

(1959) 05 AHC CK 0009

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 488 of 1959

H. Watts

APPELLANT

Vs

B.N. Rai and Another

RESPONDENT

Date of Decision : 12-05-1959

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 12, 12(2)

Payment of Wages (Procedure) Rules, 1937 — Rule 6

Payment of Wages Act, 1936 — Section 15(1), 17, 17(1), 3

Citation : AIR 1960 All 200

Hon'ble Judges : S.S. Dhavan, J

Bench : Single Bench

Advocate : R.S. Pathak, for the Appellant; N.D. Pant, Junior Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Dhavan, J.—These are two connected petitions under Article 226 of the Constitution praying for the quashing of two different orders passed by the City Magistrate of Kanpur acting as the authority u/s 15(1) of the Payment of Wages Act (No. 4 of 1936). As the same questions of law arise in both these cases and the facts are very largely similar, they are being disposed of by a single judgment. The impugned orders were passed u/s 15(3) of the Payment of Wages Act directing the petitioner to pay a certain sum of money alleged to be due to some workmen in each case. In petition No. 488 of 1959 the amount directed to be paid is Rs. 35681-19 N. P. and in petition No. 489 of 1959 Rs. 2,27,271.95 N. P. The petition in each case is supported by an affidavit containing allegations which are more or less identical. The petitioner's case as contained in these affidavits is this:

2. Mr. H. Watts (the petitioner) is the Manager of the Muir Mills Company Limited, Kanpur which carries on the business of the manufacture and sale of cotton textiles. It is alleged that, as a result of previous mismanagement, the High

Court had to interfere and suspend, by its order dated 27th October, 1957, the then Managing Agents -- a private company known as the Indian Textile Syndicate Limited -- and vested the powers of the management in another concern known as J. K. Commercial Corporation Ltd., Kanpur. On 12-10-1957 an application under Sections 15 and 16 of the Payment of Wages Act, 1936 was filed by the Inspector of Factories, Kanpur Region, before Mr. J.O.G. Russell Additional City Magistrate (1), Kanpur praying for a direction for the payment of wages due to the workmen of the company during a specified period.

In petition No. 488 of 1959 the amount payable was Rs. 35,681. 19 N. P. alleged to be due to 59 workers and 102 employees of the Watch and Ward and the Conservancy Department as wages for the period 1-10-57 to 31-10-57. In the other petition No. 489 of 59 the amount is Rupees 2,47,232.95 N. P. alleged to be due to about 5000 workers as wages for the period 16th to 30th September 1957. According to the petitioners, the applications were received by the aforesaid Mr. J. O. G. Russell and registered by him. The petitioner Mr. Watts was impleaded as the respondent in both the applications in his capacity as Manager of the concern in accordance with Section 3 of the Act.

Nothing material was done for some time, but on 20th February 1958 a written statement was filed by the petitioner. On 24-3-1958 Mr. J.O.G. Russell transferred the case to the City Magistrate, Mr. B.N. Rai, and the proceedings then continued before him. The order-sheet in the Court of the City Magistrate shows that, after the transfer of both these cases to his file, they were called up and heard together on the same dates. Prior to the transfer, each case was listed before the Additional City Magistrate on different dates, though nothing material was done; but it is important to note that a written statement on behalf of the petitioner was filed in each case while it was still on the file of the Additional City Magistrate.

In the case under petition No. 488 of 1959 the written statement was filed on 12-3-1958 whereas in the other case under petition No. 489 of 1959 the written statement of the petitioner was filed on 18th December 1957. In each case the - Additional City Magistrate passed an order directing the written statement to be admitted, and this is the only order of any significance passed by him in either case. On all the other dates prior to the transfer, the cases were listed before the Additional City Magistrate but practically nothing was done.

3. It is also important to note that each case was transferred by the Additional City Magistrate to the City Magistrate by virtue of an administrative order passed by the Additional District Magistrate. This is clear from the entry in the order-sheet dated 26th March 1958 which runs thus.

"Transferred to the Court of City Magistrate vide A. D. M. (C's) order dated 20-3-1958."

4. In the other case there is a similar entry dated 20-3-1958. Thus, both cases were removed, from the file of the Additional City Magistrate and sent to the City

Magistrate under a direction given by the Additional District Magistrate. The importance of this fact will be discussed hereafter. At this stage it will be sufficient to say that there was no "transfer" of either case under a judicial order.

5. The City Magistrate heard and disposed of both the cases together. The written statement filed in each case before the Additional City Magistrate, was treated as the written statement in that case. No fresh written statement was either tendered or directed to be filed. The order-sheet shows that there were a large number of adjournments due to the fact that the City Magistrate was busy with other matters. The petitioner states-that he had taken a number of preliminary objections against the application which had been fixed for hearing and disposal on 31-3-58 presumably, by the Additional City Magistrate. However, as the case had in the meantime been transferred to the City Magistrate, he heard and decided the petitioner's objection on 31-10-1958. The petitioner states that he fully expected that the regular hearing of the case would begin after the disposal of the preliminary objection, but the City Magistrate, on 31-10-58 not only disposed of the preliminary objection but also decided the entire case on merits. As stated above, he passed a direction for the payment of Rs. 35,681.19 N. P. in one case and Rs. 2,27,271.25 N. P. in the other.

6. Aggrieved by the order of the City Magistrate in each case, the petitioner has come to this Court for relief.

7. Mr. R.S. Pathak advanced the following arguments against the legality of the City Magistrate's order.

8. First, he contended that Mr. J.O.G. Russell, being the Additional City Magistrate and not the City Magistrate, had no jurisdiction to entertain the two applications u/s 15(3), nor could he pass any order "transferring" either case to Mr. Rai, the City Magistrate. The latter was thus not properly seized of the case as no application u/s 15 of the Act had been moved before him. He merely took over a case in the middle of the hearing from the Additional City Magistrate, which could not be done under the law. Mr. Pathak relied on Section 15(1) of the Act which empowers the State Government to appoint certain officials or authorities as the authority to hear and decide all claims arising out of deduction from wages or delay in payment of wages.

These are (1) Commissioner for Workmen's Compensation, (2) or other officer with experience-as a judge of a Civil Court, or (3) a stipendiary-Magistrate. Any or all of these officers can be appointed by the State Government to hear and decide cases under the Payment of Wages Act. Mr. Pathak pointed out that government had appointed District Magistrate, Sub Divisional Magistrates and City Magistrates, but not Additional City Magistrates, as the authorities to hear and decide claims specified in Section 15(1). According to learned counsel, a City Magistrate is a persona designate under the Notification of the Government and is not the same thing as an Additional City Magistrate.

Learned counsel relied on a number of cases in which this and other High Courts

have held that the powers conferred upon a District Magistrate under a special Act cannot be exercised by an Additional District Magistrate. In particular he relied on a decision of a Full Bench of this Court in *Kedar Nath Vs. S.N. Misra and Another*, which it was held that the Sub-Divisional Magistrate, who is empowered to hear election petitions u/s 12-C of the U. P. Panchayat Raj Act is a persona designate and that, therefore, an election petition u/s 12-C could not be transferred by the Collector under Sections 228 of the U. P. Land Revenue Act to an Assistant Collector not in charge of a Sub-Division for disposal, and if it was so transferred, the Assistant Collector would have no jurisdiction to entertain or hear the petition.

On the strength of these cases, Mr. Pathak contended that a notification appointing the City Magistrate as the authority u/s 15(1) of the Payment of Wages Act created a special tribunal for the disposal of certain types of cases under the Act and that the City Magistrate is a persona designate. He asked this Court to hold that the Additional City Magistrate is not included in the words "City Magistrate" any more than an Additional District Magistrate is included in "District Magistrate" Or an Additional Sub-Divisional Officer is included in the words "Sub Divisional Officer."

9. I do not agree. There is a vital distinction between the present case and those in which it was held that the phrase "District Magistrate" does not include "Additional District Magistrate" or that "Sub-Divisional Officer" excludes "Additional Sub Divisional Officer." In all those cases the words "District Magistrate" and "Additional District Magistrate" were considered as statutory phrases. District Magistrate is defined in Section 10(1) of the Code of Criminal Procedure thus:

"10(1). In every district outside the presidency towns the State Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate."

10. An Additional District Magistrate is defined in Section 10(2) thus:

"The State Government may appoint any Magistrate of the first class to be an Additional "District Magistrate and such Additional District Magistrate shall have all or any of the powers of a District Magistrate under this Code, or under any other law for the time being in force, as the State Government may direct."

11. Thus, the statute which creates these two officers also makes a distinction between the two. Other provisions of the Code emphasise these distinctions. For example, Section 10(3) provides that for certain purposes the Additional District Magistrate shall be deemed to be subordinate to the "District Magistrate. Section 11 provides that if the office of the District Magistrate becomes vacant and any officer succeeds temporarily to the chief executive administration of the district, he shall, pending the orders of the State Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate. Thus, this section, by implication, suggests that the

District Magistrate is the chief executive officer of the district. These provisions draw a clear distinction between the) office of the District Magistrate and the Additional District Magistrate, and in the cases relied upon "by Mr. Pathak, the Court really decided that the words "District Magistrate" would not include the Additional District Magistrate if the former is created a special tribunal for exercising specified powers under a statute.

12. Similarly, the words "Collector and Additional Collector" have been defined in the U P. Land Revenue Act. Section 14 of that Act enjoins that the State Government shall appoint in each district an officer who shall be the Collector of the district, and who shall, throughout his district, exercise all the powers and discharge all the duties conferred and imposed on a Collector by any Jaw. Section 144 provides for the creation of the office of Additional Collector and empowers the State Government to appoint an Additional Collector in any district or in two or more districts combined. An Additional Collector has been authorised under that Section to exercise such powers and perform such duties of a Collector in such cases or classes of cases as the State Government or, in the absence of orders from the State Government, the Commissioner concerned, may direct.

Thus Sections 14 and 14A create respectively the office of Collector and Additional Collector, the former being the Collector of the district. Therefore, it is possible to argue that in a case where the statute makes the Collector a special authority with powers to deal with certain types of cases, he is a persona designate and the word "Collector" shall not include Additional Collector merely because the latter exercises some powers of the Collector u/s 14 of the Land Revenue Act.

13. In the Full Bench cases cited by Mr. Pathak, the Court considered whether the term Sub Divisional Officer would include Additional Sub Divisional Officer. It was conceded on both sides that these terms were used somewhat loosely and that Sub-Divisional Officer really meant an Assistant Collector in charge of a sub-division as defined in Section 18 of the Land Revenue Act. The Court held that there could be only one Assistant Collector in charge of one or more Sub Divisions of a district and that, therefore, the Sub Divisional Officer, appointed as an election tribunal under Rule 24 of the U. P. Panchayat Raj Rules, was a persona designate whose jurisdiction could not be transferred to an Additional Sub Divisional Officer (meaning an Assistant Collector not in charge of a sub-division).

14. Thus, in all these cases relied on by learned counsel, both the authority which was claimed to be persona designate and the one to whom its jurisdiction and powers had been transferred were creatures of the statute which could not be confused with one another. But in the present case, neither the City Magistrate nor the Additional City Magistrate has any statutory genesis. u/s 12 Cr. P. C. the State Government has the power to create what are known as subordinate Magistrates in each district. It says that the Government may

appoint as many persons as it thinks fit, besides the District Magistrate, to be a Magistrate of the first, second or third class in any district outside the presidency towns: and that the State Government or the District Magistrate subject to the control of the State Government may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under the Code.

This section provides for the creation of the Magistrates of the first, second or third class in any district, but not City Magistrates. In fact, the words "City Magistrates" are not used in this section at all or indeed, anywhere in the Act. It cannot therefore be said that the office of the City Magistrate is a creature of statute or that when even a City Magistrate is authorised to bear and decide any particular types of cases, Government intend him to be a persona designate. This is further made clear by Sub-section (2) of Section 12 which provides that the jurisdiction and powers of persons appointed as Magistrates of the first, second or third class shall extend throughout the district. A City Magistrate does not mean the chief Magistrate of the city in the sense in which the District Magistrate is the Chief Magistrate of the district and it is possible for two or more Magistrates to function simultaneously as City Magistrates in the same city. They will all be City Magistrates in that area, whereas the District Magistrate is of the district. In fact, the office of City Magistrate is unknown to law.

15. For these reasons I hold that the notification of the State Government dated 18-2-1954 appointing all Districts Magistrates, Sub Divisional Magistrates and City Magistrates to be the authorities to hear and decide certain types of cases under the Payment of Wages Act did not make the City Magistrate a persona designate, though It may have made the District Magistrate and the Sub Divisional Magistrate respectively a persona designate in his own territorial jurisdiction. I, therefore, hold that Mr. J.O.G. Russell, Additional City Magistrate (1), Kanpur had the jurisdiction to function as the authority to entertain and decide all claims arising out of deduction from the wages or delay in payment of the wages of persons employed or paid within his jurisdiction.

16. There is an additional reason why the petitioner's attack on the jurisdiction of Mr. J.O.G. Russell must fail. The notification dated 18-2-1954 appointed all District Magistrates, Sub-Divisional "Magistrates and City Magistrates to be the authorities to hear and decide certain claims under the Payment of Wages Act. The petitioner has alleged that Mr. Russell was the Additional City Magistrate implying that he was not the City Magistrate. But he has not alleged that Mr. Russell was not a Sub-Divisional Magistrate. There is nothing in law to prevent an Additional City Magistrate from being appointed a Sub-Divisional Magistrate, or rather a Magistrate in charge of a sub-division. In the absence of any specific allegation, the Court will not presume lack of jurisdiction by assuming that Mr. J.O.G. Russell was not a Sub Divisional Magistrate during the material period. I therefore hold that the petitioner has not established that Mr. Russell had no jurisdiction to try the cases.

17. Even assuming that Mr. J. O. G. Russell had no jurisdiction as Additional City Magistrate to entertain these two cases under the Payment of Wages Act, it does not follow that Mr. B.N. Rai, City Magistrate, also had no jurisdiction to decide them. Learned counsel's attack on the jurisdiction of the City Magistrate is based purely on the ground that he did not receive these cases in a proper manner. As stated above, both these cases were transferred to the file of the City Magistrate by an administrative order passed by the Additional District Magistrate. Mr. Pathak contended that the Additional City Magistrate, not having the jurisdiction to entertain the two applications, could not pass any orders on them. Therefore, the order "transferring" the cases to the City Magistrate was without jurisdiction and the latter must be deemed not to have received any case at all. According to learned counsel, the proper course was for the Additional City Magistrate to return the applications to the Inspector who should then have filed them in a proper manner before the City Magistrate.

18. I do not agree. Under Rule 6 of the Payment of Wages (Procedure) Rules any application or other documents relevant to an application may be presented in person to the authority at any time during hours to be fixed by that authority, or may be sent to him by registered post. Thus, it is clear that the Inspector could have sent both his applications to the City Magistrate by post and, if he had done this, the latter would have jurisdiction to entertain them as matters properly received. But the agency of the post is only a particular type of agency. If a letter or application can be sent by post, it could also be sent by a special messenger or any other means. In the present case, on a certain date, Mr. J.O.G. Russell sent both these applications to the City Magistrate. Even assuming that he had no jurisdiction to entertain them himself, there was nothing wrong in his sending them on to the competent authority. He did not do this by passing any judicial order. As stated above, the cases were transferred by him under an administrative direction received from the Additional District Magistrate. Therefore, in passing on the applications to the City Magistrate, Mr. J.O.G. Russell may be deemed to have performed the physical act of having sent the application to the City Magistrate as if he were the messenger of the applicant in each case. If there was any irregularity in transmission, it would not vitiate the proceedings before the City Magistrate. The petitioner was not prejudiced.

19. Mr. Pathak then contended that, even assuming that the City Magistrate had the jurisdiction to take over the two cases, he would not entertain the two written statements which had been filed already before the Additional City Magistrate. He pointed out that the latter had formally received these statements and that there was an entry in his order-sheet to that effect. If he had no jurisdiction to entertain the case at all, the act of receiving the written statements was also without jurisdiction. The proceedings before the City Magistrate must therefore be treated as if there was no written statement before him. He acted illegally in entertaining the two written statements which have not been filed before him and consequently the impugned order is vitiated by this illegality.

20. I do not agree. The absence of a written statement in a case does not affect the jurisdiction of a court or a tribunal. It was up to the petitioner to file a fresh written statement before the City Magistrate if he thought that his previous statements had become waste paper in law, but he took no steps to do so. Mr. Pathak stated, on a question from the court, that the petitioner made no application to file a fresh written statement nor did he make a statement that his previous written statement could not be entertained by the City Magistrate. He merely took a blank objection that the case could not have been transferred by the Additional City Magistrate. But significantly enough he relied on the very written statements the legality of which he now impugns in these proceedings, and adopted them as his written statements. In the face of these facts, it is not open to the petitioner to contend before this Court that the City Magistrate should not have entertained the written statements which had been "filed previously before the Additional City Magistrate. Furthermore, learned counsel was unable to show that the petitioner had been prejudiced in any manner by the action of the City Magistrate in considering these two written statements which in fact, were treated throughout by the petitioner himself as his own written statements.

21. Mr. N.D. Pant, learned Junior Standing Counsel for the State contended that the petitioner ought not to be heard as he had failed to avail of his statutory remedy by way of appeal u/s 17 of the Payment of Wages Act. Counsel for the petitioner contended in reply that the aforesaid section confers no right of appeal on an employer in a case where the total sum directed to be paid by way of wages and compensation does not exceed three hundred rupees in respect of each employed person. The counsel for the State, on the other hand, argued that Section 17(1)(a) gives a right of appeal whenever the total sum payable exceeds three hundred rupees and it is not necessary that the sum payable to each employed person should exceed three hundred rupees. This controversy involves an interpretation of the sentence "if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees" in Section 17(1)(a).

22. The aforesaid Section 17 runs thus;

"17(1). An appeal against a direction made under Sub-section (3) or Sub-section (4) of Section 15 may be preferred, within thirty days of the date on which the direction was made, in a presidency-town before the Court of Small Causes and elsewhere be-fore the District Court--

(a) by the employer or other person responsible for the payment of wages u/s 3, if the total sum directed to be paid by way of wages and compensation, exceeds three hundred rupees, or

(b) by an employed person, if the total amount of wages claimed to have been withheld from him or from the unpaid group to which he belonged exceeds fifty rupees, or

(c) by any person directed to pay a penalty under Sub-section (4) of Section 15.

2. Save as provided in Sub-section (1), any direction made under Sub-section (3) or Sub-section (4) of Section 15 shall be final."

23. It was held by Chagla, C. J. in *Laxman Pandu and Others Vs. Chief Mechanical Engineer, Western Railway*, that the employer has no right of appeal u/s 17(1)(a) if, under the directions or the authority no employed person gets a sum exceeding three hundred rupees even though the total amount payable to all the employed persons together may exceed that figure. In that case the authority under the Payment of Wages Act had passed an order directing payment of a sum of Rs. 9000/- to several employees, but no employee under that order was to receive a sum exceeding three hundred rupees. The employer filed an appeal to the Judge Small Causes Court, Bombay u/s 17(1)(a) which was entertained and allowed, and the application of the workmen was dismissed by the appellate court. A revision was filed against this decision and it was contended before Chagla, C. J. that the Judge Small Causes Court had no jurisdiction to entertain an appeal from an order under which the total amount directed to be paid did not exceed three hundred rupees in respect of each employed person. This argument was accepted by learned Chief Justice who allowed the revision and held that Section 17(1)(a) did not contemplate an appeal in any case unless the total sum directed to be paid exceeded three hundred rupees for each employed person.

24. Mr. N.D. Pant, on the other hand, relied on a Madras High Court decision *Union of India (UOI) Vs. S.P. Nataraja Sastrigal and Others*, in which Subba Rao, J. held that for the purpose of fixing the pecuniary limit for the right of appeal u/s 17(1)(a), "the total amount awarded . . . in a single application is the guiding factor." The learned Judge held that if the total amount directed to be paid to all the employed persons in a single application exceeded three hundred rupees, there would be a right of appeal. In my view, with respect to the Bombay judgment, the Madras view is correct. In his judgment Chagla, C. J. conceded that his interpretation would lead to a serious anomaly if, in a joint application on, behalf of, say, a hundred workers u/s 16(2) of the Act, an order is passed by the authority directing payment of a sum exceeding three hundred rupees to one worker but different sums below three hundred rupees to all the rest. According to the interpretation of Chagla, C. J., the employer would have a right of appeal against that part of the order which directs payment to one worker but none against payment to all the rest. But the learned Chief Justice explained away this anomaly by observing that the legislature intended to give a different treatment to the employer and the employed persons respectively. There is a short answer to this argument. u/s 16(2) a single application may be presented on behalf of any number of employed persons belonging to the same unpaid group, and if this is done, the maximum compensation that may be awarded, in addition to the wages deducted or delayed, shall be Rs. 10/- per head. But in the case of individual applications, the maximum compensation payable shall be a sum not exceeding ten times the amount deducted in cases of deduction of wages and not exceeding Rs. 10/- in cases of delayed wages. Thus, the provision for joint

application is not merely a matter of procedure. A joint application will yield different results at least as regards the amount of the compensation payable in cases where the employer was guilty of deducting the workmen's wages. Taking a broad view of the Act as a whole and of Section 17(l)(a) in particular, I think the interpretation of Chagla, C. J. would lead as conceded by him, to absurd results. I, therefore, think that there was a right of appeal in this case which the petitioner did not avail of.

25. Learned counsel for the petitioner, however, contended that the petitioner should not be penalised, simply because he did not avail of the statutory remedy of appeal. He relied on a decision of Chaturvedi, J. in *Union of India (UOI) Vs. Kundan Lal and Another*, in which it was held that the failure of a petitioner to pursue his remedy by way of appeal will not deprive him of his right to come to this Court under Article 226 of the Constitution if the right of appeal appeared to be doubtful. Mr. Pathak contended that, in view of the facts of the present case, it should be held in favour of the petitioner that his right of appeal was doubtful as the Bombay Court had held, dissenting from a previous judgment of the Madras High Court, that there was no right of appeal in such cases. However, the question of the petitioner being disentitled to any relief under Article 226 because of his failure to avail of his remedy by way of appeal is of academic importance as the petitioner's case has been decided on merits.

26. Learned counsel finally contended that the Indian Textile Syndicate Limited, the previous Managing Agents, were responsible for the payment of the wages of the employed persons and the present management should not have been directed to pay them. The statute itself contains a conclusive answer to this objection. Section 3 of the Payment of Wages Act provides that every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under that Act. This is subject to the proviso that

"in the case of persons employed (otherwise than by a contractor) in factories, if a person has been named as the manager of the factory under Clause (e) of Sub-section (1) of Section 9 of the Factories Act, 1934 the person so named shall be responsible for such payment."

It is common ground that in the case of the Muir Mills Company Limited the petitioner H. Watts was named as the manager u/s 9 of the Factories Act. Whether the wages should have been paid by the previous Managing Agents and were not so paid is a matter of dispute between the past and the present Managing Agents. But the liability of the petitioner under the Act is beyond dispute. If he has any grievance against the past Managing Agents, he has his remedies under the law against them.

27. No other argument was advanced before me. Both the petitions fail and are rejected. In the circumstances of these cases, parties shall bear their own costs.