
(2011) 02 AHC CK 0042
In the Allahabad High Court
Case No : Misc. Single No. 5753 of 2010

Rahman Exports Pvt. Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-02-2011

Acts Referred:

Companies Act, 1956 — Section 6S
Payment of Wages Act, 1936 — Section 3

Citation : (2011) 2 ADJ 620 : (2011) 129 FLR 213 : (2011) 4 LLJ 189

Hon'ble Judges : Shabihul Hasnain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shabihul Hasnain, J.—Heard Sri R.K. Chaudhary learned Counsel for the Petitioner, learned Standing Counsel for opposite parties No. 1 to 5 and Sri Qamar Ahmad who has put in appearance on behalf of opposite party No. 6.

2. The Petitioner is a company registered under the Indian Companies Act, 1956 with its registered office at Kanpur. The Petitioner has challenged the award dated 27.8.2010 passed in T.T.P.W. Case No. 2 of 2008 passed by the opposite party No. 3. It further challenges the recovery certificate dated 27.8.2010 passed in pursuance of the aforesaid order whereby an amount of Rs. 1,83,17, 232/-is being sought to be recovered from the Petitioner under the U.P. Industrial Peace (Timely Payment of Wages) Act, 1978. The Petitioner has also challenged the recovery citation dated 7.9.2010 issued by the opposite party No. 5 to the writ petition. The orders so challenged have been annexed as Annexures No. 1, 2 and 3 respectively to the writ petition.

3. Counter affidavit was very promptly filed by Sri Qamar Ahmad on 1.10.2010 in this matter and a rejoinder affidavit was also filed on 22.10.2010, as such the petition became ripe for hearing very quickly. A Supplementary Affidavit has also been filed by Mr. R.K. Chaudhary on 29.10.2010 which is also taken on record.

4. The main arguments of the Petitioner is that the Prescribed Authority, the opposite party No. 3, had no jurisdiction to settle the dispute and to issue the award. There was apparent lack of jurisdiction. The opposite party No. 3 should not have decided the matter under the U.P. Industrial Peace (Timely Payment of Wages) Act, 1978. It has been argued that the claim of the workmen should have been first adjudicated u/s 15 of the Payment of Wages Act, 1978 as the same was being disputed by the Petitioners. It has also been argued that Timely payment of Wages Act, 1978 should not have been pressed into service in the present circumstances of the case. The matter is quite old and the parties are at litigation for nearly three years and, as such the jurisdiction of opposite party No. 3 under the Timely Payment of Wages Act, 1978 was barred at the threshold.

5. Sri Chaudhary has also argued that in all there were 532 workmen to have already settled their disputes with the Petitioner in the presence of the labour authorities and there are only 132 workmen who have opted out of the settlement, hence to say that there is no dispute regarding 132 workmen is absolutely whimsical, arbitrary and beyond comprehension. There is non-application of mind along with mis-interpretation of law and misconceived notion about jurisdiction. It has also been argued that the Petitioners can not be compelled to make payment to the workmen on account of the irresponsible activities of the workmen which led to the closure of the unit. This kind of award without adjudication of their claim will amount to illegal benefits for their unruly behaviour and the "Award" will turn into "Reward" for misdeeds. According to the Petitioners the workmen have not worked and hence, they are not entitled of any "wages". A number of other ancillary arguments have been raised on behalf of the Petitioner.

6. A very bulky rejoinder affidavit has been filed running into nearly 300 pages. A number of agreements and other documents have been annexed by the Petitioner. All these documents have been brought on record to impress upon the court that the matter has been pending for quite sometime at various forums and, as such, it is not a simple matter which can be adjudicated under the provisions of Timely Payment of Wages Act, 1978.

7. As mentioned above a counter affidavit was promptly filed by Sri Qamar Ahmad on behalf of opposite party No. 6 which is a "Union". In the counter affidavit the case of the opposite parties has been narrated in their own words before giving a para-wise reply. It will be necessary and important that the case as set up by the opposite parties themselves may be narrated in brief before coming to any conclusion. The opposite parties state on affidavit that a dispute between the Petitioner and workers of Unit RC-1 arose in 2004 due to the bona fide demands raised by the union with regard to minimum, EPF, proper entry of workers in form No. 10 & 12, payment and food of overtime work, working hours etc. Keeping in view the said demands, the labour authorities as Unnao and Lucknow held conciliation several times consequently both the parties entered into an agreement dated 27.8.2004 before the Assistant Labour Commissioner,

Unnao, but later on the Petitioner flagrantly refused to implement the said agreement. Thereafter the workers of Unit RC-1 again agitated their grievances before the labour authorities including the opposite party No. 2,3 & 4 respectively, consequently the Labour Authority at Unnao again held conciliation between the parties in dispute. Ultimately both the parties the Petitioner and opposite party No. 6 entered in a fresh agreement dated 2.9.2004 in presence of several district authorities along with the Assistant Labour Commissioner, Unnao. The agreement dated 27.8.2004 has also been taken into consideration and consequently the Petitioner agreed to implement the fresh agreement into which the agreement dated 27.8.2008 had merged. Again the Petitioner refused to implement the agreement dated 2.9.2004 and again the Union agitated before the Labour authorities as well as the District Administration. Consequently third agreement dated 9.6.2005 has been signed by both the parties through which the Petitioner again agreed to implement the earlier agreement referred above but the Petitioner again flouted the said agreements by taking the labour laws into his hands.

8. In consequence to the above the opposite party No. 3 keeping in mind unrest amongst the workers as well as defiance of the aforementioned agreements called upon both the parties to conciliate the dispute and the opposite party No. 3 made an exhaustive report dated 18.8.2005 merging therein the aforementioned three agreements and referred it to the opposite party No. 2 whereby the opposite party No. 3 declared the lockout dated 3.8.2005 illegal. When the opposite party No. 2 failed to implement the report dated 18.8.2005, the answering opposite party No. 6 filed a writ petition No. 5882/MS/2005 before this Hon''ble Court and sought a writ of mandamus to implement the said report in which this Hon''ble Court vide order dated 30.11.2005 has been pleased to issue show-cause and directed the learned Standing Counsel to seek instructions as to why the report dated 18.8.2005 has not been implemented till date.

9. Further in para-wise reply the opposite parties have dealt exhaustively with each paragraph of the writ petition denying the averments made by the Petitioner at length. It has been denied that workmen have settled any claims with the Petitioners. In-fact the copies of the settlement which have been annexed have been alleged to be forged. It has been contended that one of the representative of the Union, namely Sri Manjoor informed the Superintendent of Police, Unnao on 12.6.2006 that one Mr. Bhadauria the Manager and representative of the Petitioner forced him to sign on a lot of papers which later on have been used by the Petitioner to prepare the alleged settlement papers. Further the Petitioner has never paid the compensation for this alleged lay off period as provided under statutory provisions contained in Section 6K of the U.P. Industrial Disputes Act, 1947. A number of documents, correspondence, postal receipts showing different dates have been denied or alleged to be fabricated in subsequent paragraphs. In paragraph 14 allegation has been leveled against the then Labour Commissioner, Kanpur Mr. Sharda Prasad who is said to have acted in connivance with the Petitioner and further the report as contained in Annexure

No. 19 to the writ petition is also a result of biased role of the Labour Commissioner.

10. In-fact a Writ Petition No. 5882 (MS)/2005 was filed arraying Mr. Sharda Prasad as opposite party by name. Another writ petition No. 7421 / 2007 also finds mention in paragraph No. 16 of the writ petition. Threat by anti-social elements planted by the Petitioner to coerce the workers into submission finds mention in paragraph No. 18 of the counter affidavit.

11. A legal argument has been raised in paragraph No. 20 of the counter affidavit. It has been submitted that the Petitioners could not go for recovery of their wages under the provisions of Payment of Wages Act, 1936 because that Act does not apply to the case of the Petitioner. The said Act was applicable only to those workers whose average per month wages were below Rs. 1600/- but not more.

12. It has also been informed in paragraph No. 22 of the counter affidavit that the then President of the Union had died and a fresh committee was elected and duly entered in Form-J under Rule 17PA of the U.P. Trade Union Regulation and thereafter registration certificate was issued by the Deputy Labour Trade Union, Lucknow. It has also been urged in paragraph No. 24 of the counter affidavit that the Petitioners have thrown out 532 workers of the Unit RC-1 on the road in utter violation of Section 6-S read with Rule 44 of the U.P. Industrial Dispute Rules, 1957, Section 6-S(1) (a)(b)(c)(d)(e) & (f) & Section 6-S(2) (a)(b)(c)(d)(e), Section 6-T, Section 6-K, Section 6-W, Section 14-A and Section 14-B of the Act 1947.

13. In later paragraphs 31 and 32 it has been submitted that the Petitioners are indulging in unfair labour practice and the accounts of the Petitioner company is now running in the name of M/s. Rehman Industries instead of M/s. Rehman Export Pvt. Ltd. And this act of the Petitioner constitutes unfair labour practice. The averments made in paragraph No. 32 is very crucial and important. It has been stated that the workers are fighting for their bona fide rights since 2004 and they have not been paid even a single penny in lieu of compensation or wages and, therefore, at least 50% amount of the recovery citation may be directed to be paid to the workers.

14. As mentioned above a very bulky rejoinder affidavit has been filed running into 300 pages and odd. The contents of counter affidavit have been denied and that of the writ petition reiterated. An allegation has been leveled in paragraph No. 3 of the rejoinder affidavit. It has been submitted that the deponent of the counter affidavit is not at all authorized by the Charm Udyog Karmchari Union, Unnao nor he has been authorized by the executive committee of the union to swear the counter affidavit on their behalf and the authority letter dated 28.8.2010 has been cited as an example which has been annexed as CA-1 to the counter affidavit. It is submitted that the said document is indicative of the fact that it pertains to the executive meeting of Jhari Baba ki Majaar, Unnao, District

Unnao and not to the opposite party No. 6. Further in paragraph No. 4 of the rejoinder affidavit it has been submitted that Charm Udyog Karmchari Union, Unnao has no locus-standi in the dispute. It is totally stranger to the issue because majority of the workers of the troubled unit are not its workers. The emphasis has been laid again on the fact that the U.P. Industrial Peace (Timely Payment of Wages) Act, 1978 is not applicable in the present case. Hence, the petition should be dismissed.

15. After considering the writ petition, the counter affidavit, the rejoinder affidavit and very detailed and comprehensive argument it becomes very very clear that without deciding the issue of jurisdiction and competence of the opposite party who has passed the impugned order under the Timely Payment of Wages Act, no conclusion can be drawn. In this context it will be important to discuss the Timely Payment of Wages Act, 1978 at the first instance. The statement of objects and reasons states as under:

Statement of Objects and Reasons. -(1) Delays in payment of wages of workmen lead to simmering discontent amount them. Sometimes a grave threat to law and order is also posed on this account.

(2) 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 that if the wage -bill in default exceeds fifty thousand rupees the amount should be recoverable as arrears of land revenue. Further, in order to curb the tendency of the employees to keep large amounts of wages in arrears, it was also considered necessary to make it a penal offence to be in default of a wage bill exceeding rupees one lakh. Since the Governor of Uttar Pradesh promulgated the Uttar Pradesh Industrial Peace (Timely Payment of Wages) Ordinance, 1977 on December 12. 1977.

(3) The Uttar Pradesh Industrial Peace (Timely Payment of Wages) Bill, 1978 is accordingly being introduced to replace the said Ordinance.

16. It appears that this piece of legislation has been placed on the statute book to ensure timely payment of wages by the bigger establishments, when the default in payment of wages bills in regard to all the workers of the establishment exceeds Rs. 50,000/-(Fifty Thousand rupees). Section 3 of the Act provides as under:

3. Recovery of wages in certain industrial establishments as arrear of land revenue.-(1)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 fifty thousand rupees, he may, without prejudice to the provisions of Sections 5 and 6, forward to the Collector, a certificate under his signature specifying the amount of wages due from the industrial establishment concerned.

(2) Upon receipt of the certificate referred to in Sub-section (1), the Collector shall proceed to realize, from the industrial establishment, the amount specified therein, besides recovery charges at the rate of ten percent, as if such amount were an arrear of land revenue.

(3) The amount realized under Sub-section (2) shall, after deducting the recovery charges, be placed at the disposal of the Labour Commissioner who shall disburse the same or cause it to be disbursed among the workmen entitled thereto.

(4) Where the amount so realized falls short of the wages-bill in respect of which the occupier has been in default, the Labour Commissioner may arrange for disbursement of such proportion or respective proportions of the wages due to various categories of workmen as he may think fit.

(5) The liability of the occupier towards each workman in respect of payment of wages, shall, to the extent of the amount paid to such workman under this section stand discharged.

17. The Act is not meant to provide a remedy for the default in payment of wages, when the wage bill of all the workmen is not involved or of individual workmen. That can be taken care of by the provisions of Payment of Wages Act, 1936. This being the case, the inquiry by the Labour Commissioner contemplated u/s 3 of the Act is of a very limited nature, i.e. where the Establishment has made a default in timely payment of wages to its workmen as a whole, and there is no dispute. The Labour Commissioner under the Act, acts to assist the workmen to recover their wages which are admittedly due to them. He does not act as an adjudicator if the entitlement of the workmen to the wages is disputed, which involves investigation of the question of facts 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 approach the appropriate forum.

18. It will be necessary to examine the definition of "wages" under the Timely Payment of Wages Act it has been given in Section 2(e):

2(e): "wages" shall have the meaning assigned to it in the Payment of Wages Act, 1936;

Definition of "wages" has been given in Section 2(h)(vi):

2(h)(vi): "wages" means all remuneration (whether by way of salary, allowances, or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes-

(a) any remuneration payable under any award or settlement between the parties or order of a Court;

(b) any remuneration to which the person employed is entitled in respect of

overtime work or holidays or any leave period;

(c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);

(d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;

(e) any sum to which the person employed is entitled under any but does not include

(1) any bonus (whether under a scheme of profit-sharing or otherwise which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;

(2) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of (the appropriate Government);

(3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

(4) any traveling allowance or the value of any traveling concession;

(5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or

(6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause(d).

19. The argument of the counsel for the Petitioner appears to be correct because it is an admitted case between the parties that the dispute about the wages/ remuneration is continuing between the authorities since 2004. This position has been admitted by the Petitioner in paragraph No. 32 of the counter affidavit. Apart from this paragraph this fact has been admitted in various other paragraphs also. It is also admitted that the regular litigation is going on between the parties from year 2007. This fact has been admitted in the counter affidavit manifestly and there is no dispute about this position of litigation between the parties. Even the impugned order passed by the Deputy Labour Commissioner has admitted this fact very candidly that the litigation is continuing since 2007. The very opening paragraph of the impugned order says that the payment relates to the period 3.8.2005 to 30.9.2007. Paragraph No. 2 admits presence of a writ petition in 2007. One of the questions formulated by the Deputy Labour Commissioner is "Whether the union can raise a dispute with regard to the workmen who have entered into a compromise earlier." The Deputy Labour Commissioner further admits that evidence has been led by the workmen

to the effect that they had never submitted their resignations. The Deputy Labour Commissioner also admits that the opposite parties have submitted their objection initially on 1.4.2008 and then on 5.2.2009. The objection was raised regarding the jurisdiction and competence of the court and applicability of the Act. The impugned order also admits that 532 workmen were employed at the time of closure out of which 132 have neither entered into any agreement nor they have been paid any compensation or wages. In-fact the Deputy Labour Commissioner has given a categorical finding on the basis of the evidence led and the arguments of the workmen that a dispute was there regarding 532 workmen out of which he has limiting his number only with regard to 130. This finding of the Deputy Labour Commissioner is a manifest declaration of the fact that there was a dispute and under the Timely Payment of Wages Act he had no jurisdiction as contemplated u/s 3 of the said Act.

20. Section 3 very categorically lays down that when there shall be no dispute of any nature and only then this Act can be pressed into service. Moreover, the litigation at various level are going on between the parties and, hence there was no occasion for application of this Act.

21. I have also examined the objections which were taken by the Petitioners before the Deputy Labour Commissioner. The same is contained in Annexure No. 25 of the writ petition running from pages 121 to 124. The objections taken by the Petitioner clearly indicates that the applicability of the Act was disputed. On Annexure No. 27 I find written arguments on behalf of opposite parties which was filed on record and placed on file on 18.5.2009 and an endorsement to this effect has been made on the left-hand side of the written arguments. The written arguments are available on Annexure No. 27 extending from page 131 to page 135. In para 17 of the arguments reliance has been placed on a case Modi Industries Ltd. Vs. State of Uttar Pradesh and others, Let us examine the ratio held in the aforesaid judgment. The ratio laid down in paragraph No. 8 of the judgment is as follows:

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

22. The court is convinced that the ratio of the above judgments is totally applicable in the case at hand. The Deputy Labour Commissioner does not have any power or jurisdiction to settle the dispute of this nature under the Timely Payment of Wages, Act 1978. I have also gone through the following cases in this connection.:

1. 2006 (2) CLR 954 Hotel and Restaurant Karmchari Sangh v. Gulmarg Hotel and Ors.

2. 1992 FLR (65) 961 All. High Court, Indian Oxygen Shramik Sangh v. Add. Labour Commissioner.

3. 2000 FLR (85) All. High Court, Elgin Mills Co. Ltd. v. DLC/ Prescribed Authority Under U.P. Industrial Peace (Timely Payment of Wages Act, 1978).

23. In the case of Indian Oxygen Shramik Sangh v. Additional Labour Commissioner 1992 FLR (65 Allahabad High Court the ratio laid down is as follows:

9. In Payment of Wages Inspector v. Surajmal, the Supreme Court held that the Payment of Wages authority had a limited jurisdiction, and he could not decide cases involving complicated questions of law or fact. In my opinion the ratio of this decision will also apply to applications filed under the 1978 Act, Since the powers of the authority under the Payment of Wages Act as well as the 1978 Act are similar. A comparison of the provisions of both these Acts makes this clear. Section 18 of the Payment of Wages Act giving the Payment of Wages authority certain powers of the civil court is similar to Section 4 of the 1978 Act. Hence, the scope of the jurisdiction under the 1978 Act has to be construed as similar to the jurisdiction of the Payment of Wages Authority under the Payment of Wages Act, and consequently it must be held that this jurisdiction is a limited one. It is only where the claim of the workmen cannot be seriously disputed that recourse can be taken to the 1978 Act, and in cases involving seriously disputed question of fact or law the workmen must approach the Government to make a reference u/s 4-K of the U.P. Act or Section 10 of the Central Act and they cannot take recourse to the 1978 Act.

24. In the matter of Elgin Mills Co. Ltd. v. Deputy Labour Commissioner / Prescribed Authority Under U.P. Industrial Peace (Timely Payment of Wages Act, 1978) following ratio has been laid down:

The scope and ambit of the exercise of jurisdiction by the Labour Commissioner under the Timely Payment of Wages Act is confined to the determination that the workmen have not been paid the wages in time in admitted situation. Section 3 of the said Act makes it abundantly clear that the Commissioner cannot undertake determination of any disputed fact which requires investigation. He has to find out as to whether payment of wages which is admittedly due is in

default. If the very right or entitlement to wages are disputed, the Commissioner may look into the objections to the extent of its frivolity. If he is of the opinion that the objection on the face of it is frivolous or baseless then only he can entertain determination of the question of default. If the very root of entitlement or the basis or foundation of the right to wages is disputed and if it is not frivolous then, it is outside the scope, ambit and purview of the jurisdiction of the Labour Commissioner exercising power u/s 3 of the Timely Payment of Wages Act.

25. Thus, it is clear that the available case laws on the subject indicate to the fact that the Labour Commissioner is not entitled to adjudicate the entitlement of wages rather only the admitted wages can be permitted to be paid.

26. One more argument raised by Sri Qamar Ahmad that Payment of Wages Act, 1936 could not be pressed into service because the limit of Rs. 16000/- per month as wages to the workmen. This argument is clearly not sustainable. After the amendment by the Act No. 41 of 2005 the application was clearly maintainable under the Payment of Wages Act, 1936 since the embargo of having wages below Rs. 1600/- in a month eliminated and therefore, the application having been filed in 2008, was clearly maintainable under the Act of 1936. This argument finds place in paragraph No. 31 of the rejoinder of the Petitioner also.

27. Accordingly, the writ petition is allowed. The impugned award dated 27.8.2010 passed in T.T.P.W. Case No. 2/2008 by the opposite party No. 3 as well as the recovery certificate dated 27.8.2010 along with recovery citation dated 7.9.2010 are hereby quashed.

28. However, quashing of the orders under the Timely Payment of Wages Act, 1978 by this Court will not mean that the claim of the workmen has been rejected in any manner. The Court has not given any finding on the rights of the workmen or the amount of wages which had to be adjudicated by proper forum. The opposite party No. 6 and the workmen will be at liberty to approach the proper forum under the Payment of Wages Act, 1936 or any other forum which they deem fit in the facts and circumstances of the case. It is also provided that in case matter is brought before the Government it will refer it for adjudication at the earliest and the Labour Court will decide the whole matter within a maximum period of four months from the date of reference.