
(2010) 05 GUJ CK 0066
In the Gujarat High Court
Case No : L.P.A. No. 678 of 2010

Prafulchandra Purshottamdas Panchal APPELLANT
Vs
District Collector and Others RESPONDENT

Date of Decision : 06-05-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Wages Act, 1936 — Section 23

Citation : (2011) 2 LLJ 394

Hon'ble Judges : M.B. Shah, J; D.H. Waghela, J

Bench : Division Bench

Advocate : K.M. Patel and P.C. Chaudhari, for the Appellant; N.J. Shah, A.G.P. and P.J. Joshi, for the Respondent

Judgement

D.H. Waghela, J.—The Appellant, trade union, through its General Secretary, has invoked Clause 15 of the Letters Patent upon being partly aggrieved by the directions issued in order dated March 15, 2010 by learned single Judge of this Court in Special Civil Application No. 10797/2009 and allied matters. The Appellant herein had approached this Court by petition under Article 226 of the Constitution with the prayers, inter alia, for writ of mandamus to the District Collector, Ahmedabad to immediately recover the amounts due to the workmen under order of the Labour Court, for the recovery of which recovery certificate dated March 5, 2009 was already issued against Respondents Nos. 2 and 3 herein. That recovery certificate for recovery of the sum of Rs. 31,09,597.65 ps. was issued pursuant to the order of Labour Court in Misc. Application No. 368/2008 in Payment of Wages Application No. 42/2008. Admittedly, the amounts had fallen due to 57 employees on account of the award and order to reinstate them with back wages.

2. A dispute was raised by Respondents Nos. 2 and 3 herein before learned single Judge on the basis of the contention that the workmen concerned were directly paid certain amounts in full and final settlement of their dues and that

claim was refuted by the Appellant trade union. It appears that said Respondents sought to substantiate their contention by certain documents in the form of vouchers of payment and letters of resignation bearing signatures purported to have been put by the workmen concerned. As against that, it was the case of the Appellant that, as was always the case of workmen, the Respondents had misused signatures which were obtained on blank papers and blank vouchers at the time of appointment or during the period of service of the workmen concerned. In view of such factual controversies raised before the Court, learned single Judge issued the following directions:

8. Learned Advocate Mr. Chaudhary having some doubt against the officer Mr. Katara, who may have some internal relations with the employer, therefore, just to clear the doubt, an independent officer Mr. K.B. Parekh, Mamlatdar, Alien Recovery, Ahmedabad District is directed to verify, whether in respect to award passed by the Labour Court as referred above, amount is paid to the concerned employees or not by P.T. Steel Industries and also to verify, that whether any amount is still required to be recovered from the P.T. Steel Industries and M.C. Metal Pvt. Ltd. or not and thereafter, to take appropriate action under the provisions of the Bombay Land Revenue Code against the employer, who is in fault. This exercise is required to be carried out by Mr. K.B. Parekh, Mamlatdar, Alien Recovery, Ahmedabad District on or before April 9, 2010. The respective parties of award passed by Labour Court in Reference No. 1052/2004 dated December 6, 2007, are at liberty to produce relevant record for proof before Mr. K.B. Parekh.

8.1 Learned AGP Mr. Sharma must have to supply all the relevant documents if it is required by Mr. K.B. Parekh, then to have the xerox copies of the papers from Court papers, which are submitted by respective parties in both petitions as well as CA. But Mr. K.B. Parekh, Mamlatdar, Alien Recovery, Ahmedabad District must have to find out as to how much amount is paid to concerned workmen and after aforesaid payment, seal which has been affixed to M.C. Metal Pvt. Ltd. is to be opened by concerned officer immediately with a direction to M.C. Metal Pvt. Ltd. not to sell, transfer or alienate any property of M.C. Metal Pvt. Ltd.

9. Meanwhile, it is directed to M.C. Metal Pvt. Ltd. to give a Bank Guarantee for the amount, which is mentioned in recovery certificate (Annexure-B) to the S.C.A. No. 10797/2009 to be supply to Mr. K.B. Parekh, Mamlatdar, Alien Recovery, Ahmedabad District, within a period of 10 days from date of receiving copy of present order. This Bank Guarantee must remain continue till matter is finally not over.

10. It is further clarified that Mr. K.B. Parekh, Mamlatdar, Alien Recovery, Ahmedabad District shall decide this issue after giving reasonable opportunity of hearing to P.T. Steel Industries Ltd. and concerned employees, represented by Union Representative - Mr. Praful Panchal or Mr. Chaudhary, learned advocate. It is also directed to P.T. Steel Industries Ltd. to not to transfer, assign or sale or create any mortgage or any encumbrance in respect to property which belongs

to P.T. Steel Industries Ltd. situated at Plot Nos. 95, 96, 97, Gujarat Vepari Mahamandal, Odhav, Ahmedabad till April 9, 2010.

11. It is also made clear that after verification, if still amount is to be recovered either from P.T. Steel Industries Ltd. or M.C. Metal Pvt. Ltd., it is open for Mr. K.B. Parekh, Mamlatdar, Alien Recovery, Ahmedabad District, to recover such amount from both under the provisions of the Bombay Land Revenue Code.

3. It must be noted at the outset that the above directions are not challenged by the Respondents. It was contended by learned senior Advocate Mr. K.M. Patel, appearing for the Appellant, that the directions were proving to be impracticable, insofar as the Mamlatdar appointed under the order was incapable and incompetent to decide the issues sought to be raised by the Respondents and, in any case, actual proceeding for recovery as arrears of land revenue could not involve such exercise and the recovery proceedings themselves may not survive if the bank guarantee already furnished by the Respondents were invoked and the amounts were deposited in the Labour Court. He submitted that proper procedure for the Respondents, if at all any payments were directly made to the workmen concerned, was to make appropriate application for cancellation or modification of the recovery certificate. On the other hand, learned A.G.P., appearing for the District Collector, submitted, on instruction of Mr. K.B. Parekh himself, that he was unable to resolve the dispute raised by the Respondents, insofar as the documents and vouchers produced by the Respondents required verification and, in some cases, even opinion of handwriting expert in view of denial of receipt of any money as per document by the workmen concerned.

4. Under the above circumstances, it was fairly conceded by learned Counsel Ms. P.J. Joshi, appearing for the Respondents, that the Respondents would have no objection to the disputed questions of fact relating to payments allegedly made to the employees being decided by the Labour Court upon an application or reference made to it and the Respondents would also not have any objection to the amount being realized and being deposited in the Labour Court for disbursement to the workmen concerned after proper calculations and resolution of the disputes arising out of alleged payments raised by the parties. She, however, strongly objected to any order being made at this stage for disbursement of any amount either to the Appellant union or to the workmen concerned. Thus, the issue before this Court was restricted to making appropriate order for realization and deposit of money with the Labour Court and disbursement of amounts among the workmen concerned during pendency of the matter before the Labour Court for resolving the factual controversies raised by the parties.

5. Addressing that limited controversy, it was submitted by learned Counsel Mr. Patel that the recovery certificate was issued by the Labour Court after giving adequate opportunity of being heard to the Respondents and once recovery certificate was issued in favour of the trade union of the workmen, individual workman could not have legally received any amount or entered into any

settlement. Besides that, none of the workmen concerned had any where admitted any of the documents relied upon by the Respondents or admitted receipt of any amount by them. He further submitted that out of 37 workers to whom payment is allegedly made under so-called settlement, about 27 workers have filed individual affidavits on record of the petition, denying settlement of any dispute and receipt of any payment from the Respondents. According to him, similar ; affidavits have been submitted to Mamlatdar (Alien Recovery). He pointed out from the documents produced before the Court that some of the workmen, whose signature appeared to have been misused, have signed in Hindi and huge amounts are shown to have been paid in cash by voucher which did not inspire any confidence. On the one hand, such vouchers and records sought to be used by the Respondents are dated May 25, 2009 to June 15, 2009 and, on the other hand, the Respondents themselves have written letter dated June 25, 2009 to the Alien Recovery Officer to know how many persons were to be paid what amounts. In one case, letter of resignation and voucher for payment of Rs. 21,000/-, which are dated June 4, 2009, are pressed into service by the Respondents to show that the workman concerned, namely, Mahendra Singh, has received such amount and resigned, while he had actually passed away on June 2, 2007 in a train accident, according to the affidavit of his father. According to the affidavit of Mr. D.C. Mavani, stated to be proprietor of Respondent No. 2, he was in the knowledge of the fact of death of that employee and it is submitted in the affidavit that the Respondent had issued letter to each workman for getting the amounts under the award of Labour Court, but the registered letter was returned from the address of that workman "with the endorsement of death". It was also submitted that the so-called resignation or receipts of money were neither bearing signatures of any witness nor were they in the form prescribed for a valid settlement under the provisions of the Industrial Disputes Act, 1947; nor such waiver or contracting out was permissible under the provisions of Section 23 of the Payment of Wages Act. Therefore, in short, it was submitted that the workmen concerned who were fighting for their rights before the Labour Court since 2004 and for whom the competent Court had made appropriate orders, which were not under challenge by the Respondents, must be paid the amount if justice were not to remain illusory for them.

6. As against that, learned Counsel Ms. P.J. Joshi, appearing for the Respondents, submitted that the Respondents were claiming to have made final payments to the workmen concerned directly and, therefore, no further payment was required to be made, pending resolution of the factual controversies by the Labour Court. She also submitted that in case any payment is made and the Labour Court decides the factual disputes in favour of the Respondents, it would be well-nigh impossible to recover any amount from the workmen concerned. She also re-asserted that the documents in the form of vouchers and letters of resignation were genuine, legal and effective.

7. In the context of above submissions, it may be pertinent to note the statements made on oath by the Alien Recovery Officer. He has stated on

affidavit that after initiation of the proceedings for attachment of property on June 26, 2009, a panchnama was drawn but Mr. T.C. Mavani had issued a cheque of Rs. 18,50,000 and hence the recovery proceedings were dropped. However, that cheque was returned with the endorsement "Stop Payment" and hence the Mamlatdar issued notice dated July 20, 2009 to the Respondents. By further affidavit of Mr. A.D. Katara, Additional Resident Deputy Collector, Ahmedabad, it is stated that the Collector, Ahmedabad had authorized him to investigate the issue of tampering of seal of P.T. Steel/M.C. Metal Pvt. Ltd. Pursuant to that, he had visited the premises and inquired with the Police Station, Odhav and he was informed by the police personnel that a complaint was received from Dharmesh Chandrakant Mavani. Therefore, Police Inspector, Odhav Police Station had visited the premises, but it was found that seal on the premises was not broken. However, it was deposed that on visit of the premises it appeared that seal was tampered with and a panchnama was prepared in that regard. It is also deposed by him that goods and machinery of the Respondents which were attached and under seal were removed or sought to be removed. A report was made by Assistant Director, Industrial Safety of Health on February 15, 2010 that on his visit on that day, six workers were found to be working in the premises. It is averred by Mr. Katara that the premises was again sealed and panchnama thereof was made. The Collector has authorized Deputy Mamlatdar, Alien Recovery Branch, Ahmedabad to initiate criminal proceedings against proprietor/partner Mr. Dharmesh Chandrakant Mavani and pursuant thereto, a police complaint was filed.

7.1 According to the report of Special officer Mr. K.B. Parekh, appointed under the impugned order for ascertaining the amounts actually paid by the Respondents, the total amount claimed to have been paid by the Respondents to the workmen concerned, individually and directly, came to Rs. 11,87,047/- as against the recovery certificate for recovery of the amount of Rs. 31,09,597.65 ps.

8. In view of the above facts and circumstances, it is fairly clear that the Respondents have been avoiding to either co-operate in the proceedings before the Labour Court or to comply with the orders, which have not been challenged by them. Instead, attempts were made to defeat the recovery proceedings, insofar as the seals placed on the premises of the Respondents were tampered and cheques were issued to the Recovery Officer without really intending to pay any amount. Therefore, prima facie, the contentions of the Respondents are found to be unsustainable and in view of the mandatory provisions of Section 23 of the Payment of Wages Act, the amounts due and determined as due could not have been reduced or denied even with the consent of the workmen concerned. Therefore, it is found to be necessary and in the interest of justice that the amounts which are not even claimed to have been paid to the workmen concerned should be disbursed to them as soon as the amounts are available for that purpose.

9. In view of the above facts, submissions and conclusions and having regard to the terms of the bank guarantee furnished by the Respondents to the Mamlatdar, Alien Recovery, Ahmedabad, under the impugned order, it is directed that the Mamlatdar shall immediately and within a period of 10 days serve upon the bank a written claim and demand for payment of the sum covered by the bank guarantee and: upon realization of such amount by invocation of the bank guarantee, deposit such amount with the Labour Court at Ahmedabad. Thereafter, Respondents Nos. 2 and 3 shall approach the Labour Court with the statement of their calculations and payments alleged to have been made to the workmen concerned with the evidence in support thereof and the Labour Court, Ahmedabad shall examine, as expeditiously as practicable, the claim made by the Respondents and after giving to the Appellant adequate opportunity of being heard, determine the amount remaining due to the workmen concerned or remaining to be recovered from the Respondents. In case any document is found to have been forged or any other criminal offence is alleged to have been committed, it shall make appropriate report in that regard to this Court for appropriate further orders. The proceedings shall, however, be concluded as expeditiously as practicable and preferably within a period of three months. In the meantime, as soon as the amount of bank guarantee is realized and paid in the Labour Court as aforesaid, the workmen concerned shall be paid 50% of the amount of difference between the amounts to be recovered for each workman under the recovery certificate and the amounts claimed to have been paid by the Respondents. Such payments shall be made by account payee cheques in the name of each workman after due verification of his identity and entitlement under the order of the Labour Court, as the workman himself or as heir or legal representative of the workman, if he has passed away. The person receiving such interim payment shall file an undertaking before the Labour Court to repay the amount in case of such order being made by the Labour Court. Such persons shall be entitled to apply for payment of remaining amounts, if the verification process before the Labour Court is prolonged beyond three months at the instance of the Respondents. It is clarified that the proceeding before the Labour Court shall be confined to ascertaining whether, in fact, any payment is made to any of the workmen by the Respondent as claimed, and if any such payment is proved by sufficient evidence to have been made, such amounts shall be refunded to the Respondent.

10. Upon dictation of this judgment in the open Court, learned Counsel Ms. Joshi requested to stay operation of above order for a period/20 days for approaching the higher forum. In the facts and circumstances of the case, the request is partly granted and it is directed that no payment shall be made by the Labour Court to the workmen concerned before June 1, 2010, but the remaining part of the above order shall operate in the meantime. The appeal stands partly allowed in the aforesaid terms and the impugned order stands modified to that extent. In view of disposal of the appeal, the civil application does not survive and it is accordingly disposed. The parties shall be at liberty to apply in case of difficulty.