

(2000) 08 CAL CK 0057
In the Calcutta High Court
Case No : Writ Petition No. 9041 (W) of 2000

GRSE Ltd. Workmen"s Union and Others	APPELLANT
Vs	
Garden Reach Shipbuilders and Engineers Ltd. and Others	RESPONDENT

Date of Decision : 24-08-2000

Acts Referred:

Payment of Wages Act, 1936 — Section 15, 15(2), 7(2)

Citation : 105 CWN 1045 : (2001) 2 LLJ 1080

Hon'ble Judges : Bhaskar Bhattacharya, J

Bench : Single Bench

Advocate : Kalyan Bandopadhyay and S. Dey, for the Appellant; Tapas Banerjee, D.K. Ghosh and R. Dey, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, J.—In this writ application some of the Unions of employees have challenged several notices issued by the employer being Annexures "B", "C", "E" and "M" to the instant writ application by which the employer decided to deduct wages of the employees for shortfall of production and contact time previously agreed to by the parties.

2. There is no dispute that a settlement was arrived at between the management of respondent No. 1 and the employees Unions on January 6, 2000. Clause 14,2 of such agreement reads as follows:

"Accordingly, in order to offset the increased wage cost consequent upon revision of wages the Unions agree to increase the Contact Time from the present level of 3.5 working hrs, per day to full working hrs. (8 hrs. 6 minutes and for 5 hrs. on Saturdays) to achieve the targets set by the customer as per various contracts with the objectives of making the company competitive and a leading shipyard in the coming years".

3. By the notice impugned in this application, the management alleged violation on the part of the employees by not maintaining the contact time and production

norms and on the basis of such allegations decided to deduct wages in accordance with the Supreme Court decision for such shortfall of contact time and production norms.

4. The grievance of the writ petitioners in this application is that neither any Supreme Court decision nor any Government guideline, rules, regulation or any law empowered the concerned respondent to deduct wages on the ground of shortfall of production or contact time. Thus, the petitioners pray for quashing all those notices by which decision has been taken to deduct wages of the employees on those grounds.

5. Dr. Banerjee, the learned counsel: appearing on behalf of the employer has at the very outset taken preliminary objection as to the maintainability of the instant writ application. According to Dr. Banerjee, the dispute raised by the petitioners should be adjudicated in accordance with the provision contained in Section 15 of the Payment of Wages Act and in view of existence of such an efficacious alternative remedy, this writ application should not be entertained. Dr. Banerjee further submits that one of the Unions of the employees, although not party to the present writ application, has already lodged dispute before the Labour Commissioner and as such this court should not entertain the instant writ application. Dr. Banerjee in this connection by relying upon a decision of the Apex Court in the case of Bank of India Vs. T.S. Kelawala and Others, contends that the Apex Court has approved the authority to deduct wages in case the time schedule or the production norms are not maintained by the employees inspite of being physically present at the duty hours. In view of such preliminary objection raised by Dr. Banerjee I decided to consider the aforesaid point before entering into the merit of the instant writ application.

6. Mr. Bandopadhyay, the learned advocate appearing on behalf of the petitioners has vehemently opposed the aforesaid preliminary objection raised by Dr. Banerjee and has contended that mere existence of an alternative remedy is no bar to entertain a writ application if the respondent acts without jurisdiction. Mr. Bandopadhyay thus contends that in the instant case the respondent authority acted without jurisdiction in taking decision to deduct wages of the employees by taking aid of a decision of the Supreme Court which has no application to the fact of the present case.

7. There is no dispute with the proposition of law that the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution of India is not affected inspite of existence of an alternative remedy specially in a case where the authority against whom the writ is sought, is shown to have no jurisdiction or had purported to usurp jurisdiction without any legal foundation. Mr. Bandopadhyay in this connection has relied upon the decision in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, . In the said decision, the Apex Court reiterated the aforesaid well settled principle and ultimately held that High Court was not justified in dismissing the writ petition at the initial stage without examining the condition that the show cause notice

issued by the appellant therein was without jurisdiction and that the Registrar in the circumstances of that case was not justified in acting as a Tribunal.

8. By relying upon the aforesaid decision, Mr. Bandopadhyay proceeded to submit that the decision in the case of Bank of India (supra) does not apply to the fact of the present case. Mr. Bandopadhyay by relying upon the decision of the Supreme Court in the case of The Regional Manager and Another Vs. Pawan Kumar Dubey, contended that it is the rule deducible from the application of law to the fact and circumstances of a case which constitute its ratio decidendi and not some conclusions based upon fact 7 which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts.

9. I will therefore proceed to consider whether the decision of the Supreme Court in the case of Bank of India v. T.S. Kelawala and Ors. (supra) applies to the fact of the present case.

In the aforesaid case of Bank of India (supra) the respondent Nos. 3 and 4 i.e. the employees' Unions gave a call for 4 hours strike on December 29, 1977. Hence the Bank on December 27, 1977 issued an administrative circular warning the employees that they would be committing a breach of their contract of service if they participated in the strike and that they would not be entitled to draw salary for the full day if they did so and consequently they need not report for work for the rest of working hours on that day. Notwithstanding such notice the employees went on a 4 hours strike from the beginning of the working hours on December 29, 1977 which included banking hours for the public. The employees however resumed work on that day after strike hours and the bank did not prevent them from doing so. On January 16, 1978 the bank issued circular directing its Manager and agents to deduct the full day's salary of those employees who had participated in the strike. The respondents filed a writ petition in the High Court for quashing the circular. The petition was allowed. The Bank preferred a Letters Patent in High Court which also was dismissed. Hence the appeal before the Apex Court by the Bank. In the fact of such a case the Apex Court considered among other points the scope of Section 7(2) of the Payment of Wages Act, 1936 which authorised an employer to deduct wages if the employee was absent from duty. In the aforesaid context the Supreme Court made the following observations in 1990-II-LLJ-39 at pp. 49-50 :

"The principles which emerge 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. Whether the deduction from wages will be pro rata for the period of absence only or will be for a longer period will depend upon the facts of each case such as whether there was any work to be done in the said period, whether the work was in fact done and whether it was accepted and acquiesced in, etc. It is not enough the employees attend the place of work. They

must put in the work allotted to them. It is for the work and not for their mere attendance that the wages/salaries are paid. For the same reason, if the employees put in the allotted work but do not for some reason - may be even as a protest-comply with the formalities such as signing the attendance register, no deduction can be effected from their wages. 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.

When the contract, Standing Orders, or the service rules/regulations are silent, but enactment such as the Payment of Wages Act providing for wage cuts for the absence from duty is applicable to the establishment concerned, the wages can be deducted even under the provisions of such enactment.

Apart from the aforesaid ratio of the decisions and the provisions of the Payment of Wages Act and similar statutes on the subject, according to us, the relevant provisions of the major legislation governing the industrial disputes, viz, the Industrial Disputes Act, 1947 also lend their support to the view that the wages are payable pro rata for the work done and hence deductible for the work not done. Section 2(rr) of the said Act defines "wages" to mean "all remuneration which would, if terms of employment, expressed or implied, were fulfilled, be payable to workman in respect of his employment, or work done in such employment....." while section 2(q) defines "strike" to mean "cessation of work" or "refusal to continue to work or accept employment by workman". Reading the two definitions together, it is clear that wages are payable only if the contract of employment is fulfilled and not otherwise. Hence when the workers do not put in the allotted work or refuse to do it, they would not be entitled to the wages proportionately."

10. From the above observations of the Apex Court it is clear that in a given case if any agreement is arrived at between the parties as regards number of working hours or norms of production and if there is shortfall of such terms, the employer is entitled to deduct wages and such shortfall would bring the case within the purview of Section 7(2) of the Payment of Wages Act. In such a case, for the purpose of adjudicating whether there has been really any violation of such agreement, or whether the employees are responsible for such violation, an investigation of fact is necessary and under such circumstances Section 15 of the Payment of Wages Act lays down the detail and more efficacious inquiry. In my view, all these disputed questions of fact cannot be effectively adjudicated in this writ application and it is better that those disputes should be resolved under the aforesaid provision of the Payment of Wages Act after taking oral evidence if necessary.

11. Therefore, I find substance in the preliminary objection of Dr. Banerjee that this type of disputed question of fact should not be adjudicated in this writ

application particularly when the Deputy Labour Commissioner, West Bengal has already issued notice upon the employer for conciliation of the aforesaid dispute raised by one of the Unions who is not party to the instant writ application. Apart from that, the petitioners are also entitled to raise dispute in terms of Section 15(2) of the Payment of Wages Act.

12. In view of what has been stated above, I am not inclined to entertain this writ application. In view of existence of efficacious remedy mentioned above I thus reject this writ application on that ground alone. This case does not come within the exceptions indicated by the Supreme Court in the case of Whirlpool Corporation (*supra*). I make clear that I have not gone into the merit. In view of disposal of the main writ application, the application for grant of interim order has become infructuous and the same is disposed of accordingly.

No costs.