

(1984) 08 MP CK 0012

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 417 of 1982

P.C. Adhikari and others

APPELLANT

Vs

The Manager, The Braithe Waite Burn and Jossop Construction
Co. Ltd., Bhilai and another

RESPONDENT

Date of Decision : 02-08-1984

Acts Referred:

Payment of Wages Act, 1936 — Section 15

Citation : (1986) J LJ 74 : (1986) MPLJ 218

Hon'ble Judges : Gulab C. Gupta, J

Bench : Single Bench

Advocate : P.S. Nair, for the Appellant; H.N. Vyas and O.P. Namdeo, for the Respondent

Final Decision : Allowed

Judgement

Gulab C. Gupta, J.

This is a petition under Articles 226 and 227 of the Constitution of India, filed by 88 workers employed under respondent No. 1, who feel aggrieved by the order dated 13-3-1982 (Annexure-F), passed by the Authority under the Payment of Wages Act, Durg, holding their application as non-maintainable and dismissing their case.

The respondent No. 1 is a licensed contractor under the provisions of Contract Labour (Regulation and Abolition) Act, 1970, (hereinafter referred to as the "Act") and engaged in executing a contract with the Hindustan Steel Works Construction Ltd. (hereinafter referred to as the "H.S.W.C.L."), Bhilai. The petitioners are employed by the respondent No. 1 in various works related to the said contract. It appears that the principal employer, i.e. H.S.W.C.L., Bhilai, is also engaged in doing similar work by employing workers departmentally. It further appears that the workers engaged by the principal employer departmentally, are being paid higher wages than the petitioners. The petitioners

thought that by virtue of a condition in the licence granted to the respondent No. 1 by the Authorities under the abovementioned Act, they are entitled to the same wages as are payable to workers employed by a principal employer and doing the similar kind of work. Since their claim was not accepted by respondent No. 1, they filed an application u/s 15 of the Payment of Wages Act before the respondent No. 2 complaining that there had been illegal deduction in their wages. The respondent No. 1, on receipt of notice from the Authority, entered appearance and filed written statement. They admitted that they are the contractors within the meaning of the Act and hold a licence granted by the authorities under the said Act. They also admitted that Rule 25(2)(v)(a) of M.P. Contract Labour (Regulation and Abolition) Rules, 1973 (hereinafter referred to as the "Rules"), is a condition of their Licence. In spite of it, they objected to the jurisdiction of Payment of Wages Authority on the ground that the dispute is within the exclusive jurisdiction of the Labour Commissioner. Their further objection was that the claim made by the petitioners relates to a claim of potential wages and was outside the jurisdiction of the Authority.

It appears that issues relating to the jurisdiction of the Authority were tried as preliminary issues and decided against the respondent No. 1 by an order dated 7-5-1981 (Annexure-C). In this order, the Authority held that there was no substance in the submission that the matter was within the exclusive jurisdiction of the Labour Commissioner, as its own jurisdiction was neither expressly nor impliedly taken away by the Rules. It also held that the controversy between the parties was only incidental to the main question of illegal deduction of wages as claimed by the petitioners. In this view of the matter, the Authority overruled the objections of the respondent No. 1. This order of the Authority was not challenged anywhere and, hence, further proceedings continued. It appears that on 5-3-1982, an application for review of the said order was made in view of the decision of the State Industrial Court in Payment of Wages Appeal No. 29 of 1979, decided on 3-7-1981. The petitioner objected to such a procedure and also submitted that the Authority had no power of review. In spite of the aforesaid objection, the impugned order was passed on 13-3-1982 setting aside the earlier order dated 7-5-1981 by holding that the decision of the State Industrial Court given while hearing appeal under Payment of Wages Act, was binding upon the Authority and since, according to it, the matter was within the exclusive jurisdiction of the Labour Commissioner, the Authority would have no jurisdiction in the matter. That is how the applications were dismissed. The petitioners feel aggrieved by this order and challenge the same by filing this petition as aforesaid.

A preliminary objection has been taken by the respondent No. 1 to the effect that the impugned order was appealable u/s 17 of the Payment of Wages Act; and, hence, no writ petition could lie against the same. It is also submitted that the writ petition should be dismissed because of the alternative remedy. The submission of the petitioners in this behalf is that though there was an alternative remedy, the remedy was neither effective nor efficacious as the impugned order is based on an earlier decision of the appellate Court itself. It is

submitted that if the petitioners had filed an appeal, the appeal would have been dismissed in view of the decision and, thus, no useful purpose would have been served. It is also submitted that the petitioners are poor labourers, having no capacity whatsoever to follow a fruitless alternative remedy. Rule of alternative remedy is not a statutory or constitutional rule, but is a rule of practice. It is only when an alternative remedy equally efficacious is open to a litigant, that he is required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. In spite of it, the High Court has a discretion to grant relief under Article 226, if it feels that interest of justice would be served by granting such a relief. The rule being a rule of self-imposed limitation, a rule of policy and discretion rather than a rule of law, this Court would not hesitate in granting relief to an aggrieved party, if facts and circumstances warrant such a relief. In the instant case, the petitioners are labourers complaining illegal deduction of their wages. Their case remains dismissed because of a decision of the State Industrial Court given in exercise of appellate jurisdiction u/s 17 of the Payment of Wages Act. It would be expecting little too much from a Court to change its earlier view, particularly when the view has been taken after considering all legal provisions. In the instant case, the impugned order is based on the earlier decision of the Industrial Court and unless there was a reasonable possibility of the Industrial Court taking a contrary view, it would be futile and waste of time to direct the petitioners to take resort to alternative remedy. Under the circumstances, it is a fit case where alternative remedy should not deter this Court from deciding the controversy, particularly when such a decision is necessary not only in the interest of the petitioners, but also in the wider interest of contractors and contract labourer in the State. In this view of the matter, the preliminary objection is held to be without any substance and is rejected.

Submission of the learned counsel for the petitioners on the merits of the case is that Rule 25(2)(v)(a) of the rules is not, in any way, contrary to or beyond the rule making power conferred u/s 12(2) of the Act; and hence, there is no justification whatsoever for the Industrial Court to hold that such a Rule could not have been framed by exercising powers under the Act. Shri H.N. Vyas, learned counsel for the respondent No. 1, in spite of his strong desire, could not support the aforesaid conclusion of the Industrial Court, in view of the decision of the Supreme Court in *Gammon India Ltd. and Others Vs. Union of India (UOI) and Others*, . In the said case, various provisions of the Act and Rules, including Rule 25(2)(v)(a), were challenged as ultra vires to the Constitution. The Supreme Court, after examining the vires of the provisions in detail, found the aforesaid Rule as legal and valid. In this view of the matter, it was not permissible to the Industrial Court to hold that the Rule was beyond the rule making power conferred by the Act. Indeed it is not even the jurisdiction of the Industrial Court to pronounce upon the validity of a law. Section 17(4) of the Act requires the Court to make a reference to the High Court in case a question of law is required to be decided in the appeal. Apparently, therefore, the Industrial Court has not only overlooked the aforesaid decision of the Supreme Court, but also the

provisions of section 17(4) of the Act. In view of the Supreme Court judgment the legality and validity of the Rules has to be presumed.

The parties are at issue on the question whether the respondent Labour Commissioner, in deciding a dispute under Rule 25, has the exclusive jurisdiction over such dispute so as to exclude jurisdiction of all other authorities constituted under various Acts like the present one. A decision of this question would incidentally require consideration of the binding nature of the decision of the Labour Commissioner. Admittedly, the contract workers, like the petitioners, are not a party to the aforesaid condition in the licence. Indeed they could not be a party to the aforesaid condition as the licence is a condition precedent to obtain contract work in the establishment. The employment of workers like the petitioners, followed the grant of licence. Under the circumstances, it is obvious that contract labourers like the petitioners, are not a party to the licence, nor a party to the condition attached to the licence. The condition of reference of a dispute for decision of the Labour Commissioner, if considered in the aforesaid context, would mean a dispute arising between the licensing authority, or the authorities appointed under the Act and the contractor holding the licence. The aforesaid is also in line with the provisions of the rules read as a whole. In order to appreciate the submission, Rule 25(2)(5) may be reproduced as under:-

25_____

(1) _____

(2) Every licence granted under sub-rule (1) or renewed under Rule 29 shall be subject to the following conditions, namely:-

(i)_____

(ii) _____

(iii) _____

(iv) _____

(v) (a) in cases where the workmen employed by the contractor perform the same or similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, the hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of work:

Provided that in the case of any disagreement with regard to the type of work the same shall be decided by the Labour Commissioner whose decision shall be final.

(b) in other cases the wage rates, holidays, hours of work and conditions of service of the workmen of the contractor shall be such as may be specified in this behalf by the Labour Commissioner.

The aforesaid Rule read as a whole, indicates that the wage rates, holidays, hours of work and conditions of service of the workmen of the contractor, are required to be determined beforehand so as to avoid their exploitation. With a view to achieve the aforesaid purpose, this Rule provides that in case the workmen doing the same job as the workmen employed by the contractor, are employed by the principal employer of the establishment, the wage rates, hours of work and other conditions of such workmen, shall be the same as that of workmen employed by the principal employer. This would enable the contract labourers and the workmen employed by the principal employer to remain on par and, thereby, avoid any chance of discrimination. In case of other workers, the Rule contemplates a decision by the Labour Commissioner, indicating that the workmen employed by the contractor would be assured a reasonably fair wage and working conditions. It cannot be overlooked that the enactment of the Act became necessary for avoiding exploitation of workmen employed by the contractor and to ensure them fair conditions of employment. The aforesaid interpretation of the Rule, in fact, achieves this purpose. The question, however, is: whether the decision of the Labour Commissioner either under clause (a) or under clause (b) of this Rule, is final and binding upon the workmen so as to take away the jurisdiction of all other authorities. The learned counsel for the respondent No. 1 has relied upon para 30 of the decision of the Supreme Court in *M/s Gammon India Ltd.*'s case (supra) to support his aforesaid submission. The aforesaid decision, unfortunately, does not lay down any such law and cannot be cited as an authority for the proposition that the jurisdiction of authorities appointed under other Act, is taken away. The decision of the Supreme Court in *The Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma*, was then cited to support the aforesaid submission. This case arose out of the provisions of Indian Telegraph Act, 1885, read with section 51 of the Indian Electricity Act, 1910 and was not concerned with any law similar to the present provision and, hence, no strength can be derived for the aforesaid submission. On the contrary, the decision of the Federal Court in *The Shamnugger Jute Factory Co. v. S.N. Modak* (AIR 1949 F.C. 160) where the jurisdiction of the Authority under the Payment of Wages Act vis-a-vis the jurisdiction of the Industrial Tribunal under the Industrial Disputes Act, 1947, came up for consideration and it was held that the jurisdiction of an Industrial Tribunal, to which a dispute as to wages is referred, is not excluded or affected by the provisions of the Payment of Wages Act. In *Co-operative Central Bank Ltd. v. Additional Industrial Tribunal* (1969 (11) L.L.J. 698), the Supreme Court considered the same question in the context of the provisions of Andhra Pradesh Co-operative Societies Act, 1964, and held that unless the Registrar appointed under Act, was able to decide the dispute in question completely and in the same manner as a Tribunal under the Industrial Disputes Act, the jurisdiction of the Tribunal under the Industrial Disputes Act, cannot be said to have taken away. A Full Bench of this Court considered a similar matter in *Rashtriya Khadan Mazdoor Sahakari Somit Ltd. Durg v. Presiding Officer, Central Government Industrial Tribunal* (1975 M.P.L.J. 583) and held that the employees of the Co-operative

Societies engaged in industrial activities are to be governed by the Industrial Disputes Act and not by Section 55 of the M.P. Co-operative Societies Act, 1969. In *All India Bank Employees Association v. National Industrial Tribunal* (1969 (11) L.L.J. 385), the Supreme Court considered this question in the context of section 34A of the Banking Companies Act, 1949, and held that the said provision does not come in the way of effective adjudication by an Industrial Tribunal. Indeed, the question of exclusion of jurisdiction, in such a matter, has been considered by the Supreme Court on more than one occasion. In *Pabbojan Tea Co. v. Deputy Commissioner, Lakhimpur* (1967 (11) L.L.J. 872), dealing with the cases of minimum wage fixation, the Supreme Court observed that "the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but such exclusion must either be explicitly expressed or clearly implied and even if jurisdiction was excluded, the civil Courts would still have jurisdiction to examine into cases where the provisions of the Act had not been complied with or the statutory tribunal had not acted in conformity with the fundamental principles of judicial procedure." The matter of exclusion of jurisdiction of a Civil Court by the Industrial Tribunal is now authoritatively decided in *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, . Similarly, the question whether an industrial dispute can be raised in respect of matters covered by the Industrial Employment (Standing Orders) Act, 1946, arose for decision of the Supreme Court in *Management of Bangalore Woollen, Cotton and Silk Mills Co. Ltd. Vs. The Workmen and Another*, . The management in the aforesaid case had made provisions for leave in its standing orders which was certified by the certifying officer. The question for consideration of the Court was whether the modification of the matters like leave facilities provided in the Standing Orders could only be done by the Authority under the Standing Orders and could not be within the jurisdiction of the Industrial Tribunal constituted under the Industrial Disputes Act. Answering this question in the negative, the Supreme Court held that there is no indication in the scheme of the Standing Orders Act that the jurisdiction of the Industrial Tribunal to entertain an industrial dispute bearing upon a standing order of establishment has in any manner been taken away by the Standing Orders Act. This decision has since then been treated to be the settled law and subsequently followed in *Hindustan Brown Boveri Ltd. v. Their Workmen* (1969 I L.L.J. 571 (S.C.), *Management Shahdara (Delhi) Saharanpur Light Railway Co. Ltd. Vs. S.S. Railway Workers' Union*, and *Malegaon Electricity Co. P. Ltd. Vs. Commissioner of Income Tax, Bombay*, . The aforesaid judgments not only point to a trend existing in industrial jurisprudence, but also show that the jurisdiction of the authority appointed under a statute, is not taken away by conferring somewhat similar powers on an authority appointed under another statute. In this view of the matter, I have no hesitation in rejecting the submission of the learned counsel for the respondents that the jurisdiction to decide the matter arising in the instant case, vests exclusively in the Labour Commissioner.

The matter can be examined from a different perspective also. As has been

stated earlier, the grant of licence is a condition precedent to a contractor engaged himself in a contract work and the workmen to be employed by him are not a party to the said contract. A decision given by the Labour Commissioner regarding wages and other service conditions under the aforesaid Rule, would only ensure them a fair deal, but would not be sufficient to stop them either from moving the appropriate authority for recovery of their wages so settled or for demanding better terms and conditions of employment by approaching the appropriate authorities. Indeed, the learned counsel for the respondent No. 1 could not dispute this legal proposition, but submitted that this could be done only after the dispute has been decided by the Labour Commissioner under the Rule. There is no justification whatsoever for such a construction. In the instant case, the Labour Commissioner admittedly had not fixed any wages as it has been presumed by the authorities under the Act and the respondent-contractor that the contract labourers employed by him would be paid the same wages as available to the workers doing the similar job for the principal employer of the undertaking. Since no dispute between the authorities and the contractor had arisen on this question, there was no occasion for the Labour Commissioner to decide the same. This would, therefore, be deemed to be a condition of employment of the petitioners and if they are denied benefit of this condition, they would be entitled to approach the authorities for realization of their dues. Indeed, it may even be argued on behalf of the workmen that since the contractor had not disputed that they were doing similar job as the workers employed by the principal employer and wages under clause (b) of rule 25(2)(v) of the rules had not been fixed, the contractor cannot justify grant of lower wages by disputing that these contract workers are doing similar work. It is, however, not necessary to pass any final opinion on this question, as applicability of this legal proposition has yet to be decided in the instant case. Suffice it to say that the condition regarding decision of difference by the Labour Commissioner not being earlier agreed to by the workmen as they were not a party to the licence, they would not be bound by the said condition and would be free to resort to the remedy available to them under a statute including the Payment of Wages Act. In this view of the matter, there is no force in the submission of the respondent-contractor that the jurisdiction of Authority under Payment of Wages Act, had been taken away because of the aforesaid Rule.

There is yet another way of looking into the matter. Jurisdiction of the Authority in the instant case, is conferred by an Act of Parliament and its exclusion, by no stretch of imagination, can be inferred by a Rule framed by the State Government under the Act. The doctrine of implied repeal necessarily requires consideration of a statutory" provision, vis-a-vis another statutory provision.

The next question that arises for consideration in the instant case is: whether the authority appointed under the Payment of Wages Act, had the jurisdiction to decide the dispute raised in the instant case about the nature of work done by the petitioners and its similarity with the work done by the workmen employed by the principal employer? Submission of the petitioners is that this is an

incidental matter and, hence, can be decided by the Authority. The learned counsel for the contractor, however, submitted that such a matter is not an incidental matter and cannot be decided by the Authority. Reliance has been placed on the decision of the Supreme Court in *Payment of Wages Inspector Vs. Surajmal Mehta and Another*, . In this case, licence of the electric supply company was revoked and the undertaking was taken over by the M.P. Electricity Board, After taking over, the M P. Electricity Board served notices on the employees that their services were no longer required On receipt of such a notice, 20 employees filed an application u/s 15(2) of the Act to recover wages for the notice period and retrenchment compensation payable u/s 25FF of the Industrial Disputes Act The defence taken by the ex-employer was that the services of the workmen were not terminated as they had continued in the employment with the new employer and the new employer was responsible for payment of compensation, if any retrenchment took place in future. In the context of this defence, the Supreme Court held that the Authority under the Payment of Wages Act was not entitled to deal with such questions. The aforesaid judgment may apparently support the respondents, but its serious reading does not. It was a case where the termination has, in fact, not taken place and yet a claim for compensation was being preferred. The Authority was not supposed to decide whether a termination has, in fact taken place. This case, therefore, does not support the proposition canvassed by the learned counsel, as, in the instant case, the investigation is not of a claim for which no basis exists. Indeed, the present controversy is directly covered by the decision of the Supreme Court in *Shri Ambica Mills Co. Ltd. Vs. S.B. Bhatt and Another*, , which was a case more or less similar to the present one. The claim preferred by the workmen in the said case required consideration of their duties and, thereafter, their classification for purposes of determining proper wages. This was held to be an incidental matter within the jurisdiction of the Authority. In this view of the matter, it must be held that the question involved in this case is incidental and, consequently, within the jurisdiction of the Authority.

It may be pointed out that the claim in the instant case cannot be said to be a claim for potential wages. The contract of employment between the parties is really statutory and provides that if the petitioners are found to be performing same duties as performed by the employees of the principal employer, they would be entitled to the same wages as that of the principal employer. The petitioners claim that inspite of this contract they are not being paid wages even though they are discharging similar duties as the workmen employed by the principal employer. Such a dispute is really a dispute relating to interpretation of a condition of employment. In case, the petitioners are held entitled to higher wages, it will be a case of illegal deduction of their wages. Such a case would surely be within the jurisdiction of the Authority.

In view of the aforesaid conclusions, it is not necessary to decide whether under the Payment of Wages Act the Authority had the power of review. It is the settled law that the power of review has to be specifically conferred upon the Authority.

Then, the power is subjected to well known considerations regarding limitation etc. In the instant case, the review application was filed about a year after the order. It was sought to be submitted by the learned counsel for the petitioners that such a course was adopted only because the earlier Presiding Officer had been transferred and the New Presiding Officer had indicated his inclination to review the matter. As stated earlier, it is not necessary to decide these controversies Suffice it to say that the attitude and behaviour of the Presiding Officer should be beyond reproach. I have no doubt that this shall be, remembered by the learned Presiding Officer concerned and acted upon.

The petition, consequently, succeeds and is allowed. The impugned order dated 13-3-1982 (Annexure-F) is quashed and the respondent-Authority is directed to try and dispose of the case in accordance with law at the earliest. No order as to costs. The outstanding amount of security deposit, if any, shall be refunded to the petitioners.