
(2010) 10 MP CK 0023

In the Madhya Pradesh High Court

Case No : Writ Petition (S) No. 15616 of 2010

Hind Khadan Mazdoor Federation

APPELLANT

Vs

Coal India Ltd. and Others

RESPONDENT

Date of Decision : 29-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Industrial Disputes Act, 1947 — Section 10, 22
Payment of Wages Act, 1936 — Section 15, 17, 9(2)

Citation : (2011) 130 FLR 125 : (2011) ILR (MP) 147 : (2012) 1 LLJ 95 : (2011) 2 MPHT 393

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajendra Menon, J.—Petitioner a registered trade union has filed this writ petition challenging the orders dated 20-10-10 and 19-10-10 issued by the Respondents proposing to make recovery of salary for the period employees of the Petitioners' union remained on strike and, the further proposal to recover 8 days salary by virtue of the powers conferred on the Respondents u/s 9(2) of the Payments of Wages Act, 1936.

2. Inter alia contending that the Payments of the Wages Act, 1936 does not apply on the members of the Petitioner's union as they are drawing salary more than Rs. 10,000/- (Rupees Ten thousand only) and further contending that the deduction of salary is illegal, Petitioner seeks interference into the matter.

3. As the proposed action for recovery is in accordance with the provisions contemplated u/s 9(2) of the Payment of Wages Act on the ground that the deduction is illegal and contrary to the provisions of Payment of Wages Act and as it is the case of the Petitioner's union that various members are drawing salary beyond the limit stipulated and, therefore, the Payment of Wages Act is not applicable, the Petitioners have a remedy to challenge the aforesaid action by

resorting to the remedy available u/s 15 of the Payment of Wages Act and, thereafter, to the remedy by filing of appeal u/s 17. As a statutory remedy for challenging the impugned action is available under the Payment of Wages Act itself, when this Court posed the question to the learned Counsel as to why the petition be not dismissed. Learned Counsel placing reliance on a decision of the Bombay High Court in the case of Panther Power Kamgar Sanghatana and Ors. v. Jhalani Y.C. and Ors. 1998 (I) LLJ 884, contends that the writ petition is maintainable. Further, reliance is placed on a judgment of the Andhra Pradesh High Court in the case of Tyre Retreading Shop Committee, Hyderabad v. A.P.S.R.T.C., Hyderabad and Ors. reported in 2002 (I) LLJ 438. Attention is also invited to an order passed by the Division Bench of this Court in the case of Chhattisgarh Khadan Karkhana Mazdoor Union, Bilaspur v. Union of India and Ors. 1997 MPLSR 265, to contend that when the recovery itself is illegal, interference can be made by this Court directly in a writ petition.

4. Having heard learned Counsel for the Petitioner and on consideration of the facts that have come on record, I am of the considered view that the principle laid down by a Division Bench of this Court in the case of Chhattisgarh Khadan Karkhana Mazdoor Union, Bilaspur (supra), will not apply as that was a case where the question of availability of alternating remedy is not decided. It was a case where the Union was granted liberty to show cause to the notice and take all the defence. The question involved in the present writ petition is as to whether interference can be made in this writ petition when the statute itself provides for a remedy under the Payment of Wages Act. If an illegal deduction is made contrary to the provisions of Section 15, the section itself contemplates a remedy to challenge the action before the Competent Authority and in the State of Madhya Pradesh, the Labour Courts have been notified as the Competent Authorities for exercising powers u/s 15 of the Payment of Wages Act. Thereafter, against the order passed by the Labour Court, Petitioners have a further remedy by way of filing a further appeal to the Industrial Court, which is the notified Appellate Authority u/s 17. The Supreme Court in various cases has laid down the principle that when the statute itself contemplates a detailed remedy for redressal of the grievance, interference by exercising the extra ordinary jurisdiction of the High Court is not warranted.

5. Supreme Court in the case of U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and Another, , has considered the question of interference in a writ petition under Article 226 of the Constitution when alternate remedy is available and the matter has been considered in Para 11 in the following manner:

Except for a period when Article 226 was amended by the Constitution (42nd Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction or discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be

lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally, the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided, the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extra-ordinary jurisdiction.

6. Thereafter, again in the case of *Star Paper Mills Ltd. v. State of U.P. and Ors.* AIR (2006) SCW 5782, the matter is so considered in Para 5 onwards:

5. The issues relating to entertaining writ petitions when alternative remedy is available, were examined by this Court in several cases and recently in *State of Himachal Pradesh and Ors. v. Gujarat Ambuja Cement Ltd. and Anr.* (2005) 6 SCC 499.

6. Except for a period when Article 226 was amended by the Constitution (42nd Amendment) Act, 1976, the power relating to alternative remedy has been considered to be a rule of self imposed limitation. It is essentially a rule of policy, convenience and discretion and never a rule of law. Despite the existence of an alternative remedy it is within the jurisdiction of discretion of the High Court to grant relief under Article 226 of the Constitution. At the same time, it cannot be lost sight of that though the matter relating to an alternative remedy has nothing to do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extra-ordinary jurisdiction.

7. Constitution Benches of this Court in *K.S. Rashid and Son Vs. The Income Tax Investigation Commission etc.*, *Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya*, ; *Union of India (UOI) Vs. T.R. Varma*, *State of U.P. and Ors. v. Mohammad Nooh* AIR 1958 SC 86; and *K.S. Venkataraman and Co. Vs. State of Madras*, held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extra-ordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

8. Another Constitution Bench of this Court in *State of Madhya Pradesh Vs. Bhailal Bhai and Others*, held that the remedy provided in a writ jurisdiction is not intended to supersede completely the modes of obtaining relief by an action in a Civil Court or to deny defence legitimately open in such actions. The power to give relief under Article 226 of the Constitution is a discretionary power. Similar view has been reiterated in *N.T. Veluswami Thevar Vs. G. Raja Nainar* and

Others, Municipal Council, Khurai and Another Vs. Kamal Kumar and Another, ; Siliguri Municipality and Others Vs. Amalendu Das and Others, S.T. Muthusami Vs. K. Natarajan and Others, ; Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others, A. Venkatasubbiah Naidu Vs. S. Challappan and Others, and L.L. Sudhakar Reddy and Others Vs. State of A.P. and Others, ; Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others, ; Pratap Singh Vs. State of Haryana and Others and Shri Bhajan Lal and Others, and G.K.N. Driveshafts (India) Ltd. v. Income Tax Officer and Ors. (2003) 1 SCC 72.

7. Finally, in the case of A.P. Foods Vs. S. Samuel and Others, , the following principles are laid down by the Supreme Court:

6. In a catena of decisions it has been held that a writ petition under Article 226 of the Constitution of India, 1950 (in short "the Constitution") should not be entertained when the statutory remedy is available under the Act, unless exceptional circumstances are made out.

7. In U.P. State Bridge Corporation Ltd. and Others Vs. U.P. Rajya Setu Nigam S. Karamchari Sangh, it was held that when the dispute relates to enforcement of a right or obligation under the statute and specified remedy is, therefore, provided under the statute, the High Court should not deviate from the general view and interfere under Article 226 except when a very strong, case is made out for making a departure. The person who insists upon such remedy can avail of the process as provided under the statute. To same effect are the decisions in The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, , Rajasthan State Road Transport Corporation and Another Vs. Krishna Kant and Others, , Chandrakant Tukaram Nikam and Others Vs. Municipal Corporation of Ahmedabad and Another, and Scooters India and Others Vs. Vijai E.V. Eldred,

8. In Rajasthan SRTC case (supra), it was observed as follows:

A speedy, inexpensive and effective forum for resolution of disputes arising between workmen and their employers. The idea has been to ensure that the workmen do not get caught in the labyrinth of Civil Courts with their layers upon layers of appeals and revisions and the elaborate procedural laws, which the workmen can ill afford. The procedure followed by Civil Courts, it was thought, would not facilitate a prompt and effective disposal of these disputes. As against this, the Courts and Tribunals created by the Industrial Disputes Act are not shackled by these procedural laws nor is their award subject to any appeals or revisions. Because of their informality, the workmen and their representatives can themselves prosecute or defend their cases. These forums are empowered to grant such relief as they think just and appropriate. They can even substitute the punishment in many cases. They can make and re-make the contracts, settlement, wage structures and what not. Their awards are no doubt amenable

to jurisdiction of the High Court under Article 226 as also to the jurisdiction of this Court under Article 32, but they are extra-ordinary remedies subject to several self-imposed constraints. It is, therefore, always in the interest of the workmen that disputes concerning them are adjudicated in the forums created by the Act and not in a Civil Court. That is the entire policy underlying the vast array of enactments concerning workmen. This Legislative policy and intendment should necessarily weigh with the Courts in interpreting these enactments and the disputes arising under them.

9. In *Basant Kumar Sarkar and Others Vs. Eagle Rolling Mills Ltd. and Others*, the Constitution Bench of this Court observed as follows:

It is true that the powers conferred on the High Courts under Article 226 are very wide, but it is not suggested by Mr. Chatterjee that even these powers can take in within their sweep industrial disputes of the kind which this contention seeks to raise. Therefore, without expressing any opinion on the merits of the contention, we would confirm the finding of the High Court that the proper remedy which is available to the Appellants to ventilate their grievances in respect of the said notices and circulars is to take recourse to Section 10 of the Industrial Disputes Act, or seek relief, if possible, under Sections 74 and 75 of the Act.

10. The inevitable conclusion, therefore, is that both learned Single Judge and the Division Bench have failed to consider the basic issues. In the normal course we would have left it to the Respondent to avail appropriate remedy under the Act.

11. The above aspects were highlighted in *Hindustan Steel Works Construction Ltd. and Another Vs. Hindustan Steel Works Construction Ltd., Employees Union*,

12. A bare reading of Section 22 of the Act makes the position clear that where the dispute arises between an employer and employees with respect to the bonus payable under the Act or with respect to the application of the Act in public sector then such dispute shall be deemed to be an industrial dispute within the meaning of ID Act.

13. As disputed question of fact were involved, and alternative remedy is available under the ID Act, the High Court should not have entertained the writ petition, and should have directed the writ Petitioners to avail the statutory remedy.

8. Keeping in view the aforesaid principle laid down by the Supreme Court and considering the fact that Petitioners have a efficacious statutory remedy available, merely because under certain circumstances, the Bombay High Court and the Andhra Pradesh High Court have interfered in the matter in the cases relied upon by Shri Upadhyay, no case is made out for interference.

9. That apart for the purpose of adjudicating the disputes in question, enquiry into certain factual aspects of the matter, with regard to particulars of the

employees from whom the deduction is effected, the working conditions of the employees, the salary etc. are to be determined and as this warrants enquiry into factual aspects of the matter, the Labour Court can deal in the matter more properly in a proceeding u/s 15 of the Payment of Wages Act.

10. Considering the totality of the circumstances and the principles as detailed hereinabove, the petition is accordingly dismissed.