
(2013) 07 AHC CK 0300

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6120 of 2000

M/s. Swadeshi Cotton Mills

APPELLANT

Vs

Dy. Labour Commissioner and Others

RESPONDENT

Date of Decision : 25-07-2013

Acts Referred:

Citation : (2014) 1 ALJ 251 : (2013) 139 FLR 572

Hon'ble Judges : Arvind Kumar Tripathi, J

Bench : Single Bench

Advocate : V.B. Singh, Jamal Khan, Kirtika Singh and Deepak Gaur, for the Appellant; S.K. Srivastava, for the Respondent

Judgement

Arvind Kumar Tripathi, J.—Heard learned Counsel for the petitioner, learned Counsel for the respondents and perused the record. By means of the present writ petition, the impugned order dated 1.1.2000 passed by the respondent No. 1 Deputy Labour Commissioner, Allahabad (Annexure No. 8) has been challenged by which the direction was issued, for recovery of the amount, to the Collector, Allahabad, with 10 per cent interest. Further prayer is to issue mandamus commanding the respondents not to initiate recovery proceeding.

2. The recovery proceeding against the petitioner in pursuance of the order dated 1.1.2000 was stayed by interim order dated 16.3.2000 passed by this Court.

3. Brief facts of the case are that the petitioner is a company registered under Indian Company Act and is a unit of N.T.C. (U.P.) Limited, Government of India and is engaged in the business of manufacturing and sale of Cotton Yarn and is situated at Naini, District Allahabad. Swadeshi Cotton Mills Company Limited was taken over by the Central Government by the Swadeshi Cotton Mills Company Limited (Acquisition and Transfer of Undertakings) Act, 1986 (Act No. 30 of 1986) in the textile undertakings. There were six companies of the Swadeshi Cotton Mills Limited:

(1) Swadeshi Cotton Mills, Kanpur;

- (2) Swadeshi Cotton Mills, Pondicherry;
- (3) Swadeshi Cotton Mills, Naini;
- (4) Swadeshi Cotton Mills, Maunath Bhanjan;
- (5) Udaipur Cotton Mills, Udaipur;
- (6) Rae Bareli Textile Mills, Rae Bareli.

4. In view of section 3 of Act No. 30 of 1986 on the appointed day, every textile undertaking and the right, title and interest of the Company in relation to every such textile undertaking shall, by virtue of this Act, stand transferred to, and shall vest in the Central Government and shall immediately after it has so vested, stand transferred to, and vested in, the National Textile Corporation.

5. The respondent No. 3 filed claim under U.P. Industrial Peace (Timely Payment of Wages) Act, 1978 (hereinafter referred to as "Act 1978") that he was working as Welfare Officer in M/s. Swadeshi Cotton Mills and resigned from the post on 28.9.1988. According to his case, he was paid only the basic salary and was not paid dearness allowance and as such he claimed clearness allowance for the period from June, 1961 to September, 1981 at Rs. 250/- per month. He also claimed payment of unpaid Provident Fund, Travelling Allowances, Gratuity, Bonus and leave salary, etc., total amounting to Rs. 1,25,000/-. Thereafter, he has filed a revised chart claiming total a sum of Rs. 1,16,940/- and bonus for the year 1981. The objection was filed from side of the petitioner-company before respondent No. 1 contending that it was the past liability and under the Nationalised Act 30 of 1986, it was the liability of the private management and not the liability of the M/s. Swadeshi Cotton Mills. Further under the Act, 1978, the claim was not maintainable as the respondent No. 3 was not the workman and his claim was not covered under the definition of "Wages" as defined under the Payment of Wages Act, 1936. Further, case of the petitioner was that Act, 1978, cannot be invoked in case of solitary claimant, beside on merit. It was stated no dearness allowance was payable as firstly it was the claim against the private management and secondly no officer equivalent to him was paid dearness allowance. The respondent No. 3 has already been paid dearness allowance in accordance with Rule 8 of U.P. Factory Welfare Officer Rule. Writ Petition No. 7398 of 1983 was filed by the management, which was dismissed on 19.12.1996 with the observation that the petitioner can proceed further if the final order goes against them. Thereafter, the proceeding started and the order was passed for recovery of the amount.

6. Learned Counsel for the petitioner submitted that the proceeding under Act 1978 was not maintainable on two grounds. Firstly, if the claim is highly disputed, that disputed fact cannot be decided in the summary proceeding and only against the admitted dues the order for recovery has to be passed and secondly, the application of an individual employee is not maintainable and if the wage bill of the entire establishment exceeds Rs. 50,000/- then the application is

maintainable under Act No. 5 of 1978.

7. Learned Counsel for the petitioner also submitted that under the definition of "Wages" as mentioned in the Payment of Wages Act, 1936, the travelling allowances, gratuity payable on the termination of the employment, any bonus which does not form part of remuneration payable under the term of employment or order of the Court, and in the present case the claim was with regard to unpaid Dearness Allowance, Provident Fund, Bonus, Travelling Allowances, Leave Encashment, gratuity, etc. The objection was filed and payment of gratuity shown as less pay amount was wrong, unpaid salary for the period 11.2.1981 to 10.6.1981 amounting to Rs. 9,930/- was also wrong and baseless. Any officer of the status of the respondent No. 3 was not drawing any dearness allowance. The matter regarding the dearness allowance was subject-matter of the case pending in the Court of C.J.M. hence that was disputed. Unpaid salary, provident fund, bonus, medical, dearness allowances, etc. was also disputed.

8. It was further submitted that apart from that in view of section 5(1) of Act No. 30 of 1986, every liability of the company in relation to the textile undertakings in respect of any period prior to the appointed day shall be the liability of the company and shall be enforceable against it and not against the Central Government or the National Textile Corporation and the appointed day is first day of April, 1985 for payment of the dues under Chapter 3. It was provided that Central Government shall give to the Company in cash and in the manner specified in Chapter 6, an amount of Rs. 24.32 crores further for deprivation of the company of the management of the textile undertakings. It was provided that there shall be given by the Central Government to the company in cash an amount calculated at the rate of Rs. 10,000/- per annum for the period commencing on the date on which the management of the textile undertakings was taken over. u/s 15, the Central Government shall for the purpose of disbursing the amounts payable under sections 8 and 9 to the Company, by notification, appoint a "Commissioner of Payments". In view of section 18, however, the person having a claim against the company in relation to the textile undertakings with regard to any of the matters specified in the Schedule shall prefer such claim before the Commissioner within 30 days from the specified date and as such the impugned order issued for recovery is illegal, arbitrary without jurisdiction and the same is liable to be set aside.

9. Learned Counsel for the respondents opposed the prayer and submitted that Act No. 5 of 1978 was enacted for the purpose of payment of "wage bill" to control the disturbance of industrial peace. The application of the petitioner was maintainable as the payment was covered under the "Wages". In view of section 2(e) of Act No. 5 of 1978 will have the same meaning as assigned to the Payment of Wages Act, 1936. Hence, the petitioner was entitled for the payment of dearness allowance, bonus, gratuity, etc. Even if it is a sick industry, the recovery certificate can be issued against the company for payment of the wages

because the workmen are not expected to work without wages/salary. Even the gratuity cannot be prohibited as the payment of gratuity is one of beneficial measures introduced by the labour legislation. The application was moved for recovery of the amount against the Swadeshi Cotton Mill in the year 1983 and at that time, Swadeshi Cotton Mills Company Limited (Acquisition and Transfer of Undertakings) Act, 1986 was not enacted since the Swadeshi Cotton Mill was acquired by the Central Government, now, the management vested in the textile undertakings now the National Textile Corporation, hence, the National Textile Corporation will be responsible for the liability of the company also and as such rightly the order was issued for recovery of the amount. The present petition is liable to be dismissed.

10. Considered the submission of learned Counsel for the parties. As per the objection from side of the petitioner/employer was not only with regard to the dues but also that claim relates to the period commencing from June, 1961. According to respondent No. 3, he was in the employment of M/s. Ram Lal Raja Ram Varanasi and that was not branch of M/s. Swadeshi Cotton Mills. Swadeshi Cotton Mills has no concern with M/s. Ram Lal Raja Ram Varanasi. U.P. Industrial Peace (Timely Payment of Wages) Act, 1978 was enacted with the object to avoid delay in payment of wages of workmen to maintain peace and avoid disturbance of industrial peace. The provisions of the Payment of Wages Act, 1936 have been found to be inadequate to ensure timely payment of wages. The incidence of disturbance of industrial peace being greater in comparatively bigger establishments, it was considered necessary to provide if the wage bill in default exceeds Rs. 50,000/- the amount should be recoverable as arrears of land revenue. Further, in order to curb the tendency of the employers to keep large amounts of wages in arrears, it was also necessary to make it a penal offence to be in default of a wage bill exceeding Rs. 1,00,000/-. According to sub-section 1 of section 3, where the Labour Commissioner is "satisfied" that the occupier of an industrial establishment is in default of payment of wages and that the "wage-bill" in respect of which such occupier is in default "exceeds Rs. 50,000/-", he may without prejudice to the provisions of sections 5 and 6, forward to the Collector, a certificate specifying the amount of wages due from the industrial establishment concerned. u/s 4 for the purposes of ascertaining the "wage-bill" of an establishment in respect of which default has been committed, the Labour Commissioner shall have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 in respect of enforcing the attendance of witnesses, examining them on oath and compelling production of documents, and shall be deemed to be a Civil Court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. So in view of the provision, the Labour Commissioner was authorised not only to ensure attendance of witnesses but also empowered to compel for production of documents if required for taking appropriate decision with regard to the disputed claims and the proceeding before the Labour Commissioner is summary proceeding. Hence, u/s 3, the power of the Labour commissioner is to find out

whether workman who have to be in the work were paid, their wages as per the terms of their employment and within the time stipulated by such terms.

11. In view of the judgment of the Apex Court in the case of *Modi Industries Ltd. v. State of Uttar Pradesh and others*, under the Act 5 of 1978, the Labour Commissioner acts to assist the workman to recover their wages which are admittedly for no fault on their behalf. However he does not act as an adjudicator if the entitlement of the workmen to the wages is disputed. When the liability to pay the wages is under dispute which involves investigation of the question of fact and or law, it is not the function of the Labour Commissioner to adjudicate the same and in such cases the Labour Commissioner has to refer to the parties to the appropriate forum under the Industrial Disputes Act or under the Payment of Wages Act as the case may be. The powers conferred on the Labour Commissioner u/s 3 of Act 5 of 1978 are to prevent apprehended or present breach of industrial peace. The enquiry contemplated is of a summary nature. Since as per objection from side of the applicant the dues as claimed was disputed, hence, the matter was required to be referred for adjudication. It was further observed and held by the Apex Court in case of *Modi (supra)* that Act No. 5 of 1978 deals with default in payment of the wage bill of all the workmen in the establishment. It is not meant to provide remedy for the default in payment of an individual workman. That can be taken care of by the provisions of the Payment of Wages Act, 1936 which provisions are found inadequate to ensure timely payment of wages of the whole workmen in the establishment. The Labour Commissioner is also required to give reasons as to why according to him the pleas raised are untenable or when he rejects the claim of the workman has to indicate disputed questions of law or fact which prevents him from exercising his limited jurisdiction both for issuing the certificate as well as for rejecting the claim of the workmen. The Labour Commissioner is required to give his reasons depending upon the facts in each case. As held by the Apex Court in the case of *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, , that even administrative decision must bear reasons for some of them may have more vital consequences of the rights of the parties than even judicial decisions. It is not, therefore, correct to say that the Labour Commissioner is not required to give reasons for his orders. Paras 7, 8, 9 and 11 of the aforesaid judgment of the Apex Court in the case of *Modi (supra)* are quoted herein below:

7. It will thus be clear from the preamble, the statement of objects and reasons and the provisions of the Act that, firstly, the Act has been placed on the statute book to ensure timely payment of wages by the bigger establishments, the incidence of disturbance of industrial peace being greater in such establishments on account of the default in payment of wages. Secondly, the Act deals with defaults in payment of the wage-bill of all the workmen in the establishment. It is not meant to provide a remedy for the default in payment of wages of individual workmen. That can be taken care of by the provisions of the Payment of Wages Act, 1936 which provisions are found inadequate to ensure timely payment of wages of the whole complement of workmen in an establishment.

Thirdly, it is not in respect of the default in payment of every wage-bill but only of a wage-bill exceeding Rs. 50,000 that the Labour Commissioner can be approached under the Act for redressable of the grievance. Fourthly, the Act is not applicable to all establishments but only those establishments which produce, process, adopt or manufacture some articles. It will, therefore, be evident that the Act does not supplant or substitute the Payment of Wages Act, 1936 but supplements the said Act, in the limited area, viz., where the establishment, as stated above, (i) produces, processes, adopts or manufactures some Article, (ii) where there is a default in the wage-bill of the entire such establishment and (iii) where such wage-bill exceeds Rs. 50,000. The object of the Act as stated above is not so much to secure payment of wages to individual workmen but to prevent industrial unrest and disturbance of industrial peace on account of the default on the part of the establishment in making payment of wages to their work force as a whole. It appears that many establishments had a tendency to delay the payment of wages to their workmen and were playing with the lives of the workmen with impunity. This naturally led to a widespread disturbance of industrial peace in the State. Hence the legislature felt the need for enacting the present statute. This being the case, the inquiry by the Labour Commissioner contemplated u/s 3 of the Act is of a very limited nature, viz., whether the establishment has made a default in timely payment of wages to its workmen as a whole when there is no dispute that the workmen are entitled to them.

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.

9. The powers conferred on the Labour Commissioner u/s 3 of the Act are to prevent apprehended or present breach of industrial peace. That is why the inquiry contemplated is of a summary nature. The exercise of the said powers by the Labour Commissioner does not prevent either party from approaching the regular forum for the redressal of its grievance. Construing a more or less similar provision of section 3(b) of the U.P. Industrial Disputes Act, 1947 in State of "U.P. v. Basti Sugar Mills Co. Ltd." this Court had taken the same view. The

provisions of the said section 3(b) read as follows:

3. Power to prevent strikes, lockouts, etc.--If, in the opinion of the State Government, it is necessary or expedient so to do for securing the public safety or convenience or the maintenance of public order or supplies and services essential to the life of the community, or for maintaining employment, it may, by general or special order, make provision

(a) xxxxxxxxxxxx

(b) for requiring employers, workmen or both to observe for such period, as may be specified in the order, such terms and conditions of employment as may be determined in accordance with the order;

11. A similar view is expressed in *Basti Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Another*, . This nature of the provisions of section 3 of the present Act emphasises two aspects which are relevant for our purpose. Firstly, the power conferred on the Labour Commissioner being meant to be used speedily to prevent apprehended or continuing industrial unrest, the procedure to be adopted by him is essentially of a summary nature. It does not contemplate a protracted inquiry. Secondly, the purpose of the inquiry being to redress the grievance of the non-payment of wages, the authority of the Labour Commissioner extends only to finding out whether on the admitted fact that the workmen had worked, the grievance of the workmen has a substance in it or not. It does not, however, mean that the employer can defeat the provisions of the Act by raising frivolous pleas to avoid the payment of wages and when the employer does so, the Labour Commissioner has to wash his hands of the complaint of the workmen. While looking into the grievance of the workmen, the Labour Commissioner will undoubtedly have power to find out whether the employer has a plausible defence or not. Hence the Labour Commissioner would have to examine the pleas and to deal with them. He would have, therefore, to give reasons for accepting or not accepting them. To that extent, he is called upon to give reasons while issuing or refusing to issue the certificate. It must be remembered that Labour Commissioner is not a mere recovery officer. While the recovery officer acts on a claim which is already crystallised in some order, the Labour Commissioner in the present case, has to ascertain himself whether and to what extent, the workmen are entitled to the wages and then issue or refuse to issue the certificate. The inquiry that the Labour Commissioner conducts for the purpose is thus of a quasi-judicial nature. It is the Collector to whom he forwards the certificate who in fact acts as the recovery officer. As is provided in section 3 itself, on receipt of the claim or complaint of the workmen, the Labour Commissioner has to satisfy himself that the occupier of the industrial establishment concerned is in default of payment of wages and that the wage-bill in respect of which the default is complained of exceeds Rs. 50,000. He cannot satisfy himself without hearing the occupier of the industrial establishment on the claim made. That is why u/s 4, he is clothed with the powers of the civil court in the matter of enforcing the attendance of the witnesses, examining them on

oath and compelling production of documents. It has further to be borne in mind that the consequences to the parties of the issuance or non-issuance of the certificate are grave. When the certificate is not issued, the employees' claim stands deferred to an indefinite period. When, however, it is issued, the employer is saddled with a sizable financial liability and the non-payment of the amount indicated in the certificate visits him with penal consequences of both imprisonment and fine. The decisions of this Court in *Mahabir Jute Mills Ltd., Gorakhpore Vs. Shibban Lal Saxena and Others*, , *Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi and Others*, , and *C.B. Gautam Vs. Union of India and Others*, , on which Shri Tarkunde relied in support of his proposition that administrative orders need not contain reasons for the same, according to us, therefore, have only a limited application in the present case. The Labour Commissioner may have to deal with broadly three different situations, viz., (i) where there is no defence whatsoever raised by the employer to the claim of the workmen; (ii) where the employer raises frivolous and untenable pleas to resist the claim; and (iii) where there is a genuine dispute with regard to the entitlement of the workmen to the wages and the said dispute cannot be resolved without investigating the disputed questions of fact or law. In the first case, the Labour Commissioner is not called upon to give any reasons while issuing the certificate. In the second case, the Labour Commissioner has to give reasons as to why according to him, the pleas raised are untenable. In the third situation, the Labour Commissioner when he rejects the claim of the workmen, has to indicate the disputed questions of law or fact which prevent him from exercising his limited jurisdiction. Thus, both for issuing the certificate as well as for rejecting it, the Labour Commissioner may be called upon to give his reasons depending upon the facts in each case. It is well settled by a series of decisions beginning with *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, , that even administrative decisions must bear reasons for some of them may have more vital consequences on the rights of the parties than even judicial decisions. It is not, therefore, correct to say that the Labour Commissioner is not required to give reasons for his orders.

12. It was further observed that whether the certificate is issued or not, the parties remedy to approach appropriate forum for adjudication is not taken away. They can approach the regular forum meant for the resolution of the dispute. The provisions of Act 5 of 1978 are only of a summary nature meant to deal speedily with situation requiring urgent solution.

13. Sections 5, 15, 18 and 19 of the *Swadeshi Cotton Mills Company Limited (Acquisition and Transfer of Undertakings) Act, 1986* are quoted herein below:

5.(1) Every liability of the Company in relation to the textile undertakings in respect of any period prior to the appointed day shall be the liability of the Company and shall be enforceable against it and not against the Central Government or the National Textile Corporation.

(2) For the removal of doubts, it is hereby declared that,--

(a) save as otherwise expressly provided in this section or in any other section of this Act, no liability of the Company in relation to the textile undertakings, in respect of any period prior to the appointed day shall be enforceable against the Central Government or the National Textile Corporation.

(b) no award, decree or order of any Court, Tribunal or other authority in relation to any textile undertaking, passed after the appointed day, in respect of any matter, claim or dispute which arose before that day shall be enforceable against the Central Government or the National Textile Corporation.

(c) no liability incurred by the Company in relation to any textile undertaking before the appointed day, for the contravention of any provision of law for the time being in force, shall be enforceable against the Central Government or the National Textile Corporation.

15.(1) The Central Government shall, for the purposes of disbursing the amounts payable under sections 8 and 9 to the Company, by notification, appoint a Commissioner of Payments.

(2) The Central Government may appoint such other persons as it may think fit to assist the Commissioner and thereupon the Commissioner may authorise one or more of such persons also to exercise all or any of the powers exercisable by him under this Act and different persons may be authorised to exercise different powers.

(3) Any person authorised by the Commissioner to exercise any of the powers exercisable by the Commissioner may exercise those powers in the same manner and with the same effect as if they have been conferred on that person directly by this Act and not by way of authorisation.

(4) The salaries and allowances of the Commissioner and other persons appointed under this section shall be defrayed out of the Consolidated Fund of India.

18. Every person having a claim against the Company in relation to the textile undertakings with regard to any of the matters specified in the Schedule shall prefer such claim before the Commissioner within thirty days from the specified date:

Provided that if the Commissioner is satisfied that the claimant was prevented by sufficient cause from preferring the claim within the said period of thirty days, he may entertain the claim within a further period of thirty days, but not thereafter.

19. The claims arising out of matters specified in the Schedule shall have priorities in accordance with the following principles, namely:--

(a) Category I shall have precedence over all other categories and Category II shall have precedence over Category III and so on;

(b) the claims specified in each of the categories, shall rank equally and be paid

in full, by if the amount is insufficient to meet such claims in full, they shall abate in equal proportions and be paid accordingly; and

(c) the question of discharging any liability with regard to a matter specified in a lower category shall arise only if a surplus is left after meeting all the liabilities specified in the immediately higher category.

14. In view of sections 5 and 13 of Act 1986, it is clear that every liability of the company in relation to textile undertakings in respect of any period prior to the appointed date, i.e., 1.4.1985, shall be enforceable against the company and not against the Central Government or the National Textile Corporation. No award or decree or order of any Court or Tribunal or other authority in relation to any textile undertaking passed in respect of any claim or dispute shall be enforceable against the Central Government or the National Textile Corporation. In the present case, admittedly, the claim is for the period from June, 1961 to September, 1981 and bonus for the period 1981-82, hence, this liability was of the company which is recoverable, in view of the provisions under sections 18 and 19. The dues was highly disputed and as such the claim petition for recovery u/s 3 of Act 5 of 1978 was not maintainable. Hence, the impugned order dated 1.1.2000 issued by respondent No. 1 Deputy Labour Commissioner, Allahabad for recovery against the petitioner is illegal, arbitrary, without jurisdiction and the same is hereby quashed. However for recovery/payment appropriate action/proceeding can be initiated u/s 18 of the Act No. 30 of 1986 or under the Payment of Wages Act, 1936 or under the Industrial Disputes Act, 1947 on reference by the appropriate Government. Accordingly, the present writ petition is allowed. Interim order is hereby discharged. No order as to costs.