

(2013) 04 AHC CK 0313

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 67421 of 2011

Jal Kal Vibhag Nagar Nigam

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 26-04-2013

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 12(2), 7, 9
Uttar Pradesh Industrial Peace (Timely Payment of Wages) Act, 1978 — Section 3

Citation : (2013) 8 ADJ 661 : (2013) 138 FLR 688 : (2013) 3 UPLBEC 2012

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : Rakesh Bahadur, for the Appellant; A.P. Tewari, C.S.C. and Yogesh Agarwal, for the Respondent

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—Heard Sri Ravi Kant, the learned Senior Counsel assisted by Sri Rakesh Bahadur, the learned Counsel for the petitioner, Sri Yogesh Agarwal, the learned Counsel assisted by Sri A.P. Tiwari, the learned Counsel for the respondent and the learned Standing Counsel for the State Authority. The Union filed an application u/s 3 of the U.P. Industrial Peace (Timely Payment of Wages) Act, 1978 (hereafter referred to as the "Act") praying that 162 members of their union have not been paid the wages for various period along with the arrears, amounting to Rs. 31,82,080/- lacs, and consequently, prayed before the Authority for the recovery of the said amount. In this application, the Union contended that the members of the Union were working through contractors, which was in total violation of the Rules and Regulations and that the minimum wages was also not been paid. Consequently, there were arrears, which were liable to be recovered.

2. The employers, namely, the petitioner appeared and contested the claim contending that the workers in question are employed by the contractors and that they were working through an agreement as per agreed rates. It was also

brought to the knowledge of the authority that these contracts were executed because the State Government had imposed a ban in appointing the workers directly in the establishment.

3. From time to time various dates were fixed by the Prescribed Authority and the petitioner filed various applications contending specifically that the workers in question were not their employees and that they were engaged through various contractors. The petitioner also filed a list of the contractors as well as the agreement, which had been executed between the principal employers and the contractors.

4. The Prescribed Authority, after considering the matter, passed an order dated 22nd October, 2011 allowing the application of the Union and directing recovery of Rs. 31,82,080/- as arrears of wages from the petitioner. The petitioner, being aggrieved, filed a review application, which was also dismissed by an order dated 11.11.11. The petitioner, being aggrieved by the aforesaid orders, has filed the present writ petition.

5. The Prescribed Authority in the impugned order has held that various opportunities were given to the petitioner to deposit all the arrears and since the same was not deposited, the authority had no option but to allow the application.

6. Before this Court, the learned Senior Counsel submitted that the amount sought to be recovered was highly disputed and not admitted. It was contended that the claim was being made by the workers of the contractors, who were being paid in terms of the agreement and that there was no master and servant relationship between the petitioner and members of the Union. It was contended that no recovery could be made u/s 3 of the Act.

7. In support of his submission, the learned Counsel for the petitioner has relied upon a decision of the Supreme Court in *Modi Industries Ltd. Vs. State of Uttar Pradesh and others*, . and in *Rahman Exports Pvt. Ltd. Vs. State of U.P. and Others*, . in which, it was held that the scope of the enquiry u/s 3 of the Act is very limited and that the Labour Commissioner's powers extend only to find out whether the workman who have put in the work were paid their wages as per the terms of their employment within a stipulated period and if the entitlement of the workers was not disputed and if the arrears of wages exceeded Rs. 50,000/- per month, in that event, the recovery certificate could be issued. The Court further held that where the liability to pay wages was disputed, the authority had no power to adjudicate upon or settle the dispute.

8. On the other hand, the learned Counsel for the respondent Sri Yogesh Agarwal, submitted that the contracts so executed between the petitioner with the contractors was only an eye wash to defeat the provisions of various Acts and Regulations. It was contended that these contracts had outlived its utility, inasmuch as these contracts were for a period of one year, which had expired, and thereafter, there has been no fresh agreement with the contractors. It was also contended that these contracts were not registered, and consequently, no

cognizance could be given to this invalid agreement, in view of the provision of section 9 of the Contract Labour (Regulation and Abolition Act), 1970, which stipulates that the principal employer was required to be registered u/s 7 of the said Act. It was also contended that the contractor was also liable to be registered u/s 12(2) of the said Act, which was also not done in the instant case.

9. In support of his submission, the learned Counsel for the respondent has placed reliance upon a decision of the Supreme Court in *B.H.E.L. Workers Association, Hardwar and Others Vs. Union of India and Others*, which is a case with regard to the appointment or otherwise of the contract labour system under the Contract Labour (Regulation and Abolition Act), 1970. The learned Counsel for the respondent submitted that the claim made by the Union was valid and that the authority was justified in recovering the wages.

10. This Court had an occasion to deal with this question under the U.P. Industrial Peace (Timely Payment of Wages) Act, 1978. In Writ Petition No. 46445 of 2012, *M/s. Samtel Color Ltd. v. State of U.P. and others*, decided on 20th March, 2013, the Court held that the authority under the Act of 1978 travelled beyond its jurisdiction in adjudicating the dispute u/s 3 of the Act of 1978. The Court held that such disputed questions could not be adjudicated in these proceedings and that the order for recovery of wages u/s 3 of the Act of 1978 could not be sustained and was quashed.

11. In order to appreciate the rival submissions of the parties the Court finds that the statements of Objects and Reasons given under the Act of 1978 indicates that the provisions of the Payment of Wages Act was found to be inadequate to ensure timely payment of wages and that the incidence of disturbance of industrial peace was greater in establishment and, therefore, it was considered necessary to provide that if the wage bill in default exceeded Rs. 50,000/-, the amount would be recoverable as arrears of land revenue. This became essential because it was found that there was a tendency of the employers to keep large amount of wages in arrears.

12. The Supreme Court analysed the provisions of the Act of 1978 in *Modi Industries Ltd. v. State of U.P. and others*, 1994 SCC (L & S) 286 : 1993 (67) FLR 1062 (SC). in which the Supreme Court held:

8. The inquiry u/s 3 being thus limited in its scope, the Labour Commissioner's powers extend only to finding out whether the workmen who have put in the work were paid their wages as per the terms of their employment and within the time stipulated by such terms. If the Labour Commissioner is satisfied that the workmen, though they have worked and are, therefore, entitled to their wages, are not paid the same within time, he has further to satisfy himself that the arrears of wages so due exceed Rs. 50,000/-. It is only if he is satisfied on both counts that he can issue the certificate in question. Under the Act, the Labour Commissioner acts to assist the workmen to recover their wages which are admittedly due to them but are withheld for no fault on their behalf. He does not

act as an adjudicator if the entitlement of the workmen to the wages is disputed otherwise than on frivolous or prima facie untenable grounds. When the liability to pay the wages, as in the present case, is under dispute which involves investigation of the questions of fact and/or law, it is not the function of the Labour Commissioner to adjudicate the same. In such cases, he has to refer the parties to the appropriate forum.

13. The Supreme Court found that the inquiry under the Act was limited only to find out whether the workman had earned their wages as per the terms of their employment or not and if the authority was satisfied that the workers had worked and was entitled to their wages and if the authority further found that the arrears of wages exceeded Rs. 50,000/-, in that case he was obligated to issue a recovery certificate. The Supreme Court held that the authority was required to act as the facilitator and not as an adjudicator, namely, that if the claim of the workers was disputed, the authority could not adjudicate upon the dispute unless frivolous or prima facie untenable grounds were taken by the employers. The Supreme Court further observed that where the dispute involved investigation of questions of fact and of law, it was not the function of the authority to adjudicate the same and, in such matters, the parties were required to approach the appropriate forum.

14. In the light of the aforesaid decisions, various Courts have passed orders from time to time. In Occupier/Director, Hindustan Lever Ltd. and Manager, Hindustan Lever Ltd. Vs. State of Uttar Pradesh and Shri Rajveer Singh Solanki, Division Head Indian National Trade Union Congress (INTUC), Agra Region, . the Court held that the claim of the union which was disputed and required adjudication could not adjudicated by the authority under the Act of 1978 and no recovery certificate could be issued under the said Act.

15. Similarly in Rahman Exports Pvt. Ltd. Vs. State of U.P. and Others, . the Court held that the Deputy Labour Commissioner does not have any power or jurisdiction to settle the dispute of the nature involved in the instant case under the Act of 1978. The Court held that the authority was not entitled to adjudicate upon the entitlement of the wages and could only issue orders for recovery of the admitted wages to be paid to the workers.

16. In the light of the aforesaid decision and from the material available on record, the Court finds that in the instant case, a categorical stand was taken by the petitioner before the authority, namely, that the members of the Union are workers of the Contractors, who were engaged for a certain kind of work in the establishment of the petitioner under an agreement at agreed rates specified therein. The union in their application u/s 3 of the Act also admitted that their members were engaged through contractors, but were not paid the minimum wages, and consequently, there were arrears.

17. The contention of the union that there was no valid agreement or that there has been a violation of the provisions of the Contract Labour (Regulation and

Abolition Act), 1970 and the fact that the petitioners adopted an unfair labour practice are disputed questions of fact, which could not be adjudicated by the authority under the Act of 1978, inasmuch as, the Court is of the opinion that such dispute involves both questions of fact and of law, which could not be appreciated in proceedings u/s 3 of the Act of 1978 nor can the authority adjudicate such dispute in these proceedings.

18. The Supreme Court in *Modi Industries Ltd. (supra)*, has clearly held that the authority acts as a facilitator and not as an adjudicator. The question whether contractors were registered, whether minimum wages were being paid or not and whether the workers of the contractors would be deemed to be the employees of the petitioners are disputed questions of fact. These questions of fact could only be adjudicated in appropriate proceedings and not u/s 3 of the Act. In view of the aforesaid, the impugned order for recovery of wages u/s 3 of the Act cannot be sustained and is quashed.

The writ petition is allowed.