

(2001) 10 BOM CK 0033
In the Bombay High Court
Case No : Writ Petition No. 603 of 2000

Goodlass Nerolac Paints Limited	Vs	APPELLANT
Paints Employees Union, Mumbai		RESPONDENT

Date of Decision : 01-10-2001

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28
Payment of Wages Act, 1936 — Section 7, 9

Citation : (2002) 1 BOMLR 514 : (2002) 92 FLR 1123 : (2002) 1 MhLj 161

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : S. Ramaswamy and R.P. Rele, instructed by Piyush Shah, for the Appellant; Susheel Mahadeshwar, for the Respondent

Final Decision : Dismissed

Judgement

1. The short question involved in this writ petition is whether an employer can deduct wages of a workman on the basis of the judgment of the Apex Court in Bank of India v. T.S. Kelawala and Ors. reported in 7990 CLR SC 748 for the reason that the workman has not performed his part of the contract by working although he was present on duty.

2. The facts giving rise to the present writ petition are as follows :--

The petitioner which is a paint manufacturing company employs several workmen in its establishment. Several settlements have been signed between the petitioner Company and the Respondent Union. It is the case of the Respondent that as they did not toe the line of the management, the petitioner sponsored another trade union in its establishment and indiscriminately and under some pretext or the other started effecting deduction in the wages of workmen who were members of the Respondent Union. Two workmen, Puran Baldeo and Rameshchandra Ramsevak Kurmi, were working as skilled workers in the Varnish Department. According to the petitioner, on 3rd August 1993 these two workmen

although present on duty did not carry out the work allotted to them. Their wages were, therefore, deducted on the basis of the principle of "No work no pay" for that day i.e. 3rd August 1993. The Respondent Union aggrieved by this, filed complaint (ULP) No. 993 of 1993 u/s 28 read with Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act") on behalf of the said two workmen. It appears that during the time when the complaint was pending, Puran Baldeo expired and, therefore, the complaint was restricted to Rameshchandra Ramsevak Kurmi.

3. The allegation in the complaint was that the work which was allotted to the workman was on a seniority and priority basis i.e. works which were to be conducted in the Varnish Department were to be allotted on seniority basis. According to the Respondent, the work performed in the Varnish Department was : (i) Stenciling of drums and barrels; (ii) Filtration of alkyd and MF resins; (iii) Making of saleable varnish and filling of the same in required containers; (iv) Making and filling of thinners; (v) Making varnishes in tank and circulation of the same for the adjustment of constants; and (vi) Premarking of containers and cartons. According to the Union, the workmen were allotted the work of premarking, making and filling of containers on seniority basis i.e. premarking was to be done by the seniormost skilled workman in the Varnish Department while filling of container by the junior most .It appears that on 3rd August 1993, the concerned workman was directed to fill a one litre pouch by his superior and he refused to do so on the ground that the work of making was allotted to his junior Shankar Bhairu. The contention of the Union in the Complaint was that the petitioner had settled with them this allotment of duty on seniority-cum-priority basis and therefore, there was no reason why the petitioner Company should have effected deduction of wages from the wages of the said workman. The Union claimed that this deduction was contrary to law and amounts to an unfair labour practice under Item 9 of Schedule IV of the Act.

4. Written Statement was filed on behalf of the petitioner wherein they contended that there was no agreement regarding allotment of work on seniority-cum-priority basis and that they had effected deduction in wages on the ground that, although the workman was present on duty, he did not perform the work allotted to him. The petitioner's claimed that under the Judgment of the Apex Court in Kelawala (supra), they were entitled to deduct wages on the basis of "No work no pay".

5. Evidence was recorded before the Industrial Court, of the workman as well as of Arvind G. Lotlikar, Deputy Manager, Varnish Department, on behalf of the petitioner. The Industrial Court by its order dated 18th February, 2000 allowed the complaint and held that the petitioner has committed unfair labour practice under Item 9 of Schedule IV of the Act. The Industrial Court further directed the petitioner to remit the wages deducted from the salary of the concerned workman for 3rd August, 1993 within fifteen days from the date of the order.

Being aggrieved by the order of the Industrial Court, the petitioner is before this Court by way of the present Writ Petition.

6. Mr. Ramaswamy, learned Counsel appearing for the petitioner, contends that a bare reading of Kelawala's judgment (supra) would show that the petitioner Company was well within its right to deduct wages from the salary of the concerned workman. He further submits that there is no evidence on record to show that the work is allotted to the workman on priority or seniority basis. He further submits that only the testimony of the workman who is an interested witness has been relied on by the Industrial Court and the Union has not cared to depose regarding the agreements between them and the petitioner regarding allotment of work. He, therefore, submits that once a workman has not worked for a particular day, he is not entitled to the wages for that day and it is open to the petitioner Company to deduct wages for that day. Mr. Ramaswamy further contends that although work is to be allotted to the workman on priority basis i.e. depending on the demand in the market or the availability of stock etc., there is no evidence to show that the work was to be allotted on seniority basis. Mr. Ramaswamy places reliance on the judgment of the Apex Court in Kelawala's case (supra) and the judgment of the Madras High Court in J. Ganapathy Subramaniam and Anr. v. Deputy General Manager, Canara Bank and Anr., reported in 2000 (1) L.L.N. 387.

6-A. On the other hand, Mr. Mahadeshwar, learned Counsel appearing for the Respondent Union, submits that Kelawala's case (supra) is applicable only in a mass action for strike, and wages can be deducted from the workmen when it is not possible to hold an inquiry or if the very purpose of the exercise of holding an inquiry would be defeated. He submits that this judgment of the Apex Court is not applicable in an individual action when there is a bona fide dispute regarding allotment of work between the petitioner and the workman. He further relies on the provisions of the Payment of Wages Act, 1936 and submits that deduction cannot be effected if there is reasonable cause for the absence from duty.

7. The evidence adduced before the Industrial Court shows that there is a practice to allot work on priority basis for more than twenty five years and this arrangement had been implemented after discussions with the Respondent Union. The evidence of the workman is that although there was work of making available on 3rd August, 1993, this work was allotted to his junior and he was directed to fill the containers. There is evidence to show that from 4th August, 1993 till the evidence was recorded on 7th September, 1998, work was being allotted on a priority basis. The workman admitted that he had not worked on 3rd August, 1993. However, it was because the practice adopted all along for allotment of work was given a go-bye on 3rd August, 1993 as his junior was made to work of making rather than filling of containers. The witness of the petitioner Company has admitted that individual employees are not served with the duty list regarding the work to be performed by them, but that these duty lists are fixed with the Union from time to time. Although he has stated that he

had personally seen the agreement between the Union and the petitioner wherein the duties of the skilled employee have been specified, the Management has not cared to place this document on record. In fact, this witness denies that on 3rd August, 1993 the work of filling was assigned to the workman. He denies that allotment of work on that particular day of making was given to a junior workman. However, he claims that he does not know Shankar Bhairu, who, according to the Respondent Union, is junior to the concerned workman and who was allotted the work of making on the given day i.e. 3rd August, 1993. A letter was addressed to the workman on 19th August, 1993 alleging that he had refused to do the work of filling which was allotted to him and had thus refused the lawful order of his superior and chose to remain idle throughout the day on 3rd August, 1993. According to the petitioner, although the said act constituted a misconduct, it was entitled to deduct the wages for 3rd August, 1993 as the workman had not performed any work on the principle of "no work no pay". The workman has disputed this fact and had brought to the notice of the petitioner through Respondent Union that he was not required to do the work of filling and, therefore, no amount could be deducted from his wages for 3rd August, 1993.

8. In *Kelawala's* case (supra), the Apex Court was concerned with an action of strike and go slow and considered whether an employer has the right to deduct wages unilaterally without holding an inquiry for the period when the employees are on strike or resort to go slow. The Apex Court has held (vide paragraph 5) as follows -

"5. It is necessary to clear yet another mis-concept. There is no doubt that whenever a worker indulges in a misconduct such as a deliberate refusal to work, the employer can take a disciplinary action against him and impose on him the penalty prescribed for it which may include some deduction from his wages. However, when misconduct is not disputed but is, on the other hand, admitted and is resorted to on a mass scale such as when the employees go on strike, legal or illegal, there is no need to hold an inquiry. To insist on an inquiry even in such cases is to pervert the very object of the inquiry. In a mass action such as a strike it is not possible to hold an inquiry against every employee nor is it necessary to do so unless, of course, an employee contends that although he did not want to go on strike and wanted to resume his duty, he was prevented from doing so by the other employees or that the employer did not give him proper assistance to resume his duty though he had asked for it.....".

Further, the Apex Court has observed (vide paragraph 22) as under :--

"The principles which merge from the aforesaid authorities may now be stated. Where the contract, Standing Orders or the service rules/regulations are silent on the subject, the management has the power to deduct wages for absence from duty when the absence is a concerted action on the part of the employees and the absence is not disputed....."

9. With further reference as to under what circumstances deduction of wages

could be made, the Apex Court has held as under:--

"..... When there is a dispute as to whether the employees attended the place of work or put in the allotted work or not, and if they have not, the reasons therefore etc., the dispute has to be investigated by holding an inquiry into the matter. In such cases, no deduction from the wages can be made without establishing the omission and/or commission on the part of the employees concerned.

.....

28. The third fallacy was to equate disputed individual-conduct with admitted mass conduct. A disciplinary proceeding is neither necessary nor feasible in the latter case. The contract of employment, Standing Orders or the service rules provide for disciplinary proceedings for the lapse on the part of a particular individual or individuals when the misconduct is disputed. As things stand today, they do not provide a remedy for mass misconduct which is admitted or cannot be disputed. Hence, to drive the management to hold disciplinary proceedings even in such cases is neither necessary nor proper."

10. While dealing with the Payment of Wages Act, 1936, the Apex Court held that this deduction can be made only on the basis of an inquiry/investigation and it would not be proper for the management to deduct wages for absence of an individual workman without such an investigation/inquiry. In fact, even in the case of strike where the employees are not party to the action and are genuinely desirous of discharging the duties but could not do so for failure of assistance from the management, the management would not be justified in deducting the wages of such employees without holding an inquiry.

11. This judgment obviously shows that deductions from the wages of an individual workman can be made for absence from duty only after holding an inquiry or at least some kind of investigation. Once the workman disputes his absence or the reasons for not performing the allotted work, the dispute has to be investigated by holding an inquiry into the matter. No deduction on this basis can be made by any management without establishing the guilt on the part of the employee concerned. In the present case, the petitioner has taken upon itself to decide that absence from duty on 3rd August, 1993 entailed a deduction from the wages of the concerned workman. The observation of the Apex Court in Kelawala's case (supra) that mere presence on duty is not sufficient and the worker must work for his wages and that it is for work and not for mere attendance that wages are paid to the workman is made with reference to a concerted action like a strike. Although the workman was not absent on that day, the mere fact that he refused to perform work allotted to him is, according to the Management, enough to disentitle him to wages for that particular day. This is clearly a misinterpretation of the ratio in Kelawala's case and the case of the petitioner cannot be accepted.

12. I am also unable to accept the contention raised by Mr. Ramaswamy that the

petitioner Company was entitled to effect the deduction of wages of the workman without holding an investigation/inquiry. The workman here had disputed the fact that he was required to do the job of filling of containers. The workman had made out a case that this work was to be done by a junior worker and not by a person of his seniority. The evidence before the Industrial Court also establishes this fact. I, therefore, see no reason to disagree with the finding recorded by the Industrial Court on this issue.

13. The decision in the case of J. Ganapathy Subramaniam (supra) is based on the decision of the Apex Court in Kelawala 's case (supra).

14. The petitioner Company ought to have held an inquiry before effecting any deductions from the wages of the concerned workman. Mr. Mahadeshwar submits that u/s 7 read with Section 9 of the Payment of Wages Act, 1936, such deductions could be made only if the workman refuses, in pursuance of a stay-in strike or for any other cause which is not reasonable in the circumstances to carry out his work. Mr. Mahadeshwar submits that this absence on account of a stay-in strike or "for any other cause which is not reasonable in the circumstances" has to be read ejusdem generis with the word "strike" and, therefore, he submits that action such as a hartal or bandh, etc., may be covered by this explanation. However, it is not necessary to go into this aspect at all as the judgment of the Apex Court in Kelawala's case (supra) is quite clear. This judgment does not in any manner give a licence to the employer to effect deductions of individual workman as and when the individual workman is absent from duty, whether the reasons for such absence are genuine or not.

15. For the foregoing reasons, Writ Petition is dismissed. Rule discharged. No order as to costs.

16. The deducted amount of wages for 3rd August, 1993 from the salary of the concerned workman shall be paid by the petitioner Company within two weeks from today.

17. Parties to act on an ordinary copy of this order duly authenticated by the Personal Secretary of this Court.

18. Issuance of certified copy expedited.

19. Petition dismissed.