
(1970) 02 KL CK 0018

In the High Court Of Kerala

Case No : Civil Revision Petition No. 1137 of 1968

K. Venkatachalam Aiyer

APPELLANT

Vs

J. Melby D'Cruz and Others

RESPONDENT

Date of Decision : 13-02-1970

Acts Referred:

Industrial Disputes Act, 1947 — Section 25FFF, 33C(2)
Payment of Wages Act, 1936 — Section 15(2)

Citation : AIR 1971 Ker 190

Hon'ble Judges : Sadasivan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sadasivan, J.—The revision petitioner is the Liquidator of the 1st respondent company. He was the Additional 3rd respondent in Payment of Wages Act Appeal No. 2 of 1964 on the file of the District Court. Quilon and the Liquidator of the 1st respondent in Payment of Wages Application 4 of 1963 on the file of the Authority under Payment of Wages Act (Labour Court), Quilon. The application before the Authority was submitted u/s 16 read with Section 15(2) of the Payment of Wages Act for direction against the Revision petitioner for payment to the applicants of delayed wages as mentioned in the schedule to the application. The application was presented by a group of persons who were employed in the revision petitioner's industrial establishment T. M. P. No. 2 at Chavara. This company was originally started as "Associated Minerals concern" in the year 1939 and after the closure of the same for a period of about two years from 30-4-1949 to 1-2-1951 on account of lock-out, the then Government of Travancore-Cochin took over the factory and conducted the same in the name of T. M. C. No. 3.

In April 1957, this concern was taken over by Travancore Minerals Limited, which was a company in which the shares were held by the Central Government, the Government of Kerala and the Government of Madras. This company had also taken over two other plants from the then Government of Travancore Cochin,

namely T. M. C. No. 1 at Chavara which was re-named T. M. P. No. 1 and T. M. C. No. 2 at Manavalakurichi which was named T. M. P. No. 3. Each one of these plants was separately owned in the past and was a distinct business or industrial undertaking. In 1962 the company was confronted with a serious situation arising from the fact that the foreign buyers stopped buying the products of the company. The company was, therefore, forced to take steps to close down the various undertakings carried on by it.

A retrenchment of some of the juniormost employees was effected in T. M. P. No. 1 and T. M. P. No. 2 towards the middle of 1962. This was done on the basis that these were separate undertakings and the seniority list was prepared plant-wise. Towards the end of December, it was decided to close down the undertaking T. M. P. No. 2 and accordingly a closure notice was put up on the 29th December 1962 closing T. M. P. No. 2 with effect from the 31st December, 1962, The workmen were paid compensation as provided in the proviso to Section 25FFF of the Industrial Disputes Act 1947.

2. The Payment of Wages Application was filed claiming firstly that the proviso to Section 25FFF had no application, and therefore, they were entitled to compensation for the full period of service and secondly that T. M. P. No. 2 cannot be treated as an undertaking and, therefore, in any event Section 25F alone applied. The Authority under the Payment of Wages Act, while holding that the proviso to Section 25FFF had no application, dismissed the application on the ground that it was not properly filed. The District Court, Quilon in appeal held that the application was maintainable but the appeal was dismissed on the ground that it was a case falling squarely within the provisions of the proviso to Section 25FFF of the Act and the Applicants are not entitled to any relief. Against that decision a civil revision petition was filed (C. R. P. 71/66) and this Court by its order dated 7th July, 1967 set aside the order of the District Court and remanded the matter to the learned Judge for a decision afresh after determining the questions covered by points 1, 2 and 3 of the points for determination set out in paragraph 5 of the order. The points were:--

(i) Whether the closing of plant No. 2 amounts to a closure within the meaning of that term in Section 25FFF?

(ii) Whether it is only a retrenchment for which retrenchment compensation is to be paid u/s 25F?

(iii) Even if the closure is a closure as contemplated u/s 25FFF, whether the workers are entitled to compensation under the main section or only under the proviso?

This Court also held that the application was maintainable and properly filed. The matter was then argued before the District Court and the learned Judge by his order dated 6th February, 1988 allowed the application holding that it is a case coming under the provisions of Section 25F of the Act and that Section 25FFF has no application as it is not a case of closure of an undertaking. It is against this

judgment that the Liquidator of the company has come up in revision.

3. I do not propose to go into the merits of the case. Learned counsel for the revision petitioner has argued that Section 15(2) of the Payment of Wages Act cannot cover such claims as the claim raised in the present case, and that the proper forum for such an application is the Labour Court u/s 33C(2) of the Industrial Disputes Act. Section 15(2) of the Payment of Wages Act is to the following effect :--

"Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector under this Act, or any other person acting with the permission of the authority appointed under Sub-section (1) may apply to such authority for a direction under Sub-section (3)."

Section 33C(2) of the Industrial Disputes Act reads :--

"(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such labour Court as may be specified in this behalf by the appropriate Government."

On a careful consideration of the question arising in the present case, I am inclined to agree with the learned counsel in his contention that the proper forum for settlement of such a dispute is the Labour Court u/s 33C(2) of the Industrial Disputes Act. This view receives support from a recent decision of the Supreme Court in Payment of Wages Inspector Vs. Surajmal Mehta and Another, The facts of that case are almost identical with the facts of the present case and I extract below in brief the facts :--

"On the licence of the Sarnagar Electric Supply and Industry company, of which respondent 1 was at all material times the Managing Director, having been revoked by the Madhya Pradesh Government and the company's undertaking having been taken over by the Madhya Pradesh Electricity Board, respondent 1 served notices on the company's employees that their services would no longer be required as from 1st October, 1962. Thereupon, the appellant on behalf of twenty employees of the company filed an application u/s 15(2) of the Act to recover from respondent 1 wages for the notice-month and retrenchment compensation amounting to Rs. 12,853-60 payable to the employees u/s 25FF of the Industrial Disputes Act, 1947. On respondent 1 contesting the claim as also the jurisdiction of the authority, the authority raised certain preliminary issues, namely :

(1) whether the said application was maintainable in view of the revocation of

the company's licence;

(2) whether the authority had jurisdiction to determine the liability of respondent 1 for retrenchment compensation before the amount thereof was ascertained u/s 33C(2) of the Industrial Disputes Act, and

(3) whether in view of the services of the workmen not having been interrupted by the said transfer and the terms and conditions of service applicable to them after the said transfer being not in any way less favourable than before and the said Board as the new employer being liable after the transfer for compensation in the event of retrenchment, the employees were entitled to claim any compensation."

By his order dated 21st May 1963 the authority held against respondent 1 on the question of jurisdiction. Respondent 1 thereupon filed a writ petition in the High Court and a Division Bench of the High Court held that Section 15 of the Act did not apply and that the proper forum for such an application was a Labour Court u/s 33C(2) of the Industrial Disputes Act. "On appeal to the Supreme Court the view of the High Court that the Payment of Wages Authority had no jurisdiction u/s 15(2) of the Payment of Wages Act to try the case was upheld. In doing so their Lordships of the Supreme Court have observed :--

"The question therefore is whether on the footing that compensation payable under Sections 25FF and 25FFF of the Industrial Disputes Act being wages within the meaning of Section 2(vi)(d) of the Act, a claim for it on the ground that its payment was delayed by an employer could be entertained u/s 15(2) of the Act. In our view it could not be so entertained. In the first place, the claim made in the instant case is not a simple case of deductions having been unauthorisedly made or payment having been delayed beyond the wage periods and the time of payment fixed under Sections 4 and 5 of the Act. In the second place, in view of the defence taken by respondent 1, the authority would inevitably have to enter into questions arising under the proviso to Section 25FF, viz., whether there was any interruption in the employment of the workmen, whether the conditions of service under the board were any the less favourable than those under the company and whether the Board, as the new employer, had become liable to pay compensation to the workmen if there was retrenchment in the future. Such an inquiry would necessarily be a prolonged inquiry involving questions of fact and of law. Besides, the failure to pay compensation or, the ground of such a plea cannot be said to be either a deduction which is unauthorised under the Act, nor can it fall under the class of delayed wages as envisaged by Sections 4 and 5 of the Act. It may be that there may conceivably be cases of claims of compensation which are either admitted or which cannot be disputed or which by reason of its falling under the definition of wages the authority may have jurisdiction to try and determine. But we do not think that a claim for compensation u/s 25FF which is denied by the employer on the ground that it was defeated by the proviso to that section, of which all the conditions were fulfilled, is one such claim which can fall within the ambit of Section 15(2). When

the definition of wages was expanded to include cases of sums payable under a contract, instrument or a law, it could not have been intended that such a claim for compensation which is denied on grounds which inevitably would have to be inquired into and which might entail prolonged inquiry into questions of fact as well as law was one which should be summarily determined by the authority u/s 15. Nor could the authority have been intended to try as matters incidental to such a claim questions arising under the proviso to Section 25FF. 2In our view it would be the Labour Court in such case which would be the proper forum which can determine such questions u/s 33C(2) of the Industrial Disputes Act which also possesses power to appoint a Commissioner to take evidence where questions of fact require detailed evidence. Shri Shrof. however, drew our attention to the decision in *Uttam Chand v. Kartar Singh*. 1967 1 L LJ 232), a decision of a learned single Judge of the High Court of Punjab, taking a view contrary to the one which we are inclined to take. But that decision contains no reasons and is, therefore, hardly of any assistance."

The above observations are on all fours with the present case. The claim made is not on account of any deductions of wages or delayed wages etc, so as to attract Section 15(2) of the Payment of Wages Act. On the other hand, the claim made is an unliquidated or indefinite amount as is contemplated in Section 33C(2) of the Industrial Disputes Act, viewed from the stand-point either of closure or retrenchment. The proper forum, therefore, is the Labour Court under S. 33-C (2) of the Industrial Disputes Act.

4. This revision petition is, therefore, allowed and the judgment under revision is set aside. The respondents will be at liberty to move their claim before the Labour Court u/s 33C(2) of the Industrial Disputes Act, if so advised. No costs in this Court.