

(2014) 07 GUJ CK 0001

In the Gujarat High Court

Case No : Special Civil Application No. 4796 of 2004

Junagadh Municipal Corpn.

APPELLANT

Vs

Benkunwarben Tapubhai Vaghela

RESPONDENT

Date of Decision : 28-07-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)
Minimum Wages Act, 1948 — Section 20

Citation : (2014) 07 GUJ CK 0001

Hon'ble Judges : Akil Abdul Hamid Kureshi, J

Bench : Single Bench

Advocate : Premal R. Joshi, Advocate for the Appellant; Amar D. Mithani, Advocate for the Respondent

Judgement

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Akil Abdul Hamid Kureshi, J.—Junagadh Municipal Corporation, the petitioner has challenged an order dated 3.2.2004 passed by the Labour Court, Junagadh in two Recovery Applications No. 484 and 485 of 1992.

2. Brief facts are as under:

2.1. The above-noted recovery applications were filed by heirs of deceased Benkunwarben Tapubhai Waghela and Tapubhai Jadavbhai Waghela under section 33C(2) of the Industrial Disputes Act. They were working as labourer and guard with the petitioner Corporation. On the premise that for the period between September 1984 to December 1992, they were not paid wages according to the minimum wages prescribed under the Minimum Wages Act, they filed above-mentioned recovery applications. Pending the proceedings, both of them having died, the legal heirs pursued the cases. In such applications, they contended that they were paid only Rs. 100/- per month against minimum wages prescribed which were much higher and was revised from time to time. The Corporation filed written reply and opposed the recovery proceedings inter-alia on the

grounds that the application itself was not maintainable. The Labour Court had no jurisdiction to order recovery since the notifications under the Minimum Wages Act would not apply to the employer as the workmen were engaged in a school. They also opposed the recovery applications on facts.

2.2. Ignoring such resistance, the Labour Court, allowed both the recovery applications and by the impugned order, the learned Judge of the Labour Court accepted the say of the workman. It was held that they were not paid according to the minimum wages. It appears that their claims were Rs. 40,251/- and 47,256/- respectively. Due to some oversight, in the operative portion of the impugned order, the Labour Court referred only to recovery of Rs. 47,256/-. Be that as it may, the reading of the entire order would show that the Labour Court accepted both the claims.

2.3. Before the Labour Court, the workman Benkunwarben had given evidence and also produced supporting documents. The notification under which the Municipal Corporation was required to pay the minimum wages to its workman was also produced. On the other hand, the Corporation produced no documentary evidence. On behalf of the Corporation one Mansukhbhai Velhibhai was examined. He put little defence to the various claims of the workmen.

3. On the basis of such materials, learned counsel Shri Premal Joshi for the Corporation vehemently contended that the Labour Court erred in ordering recovery in exercise of powers under section 33C(2) of the Industrial Disputes Act when the very claims were disputed and there was no pre-adjudication of such disputed claims. He further submitted that the competent authority under the Minimum Wages Act alone could have gone into such consideration. In this context he relied on decision of Division Bench of this Court in case of Gujarat Water Supply and Sewerage Board and Another Vs. Ketanbhai Dinkarray Pandya, and in case of Junagadh Municipal Corporation v. Gulamhussain A. Sheikh & ors dated 28.11.2011 passed in Letters Patent Appeal No. 490/2005.

4. On the other hand, learned counsel Shri Mithani for the respondents relied on a Division Bench decision of this Court in case of Somiben Mathurbai Vasava Vs. Lalji Hakku Parmar Leather Works Company, and in case of Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., Supreme Court 1335

5. Section 20 of the Minimum Wages Act pertains to claims. Sub-section(1) thereof provides for appointment of an authority to hear and decide all claims arising out of payment of wages. Sub-section(2) of section 20 provides that where an employee has any claim referred to in sub-section(1), persons mentioned therein which includes employee himself may apply to such authority for a direction under sub-section(3). Sub-section(3) in turn provides that when any application under sub-section(2) is entertained, the authority shall hear the applicant and the employer or given them an opportunity of being heard and after such further inquiry if considered necessary, may without prejudice to any

other penalty to which the employer maybe liable, direct payment of difference between the minimum wages and those already paid.

6. In the present case, dispute of the workmen precisely was that they were not paid wages as per the standards prescribed under the Minimum Wages Act. The Corporation opposed such claims on various grounds. Such issues could have been gone into by the competent authority under the Minimum Wages Act. Without there being any adjudication of such issues, recovery under section 33C(2) of the Industrial Disputes Act, could not have been ordered. This is precisely what the Division Bench of this Court in case of Gujarat Water Supply and Sewerage Board and anr. v. Ketanbhai Dinkarray Pandya(supra) held. It was a case in which several employees of Gujarat Water Supply and Sewerage Board filed recovery applications under section 33C(2) of the Industrial Disputes Act claiming that they had not been paid wages at the rates prescribed under the Minimum Wages Act. The Labour Court on the basis of evidence produced by both the sides, accepted the claim of the workmen and ordered recovery. The Board challenged such order of the Labour Court before the High Court. Learned Single Judge dismissed the petition. Division Bench allowed the writ petitions by making following observations:

49. We have already taken a view hereinabove that powers of Labour Court under section 33C(2) of the Industrial Disputes Act are that of executing Court and for that purpose, there has to be an undisputed or adjudicated existing right which can be enforced. In all these petitions, admittedly, the Labour Court has entertained claim of workmen in Recovery Application under Section 33C(2) of the Industrial Disputes Act in absence of prior adjudication by competent Court or authority, which it was not competent to do. The impugned awards passed by the Labour Court in all the petitions, therefore, cannot be permitted to stand. The petitions, therefore, deserve to be allowed.

7. Decisions of this Court in case of Somiben Mathurbhai Vasava v. M/s. Lalji Hakku Parmar Leather Works Company (supra) and that of Supreme Court in case of Town Municipal Council, Athani v. Presiding Officer, Labour Court, Hubli and others (supra), were referred to and considered. Same view was adopted in a later decision in case of Junagadh Municipal Corporation v. Gulamhussain A. Sheikh & ors(supra).

8. Under the circumstances, I am of the opinion that the Labour Court committed an error in ordering recovery of the alleged short payment of minimum wages without there being full adjudication by the competent authority or the Court. This is not to suggest that if in a given case, the employer simply does not put in defence to the claim of a workman of unpaid monetary benefits, even then prior adjudication under the industrial dispute or under some other Labour Legislation would be a pre-condition to entertain the recovery application under section 33C(2) of the Industrial Disputes Act. Such case however, may be different in nature and may require different scrutiny and approach. The present case certainly falls within the parameters of the decision of Division Bench in case of

Gujarat Water Supply and Sewerage Board and anr. v. Ketanbhai Dinkarray Pandya(supra).

9. The impugned order of the Labour Court is quashed. However, I cannot lose sight of certain salient features of the case. Firstly, the issues are very old. The claim of short payments pertain to the year 1984 and onwards. Both the workmen have passed away long back. Their heirs are waiting for their legal dues. From the record, it emerges that the Corporation was not able to produce much material establishing that the workmen were paid according to the minimum wages rate. Their main defence was that Minimum Wages Act would not apply all together. On the other hand the workman had produced oral as well as documentary evidence.

10. Under the circumstances, it is further directed that if the respondents file application before the competent authority under section 20 of the Minimum Wages Act latest by 15.8.2014, such applications shall be disposed of:

a) latest by 15.11.2014;

b) such consideration shall be bearing in mind the observations made in this order;

c) without raising dispute of limitation;

d) the Corporation shall be allowed to file reply latest by 31.8.2014. The Corporation shall not insist on a formal notice by the competent authority and shall voluntarily appear before the said authority upon being notified by the respondents of the filing of such applications;

e) if the authority under the Minimum Wages Act passes a final order in favour of the respondents, such amount shall be paid over to the respondents by the Corporation without the respondents having to resort to further proceedings for recovery, of-course, subject to the Corporation's right to appeal.

11. With above directions, the Special Civil Application is disposed of. Rule is discharged.