. Singh, J.—Recovery certificate dated April 30, 1994 issued by the Additional Labour Commissioner. U.P. Kanpur Region, Kanpur in the purported exercise of power u/s 3 of the U.P. Industrial Peace (Timely Payments of Wages) Act, 1978 (in Short "the Act") is sought to be quashed by means of this writ petition filed at the instance of the concerned Industrial Establishment

2. The impugned recovery certificate has been issued on an application u/s 3 of the Act read with rule 22 of the U.P. Factory Welfare Officers Rules, 1955 (in short "the Rules") moved on behalf of the workmen of the concerned Industrial Establishment through Ram Das Shukla, President of Elgin Mill No. 2, Rashtriya Shramik Sangh, 2, Navin Market, Kanpur for realisation of a sum of Rs. 7,24,619.56 as over time due to the workmen and Rs. 2,44,236.11 due to the welfare officers; arrayed herein as respondents No. 3 and 4. It was alleged in the application that all the workmen of Eiign Mill No. 2 had worked overtime from time to time during January 1, 1980 and December 31, 1980 and thereby earned over time wages at the rate of 200% i.e. at double rate for the period they had worked overtime, but they were actually paid over time wages at single rate i.e.,

at the rate of 100% and so an amount of Rs. 7,24,619.56 remained unpaid to the workmen during the year 1980. Similarly it was alleged that a sum of Rs. 2,44,236.11 remained unpaid to the two Labour Welfare Officers herein arrayed as respondents No. 3 and 4, which they were entitled to get towards dearness allowance, bonus, provident fund, housing, medical and other facilities.

3. The Additional Labour Commissioner, Kanpur Region, Kanpur rejected vide order dated April 22, 1983 the application aforesaid in as much as the matter, in his opinion, involved computation which could be done u/s 33C of the Industrial Disputes Act, 1947. An application was then moved on behalf of the workmen and the two Labour Officers u/s 151 of the CPC read with Section 4 of the Act and Section 21 of the General Clauses Act for review of the order dated April 22, 1983. The review application was opposed on behalf of the petitioners, inter alia on the ground that it was not maintainable in as much as the Labour Commissioner had no power of review under the provisions of the Act.

4. Upon consideration of the submissions made on behalf of the parties, the Additional Labour Commissioner U.P. Kanpur Region, Kanpur held, by his order dated November 28, 1984, that the review application was maintainable. Aggrieved the petitioners preferred a writ petition, it being Civil Misc. Writ Petition No. 17318 of 1984. A learned Judge held that "the Labour Commissioner is not statutorily authorised to review adjudication of the rights of the parties under the Act", but dismissed the writ petition, vide judgment and order dated September 21, 1993 for reasons which, stated in the words of the learned Judge, himself, read as under:

"A perusal of the order reveals that it did not adjudicate upon any of the right of the parties namely, the employer or the employees. By this order, the Labour Commissioner only relegated the concerned employee to the remedy provided for u/s 33C of the Industrial Disputes Act, as in his opinion the matter pertained to computation for which the Labour Court was competent. In view of the fact that the order dated April 22, 1983 did not adjudicate upon any of the rights of the parties, the impugned order dated November 24, 1984 entertaining the proceedings in respect of the claim of the employees, on a revised opinion, cannot be taken to amount review of earlier order of April 22, 1983. It only purports to hold the proceedings to be maintainable."

5. Thereafter the Additional Labour Commissioner entertained the application u/s 3 of the Act and issued the impugned recovery certificate according to which the occupier of the concerned Industrial Establishment, viz M/s Elgin Company Ltd., Kanpur was in default of payment of wages to the workmen from January 1, 1980 to December 31, 1980 and the two Labour Welfare Officers from January 27, 1954 to September 12, 1987. The wage bill in respect of which the default was committed amounted to Rs. 10.69,007.15.

6. The principal questions raised by Sri J.N. Tewari, learned Senior counsel appearing for the petitioner are; (i) the dispute involved in the case was outside

the purview of Section 3 of the Act; (ii) the Additional Labour Commissioner has issued the impugned certificate in a mechanical manner without applying his mind to the objections raised as against the demand of the workmen and two Labour Welfare Officers working in the Mills. The question as to maintainability of review was also re-agitated by Sri. J.N. Tewari who urged that the order dated April 22, 1983 was not open to review of the Additional Labour Commissioner. In reply Sri K.P. Agrawal, learned Senior counsel appearing for the respondents urged that the impugned order made by the Additional Labour Commissioner did not suffer from lack of jurisdiction nor can it be termed as an order made without application of mind. According to Sri K.P. Agrawal, the objection raised on behalf of the petitioner to the applications moved on behalf of the workmen and two Labour Welfare Officers were frivolous and untenable and were not such as may oust the jurisdiction of the Additional Labour Commissioner u/s 3 of the Act.

7. Section 3 of the Act provides a forum for speedy redressal of workmen's grievance as a whole where the Occupier of an Industrial Establishment has committed default in payment of wages in respect of a wage bill exceeding fifty thousand rupees. The scope and ambit of powers of the Labour Commissioner u/s 3 of the Act came up for consideration before the Supreme Court in *Modi Industries Ltd. v. States of U.P.* (1994 I LLJ 383). Their Lordship of the Supreme Court held that the enquiry that is conducted by the Labour Commissioner u/s 3 of the Act is of quasi-judicial nature and further that when liability to pay the wages is in dispute which involves investigation of questions of facts and/or law, it would not be open to the Labour Commissioner to adjudicate the same. The principle governing exercise of power has been encapsulated by their Lordships of the Supreme Court as under:- P 389

"..... The Labour Commissioner may have to deal with broadly three different situations, viz.(i) Where there is no defence whatsoever raised by the employer to the claim of the workmen; (ii) Where the employer raises frivolous and untenable pleas to resist the claim; and (iii) where there is a genuine dispute with regard to the entitlement of the workmen to the wages and the said dispute cannot be resolved without investigating the disputed questions of fact or law. In the first case, the Labour Commissioner is not called upon to give any reason while issuing the certificate. In the second case, the Labour Commissioner has to give reasons as to why according to him, the pleas raised are untenable. In the third situation the Labour Commissioner when he rejects the claim of the workmen has to indicate the disputed question of law or fact which prevented him from exercising his limited jurisdiction. Thus both for issuing certificate as well as for rejecting it, the Labour Commissioner may be called upon to give his reasons depending upon the facts in each case....."

8. The present was not a case of "no defence whatsoever raised by the employer" to the claim of the workmen in as much as the application u/s 3 of the Act was opposed, inter alia on the grounds that (i) Occupier committed no breach u/s 5 of the Payment of Wages Act; (ii) the application is vague and does

not specify the names of workmen who had worked over-time during the year 1980 nor does it specify the hours for which workmen may have worked over time and (iii) the two Labour Welfare Officers did not come in the category of workmen and their claims "are also not established existing claims but an attempt is being made in this proceedings to seek adjudication on the issue of parity with the officer with whom they are to be classified". Apparently it cannot be said to be a case, "where there is no defence whatsoever, raised by the employer to the claim of workmen". It was, of course open to the Additional Labour Commissioner to go into the pleas taken by the Employer in defence to the application u/s 3 of the Act and hold, for recorded reasons, that the pleas taken were frivolous and untenable pleas to resist the genuine and bona fide claim of the workmen. The Additional Labour Commissioner has not done that and seems to have issued the recovery certificate in a mechanical manner as would be evident from the set language used therein. The Additional Labour Commissioner has not at all adverted himself to the application u/s 3 of the Act.

9. It was urged by Sri K.P. Agrawal that entitlement of the workmen for over time wages at the rate of 200% could not be disputed for that is a claim recognised by Statute and so was the claim of the two Labour Welfare Officers who were entitled, by virtue of rules of the U.P. Factories Welfare Officers' Rules 1955, to have status of an Officer of the Factory entitled to clearness allowance, bonus, provident fund, leave, housing, medical and other facilities at par with the officers of similar status and grade in the factory and to whom the provisions of the Act were made applicable by virtue of rule 22 of the Rules aforesaid as inserted by U.P. Factories Welfare Officers (Sixth Amendment) Rules, 1970. The argument is attractive but it cannot be gainsaid that the claim of the two Labour Welfare Officers taken in isolation of the claims of the other workmen would not be maintainable u/s 3 of the Act and cannot be pressed into service for enforcement of claim of individual workmen. True, Section 3 of the Act applies, as urged by Sri K.P. Agrawal, to a case of "default of payment of wages" but the further requirements for the applicability of the section is that the default must be in respect of the "wage-bill" exceeding five thousand rupees. The expression "wage-bill" as defined in Section 2(d) of the Act means total amount of wages payable by an Industrial Establishment to its workmen. These questions and the question whether a stale and inveterate claim can be enforced u/s 3, ought to have been adverted to and examined by the Additional Labour Commissioner before issuing recovery certificate. It is not for this Court to go into the questions aforesaid and pleas taken in defence to the claim u/s 3 of the Act and pass an order allowing or rejecting the application.

10. As regards the question as to maintainability of the review application, suffice it to say that albeit the power to review is not the inherent power and it must be conferred by law either expressly or by necessary implication, an authority exercising quasi-judicial function under a Statute can recall its order passed earlier if such order had been passed on mis-conception of law or fact or on the basis of any fraud or misrepresentation notwithstanding the fact that the

statute does not expressly confer such power of review for such a limited power of review inheres in every statutory authority exercising administrative or quasi-judicial powers. Additional Labour Commissioner can, therefore, in appropriate case, review and recall an order passed u/s 3 of the Act. Section 4 of the Act and Section 151 C.P.C. under which the application was moved may not be pressed into service but, having regard to the nature of Labour Commissioner's function u/s 3 and likely consequences of the order rejecting an application moved under the section on a technical ground, I am of the considered view that it is the duty of the Labour Commissioner to rectify, review and recall its order as and when it is brought to its notice that the order sought to be recalled was passed on a wrong or mistaken assumption of facts or on a misconception of law and that if allowed to stand the order would have serious consequences and may result in grave injustice - See S. Nagaraj and Others Vs. State of Karnataka and Another, .

11. I must, however, hasten to add that the question whether the limited grounds of review as discussed above, are made out or not, ought to be gone into either separately or while issuing the recovery certificate. The earlier order may be recalled, if in the opinion of the appropriate authority, the grounds are made out. It goes without saying that the reasons for the formation of opinion one way or the other, are to be disclosed in the order itself. This has not been done in the instant case. The order holding the review application to be maintainable would not absolve the appropriate authority of its duty to go into the questions discussed above except on pain of invalidating the order that may come to be passed without expressly going into the question aforesaid.

12. In view of the above discussion the writ petition succeeds and is allowed. The impugned recovery certificate is quashed with the direction to the Additional Labour Commissioner to go into the pleas raised on behalf of the employer in defence of the claim u/s 3 of the Act and take appropriate decision in the matter in accordance with law and in the light of the observations made in the body of this judgment.