

(1993) 01 AHC CK 0065

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 17318 of 1984

Elgin Mills Company Ltd.

APPELLANT

Vs

The Additional Labour Commissioner, U.P. Kanpur Region and
Others

RESPONDENT

Date of Decision : 21-01-1993

Acts Referred:

Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 14
Industrial Disputes Act, 1947 — Section 33C, 33C(2)
Uttar Pradesh General Clauses Act, 1904 — Section 21
Uttar Pradesh Industrial Peace (Timely Payment of Wages) Act, 1978 — Section 3,
3(1), 4, 5, 6

Citation : (1993) 2 AWC 1248

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

Bench : Single Bench

Advocate : V.B. Singh, for the Appellant; A.K. Sinha and K.P. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

D.S. Singh, J.—Heard Sri Vijai Bahadur Singh, learned Counsel appearing for the employer Petitioner and Sri K.P. Agarwal, learned Senior Advocate appearing for the contesting Respondent No. 4, at length and in detail.

2. The interlocutory order dated 24th November, 1984 passed by the Additional Labour Commissioner, Uttar Pradesh Kanpur Region, Kanpur, the Respondent No. 1, holding that he had jurisdiction under the provisions of the Uttar Pradesh industrial Peace (Timely Payment of Wages) Act, 1978, hereinafter called the Act, to entertain and adjudicate upon the claim of the workman-Respondent and directing the concerned authorities of the employer to appear on 28th November. 1984 for further hearing, is under challenge in this petition under Article 226 of the Constitution of India

3. The impugned order dated 24th November, 1984, in substance, supersedes

the order dated 22nd April 1983, passed by the Respondent No. 1 himself holding that the claim of the contesting Respondent was, in fact, a matter of computation falling within the ambit of the provisions of Section 33-C(2) of the Industrial Disputes Act, 1947, hereinafter called the Industrial Disputes Act, when could be entertained by the Labour Court, and declining to take cognizance of the matter.

4. Sri Vijai Bahadur Singh, learned Counsel for the Petitioner, contends that the impugned order is invalid on the following two counts:

(a) that the impugned order amounts to an order of review which was not permissible in as much as the Respondent No. 1 did not possess any power of review.

(b) that the Impugned order is bad for non-disclosure of any reason in its support.

5. Sri K.P. Agarwal, learned Senior Advocate, appearing for the workman-Respondent, relies upon the provisions of Section 21 of the U.P. General Clauses Act, 1904 and submits that the Respondent No. 1 did not lack power to pass the impugned order setting aside the earlier order passed by him on 22nd April, 1983. Further submission of Sri Agarwal is that the Respondent No. 1 in passing the impugned order did not decide any of the rights of the parties. He only revised the opinion that the matter with respect to the claim of the contesting Respondent was cognizable by him. Sri Agarwal also submits that the impugned order is interlocutory in nature and the court should not interfere with it in exercise of its special and extraordinary Jurisdiction under Article 226 of the Constitution of India.

6. Section 3(I) of the Act provides that where the Labour Commissioner is satisfied that the occupier of an industrial establishment is in default of payment of wages and that the wage bill in respect of which such occupier is in default exceeds fifty thousand rupees, he may, without prejudice to the provisions of Sections 5 and 6 forward to the Collector, a certificate under his hand against specifying the amount wages due from the industrial establishment concerned. It is to be noticed that the Labour Commissioner can act only if he is satisfied with regard to existence of two conditions, namely the details of the payments, of wages as the part of the occupier of an industrial establishment and the quantum of the wage-bill being more than fifty thousand rupees. The expression "cases" for the purposes of the Act shall have the same meaning as has been assigned to it under the Payment of Wages Act, 1936. The expression, wage-bill is defined in the Act as the total amount of wages payable by an industrial establishment to its workman. Looking to the definition of the expressions "wages" and "wage-bill" it appears that the Commissioner has to make enquiry, *inter alia*, about the payability of the wages by the industrial establishment to its workmen which necessarily involves examination of the question whether the claimants of the wages are really workmen of the industrial establishment or not. Section 4 of the

Act contemplates that for the purposes of ascertaining the wage-bill of an establishment in respect of which default has been committed the Labour Commissioner shall have all the powers of a Civil Court, while trying a suit, under the Code of Civil Procedure, 1908 in respect or enforcing the attendance of witnesses and examine them on oath and compelling the production of documents. The questions such as who is the occupier" whether the establishment is an industrial establishment" whether the workmen concerned are the workmen of the industrial establishment, whether the wages are payable to them, is there any default in payment of wages whether the wage-bill in respect of which default is alleged exceeds fifty thousand rupees, the minimum limit fixed u/s 3 of the Act, have got to be adjudicated upon before a certificate for recovery can be issued, Once the certificate is issued to the Collector the amount specified in the certificate has got to be recovered from the industrial establishment concerned. Besides the amount specified in the recovery certificate the industrial establishment has also to pay recovery charges at the rate of ten percent. The question whether the industrial establishment should or should not be saddled with the liability of recovery charges shall depend upon the establishment of the default and thereupon issuance of the recovery certificate.

7. Thus it is evident that in the proceedings u/s 3 of the Act an element of adjudication of the rights of the parties, may be prima facie, is involved. Whenever there is adjudication, be it quasi-Judicial or administrative, there has to be finality of the adjudication and for reviewing the adjudication there should be express power it is well settled that the power of review cannot be exercised unless it is expressly conferred on the authority. In the Act no power of review has been conferred upon the Labour Commissioner in respect of the adjudication u/s 3 of the Act. Reliance upon Section 21 of the General Clauses Act to trace the power of review does not appear to be sound. Section 21 of the General Clauses Act cannot have the application where the order sought to be reviewed purports to adjudicate upon the rights of the parties. Thus, it has to be held that the Labour Commissioner, exercising the powers u/s 3 of the Act, is not possessed of the power of review as such. Of course, he has power of rectification of clerical or arithmetical mistakes.

8. Sri Agarwal invites attention of the Court to the decision of the Hon'ble Supreme Court of India rendered in the case of *Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others*, . Specific reference is made to paragraph 27 of the judgment which reads thus:

27. It has been argued that the order of the Chancellor becomes final and binding which is one of the features of Judicial power. It is true that the conclusiveness of the decision without the need for confirmation or adoption by any other authority is generally regarded as one of the features of judicial power But it must be added that the order made by a statutory authority even if it is given finality does not thereby acquire judicial quality if no other characteristic of judicial power is present. Power to make orders that are binding and conclusive

is not, by itself a decisive factor to hold that the power is Judicial, Prof. De Smith makes a similar point in his book *Judicial Review of Administrative Action*" (4th Edition P. 82).

From the perusal of the above paragraph, it appears that the Hon''ble Supreme Court was considering the question as to whether the power exercised by the Vice Chancellor under the U.P. State Universities Act was judicial. Here there is no challenge to the nature of the power of the Labour Commissioner u/s 3 of the Act. Reference to the case of *Km. Neelima Misra* (supra) is, therefore, misplaced. The question before this Court is whether in the proceeding u/s 3 of the Act any element of adjudication of the rights of the parties is involved, and once the adjudication is arrived at whether the same can be reviewed or not.

9. The power of review must be discernable in the statute under which the authority acts. Review of the order passed by a statutory authority with the aid of Section 21 of the General Clauses Act, is permissible only where there is no adjudication of any right of the parties.

10. The other case referred by Sri Agarwal is of Delhi High Court, rendered in the case of *K.R. Raghavan v. Union of India* 1979 LIC 1294. The attention of the Court was drawn to paragraph 11 of the said decision in the said paragraph 11 it has been held that "the exercise of a ministerial or discretionary power is not final in any sense. Firstly, the power can be exercised not only once and for all, but as often as it is required according to change in circumstances. Secondly, the very fact that the exercise of the power does not exhaust the power of the authority to exercise it again means that the power is revocable" This was held on the basis of Section 14 of the General Clauses Act, 1897, which provides that where any power is conferred under any Central Act or Regulation, unless a different intention appears, may be exercised from time to time as occasion requires. In the instant case, the controversy before the Court is not whether the Commissioner can exercise power u/s 3 of the Act again and again. The controversy is whether the order passed u/s 3 of the Act can be reviewed. Thus reference to the case of *K.R. Raghavan* (supra) also is misplaced.

11. The inevitable conclusion, therefore, is that the Labour Commissioner is not statutorily authorised to review the adjudication of the rights of the parties under the Act

12. The relevant question that arises herein is whether the order dated 22nd April, 1983, which is supposed to have been disturbed by the impugned order had the effect of deciding any of the rights of the parties. The order dated 22nd April, 1983, aforesaid, is on the record before this Court as Annexure-3 to the petition. A perusal of the order reveals that it did not adjudicate upon any of the rights of the parties, namely, the employer or the employee. By this order, the Labour Commissioner only relegated the concerned employee to the remedy provided for u/s 33-C 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 22nd April, 1983 did not adjudicate upon any of the rights of the parties, the impugned order dated 24th November, 1984 entertaining the proceedings in respect of the claim of the employee, on a revised opinion, cannot be taken to amount review of the earlier order of 22nd April, 1983. It only purports to hold the proceedings to be maintainable. The respective rights of the parties are yet to be adjudicated upon There seems to be no Impediment, in law, in taking cognizance of the claim for adjudication under the Act notwithstanding the denial to entertain the same on earlier occasion on the ground of alternative remedy. Power of the Labour Commissioner to relegate the Petitioner to the remedy of Section 33-C of the Industrial Disputes Act is doubtful.

13. The second contention of the learned Counsel for the Petitioner that the impugned order is bad for non-disclosure of reasons cannot be sustained on facts Prima-facie, reasons are there. The reasons for entertaining the claim, as disclosed in the Impugned order, are the existence of claim of wages amounting to more than fifty thousand rupees and the maintainability of the proceedings under the Act. These reasons may not be adequate but are reasons which are not irrelevant The Impugned order, therefore, cannot be struck down for lack of reasons.

14. In any event, the impugned order is inter-locutory in nature and does not have the effect of deciding any of the rights of the parties. The court is loath in interfering with the Interlocutory order in exercise of its special and extraordinary Jurisdiction under Article 226 of the Constitution of India.

15. In the result, the petition fails and Is dismissed. The interim order/orders shall stand discharged However there will be no order as to costs. The proceedings under the Act pending before the relevant authority shall be expedited