

(2006) 01 AHC CK 0214
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 14638 of 1996 and 15796 of 1998

Rampur Distillery (A Unit of Radico Khaitan Limited)

APPELLANT

Vs

Competant Authority/Dy Labour Commissioner, Varanasi
Region, Inspector, Payment of Wages Act 1936/Labour
Enforcement Officer and Sri M.B. Yadav, Agent, Rampur
Distillery

RESPONDENT

Date of Decision : 17-01-2006

Acts Referred:

Payment of Wages Act, 1936 — Section 1(4), 15, 17, 2

Citation : (2006) 3 AWC 2497 : (2006) 108 FLR 1210 : (2006) 2 LLJ 948 :
(2006) 1 UPLBEC 1017

Hon'ble Judges : Bharati Sapru, J

Bench : Single Bench

Advocate : Swapnil Kumar, for the Appellant; J.A. Khan and Afzal Durani and
S.C., for the Respondent

Final Decision : Allowed

Judgement

Bharati Sapru, J.—List is revised. Learned counsel for the parties appearing in writ petition No. 15796 of 1998 are present.

2. In the connected writ petition No. 14638 of 1996, learned counsel appearing on behalf of the petitioner is present but the Learned counsel for the respondents who was heard earlier on 5.1.2006 and a date was fixed 17.1.2006 as the next date of hearing, did not care to appear on both the calls.

3. As the controversy involved in the writ petition No. 15796 of 1998 and the writ petition No. 14638 of 1996 being identical and the both the writ petitions are connected by the order dated 21.5.1998, the same are being heard and decided together by common order by taking the writ petition No. 15796 of" 1998 as leading case.

4. The present proceedings arise out of an order dated 3.4.1998 passed by an

authority under the Payment of Wages Act on an application made by the respondent No. 2, Labour Enforcement Officer, Varanasi u/s 15 of the Payment of Wages Act, 1936 (hereinafter referred to as the Act) claiming that 44 workmen who were engaged by the petitioner through a contractor in the bonded warehouse were being subjected to illegal deduction of wages because the petitioner was not paying to these 44 workmen minimum wages which ought to have been paid in pursuance of notification dated 13.8.1991 under the Payment of Wages Act.

5. The claim raised by the workmen was that illegal deductions had been made from the period March, 1995 to Feb., 1996. The authority concerned has therefore directed the petitioner to pay a sum of Rs. 2,13,977.28 as wages and also imposed a penalty of Rs. 4,27,954.56 along with costs for a sum of Rs. 250/-.

6. The facts of the case are that the petitioner has a bonded warehouse situated at Chauka Ghat, Varanasi, which was allotted to the petitioner on 1.4.1994 for the period commencing w.e.f. 1.4.1994 to 31.3.1995 and later on re-allotted to the petitioner in the years 1995-96, 1996-97 and 1997-98. The bonded warehouse allotted to the petitioner was under the control of the Excise Department of the State of U.P.. The activities being carried in the bonded warehouse were that the alcohol which is produced in the factory of the petitioner was brought to the bonded warehouse and diluted with water so that it becomes fit for human consumption. Without adding of the water, it was not fit for human consumption. After being diluted with water, the alcohol was packed in pouches and the same were to be distributed for sale and use under the control and supervision of Excise Department.

7. I have heard learned counsel for the petitioner, learned standing counsel for the respondents.

8. Learned counsel for the petitioner has argued firstly that the bonded warehouse cannot be deemed to be covered under, the said Act because it is not covered under the provisions of Section 1(4) of the Payment of Wages Act, 1936, which is quoted hereinbelow:

(4) It applies in the first instance to the payment of wages to persons employed in any factory, to persons employed otherwise than in a factory upon any railway by a railway administration or, either directly or through a sub-contractor, by a person fulfilling, a contract with a railway administration, and to persons employed in an industrial or other establishment specified in Sub-clauses (a) to (g) of clause (ii) of Section 2.

9. The next argument of the learned counsel for the petitioner is that the application u/s 15 of the Act is misconceived and not maintainable because the Section 15 of the Act contemplates only claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims.

10. Learned counsel for the petitioner has also argued that the jurisdiction u/s 15 of the Payment of Wages Act, 1936 is limited and summary in nature and is confined to claims which arise out of illegal deductions and delay in the payment of wages and the scope of jurisdiction of the authority vested u/s 15 of the Act does not extend to deciding "potential wages" or wages which ought to be given. He has argued that Section 15 of the Act is confined to the illegal deductions meaning thereby that there must be existing wages out of which a wrongful or illegal deduction is made. This, therefore means that the section contemplates that the "wages" itself are definite and decided and does not require any interpretation of what it ought to be.

11. Learned counsel for the petitioner has next argued that in the present case, it is not the case of the respondents that any illegal deduction has been made actually but that the petitioner has failed to comply with the notification issued under the Minimum Wages Act.

12. Learned counsel for the petitioner has argued that the authority under the Payment of Wages Act has acted wholly illegally and in excess of jurisdiction by holding that because the notification under the Minimum Wages Act was not complied with, the petitioner has made illegal deductions. This he, contends that it is not the scope of the said section. For this purpose, he has relied upon two decisions firstly - a decision reported in the case of A.V. D'Costa Vs. B.C. Patel and Another, wherein a five judges bench of the Hon'ble Supreme Court has held that the scope of provisions of Section 15 of the Act is limited to wages but has no jurisdiction to determine the question of "potential wages". I quote from this judgment--

The authority has the Jurisdiction to decide what actually the terms of the contract between the parties were, that is to say, to determine the actual wages; but the authority has no jurisdiction to determine the question of potential wages. The respondent's complaint in the present case comes within the latter illustration. If the respondent's claim to be placed on the scheme of higher wages had been unduly passed over by the appellant, if indeed he had the power to do so, the obvious remedy of the respondent was to approach the higher authorities of the railway administration by way of departmental appeal or revision; but instead of doing that, he has sought his redress by making his claim before the authority under the, Act.

13. Learned counsel for the petitioner has also relied on a decision of the Hon'ble Rajasthan High Court rendered in the case of Railway Employees Co-operative Credit Society Ltd. v. The Authority appointed under the Payment of Wages Act for Jodhpur and Anr. reported in 1971 LAB I. C. 942 wherein the Hon'ble Court has held that the "wages" under the Act does not include a claim for wages of employment in which a claimant has not actually been employed.

14. The next argument of the learned counsel for the petitioner is that the claim made by the Inspector on behalf of the workmen was not a case under the

Minimum Wages Act and he was wrongfully seeking enforcement of the notification under the provisions of Section 15 of the Act.

15. In reply the learned standing counsel has raised two arguments firstly - that the petitioner can be said to be a factory within the provisions Section 1(4) of the Act and secondly an alternative remedy is available to the petitioner u/s 17 of the Act.

16. In reply to the argument as advanced by the learned standing counsel, the learned counsel for the petitioner has argued that the question whether the bonded warehouse is a factory or not u/s 1(4) of the Act, is not to be decided by an authority u/s 15 of the Act, as the same does not come within the domain of the Act to go into the disputed questions of facts. In reply to the second argument on alternative remedy being available to the petitioner u/s 17 of the Act, the petitioner replied that an alternative remedy in a case like this, cannot be said to be an absolute bar because the authority under Payment of Wages Act has clearly exceeded his jurisdiction under the Act and the petitioner would have to deposit the entire amount before filing the appeal, even if it was not liable to pay the said amount. The alternative remedy was an onerous one. For this purpose, learned counsel for the petitioner has relied upon in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, wherein this court has held that the authority acts without jurisdiction or purports to have usurp jurisdiction without any legal foundation, an alternative remedy would not operate as an absolute bar. In the present case, the writ petition was entertained in the year 1988 and an interim order was granted in the matter.

17. Learned counsel for the petitioner has also relied upon a decision of division bench of this Court rendered in the case of Virendra Kumar Gupta Vs. State of U.P. and Others, wherein it has been held that the existence of alternative remedy is not an absolute bar to the maintainability of a writ petition, where an inferior Court or Tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction. The Hon'ble High Court has relied on the case of State of U.P. v. Mohd. Nooh's reported in AIR 1958 SC 86.

18. Having heard learned counsel for the parties and having perused the record of the case, I am of the firm opinion that in the present case, no illegal deductions have been made from the wages of the respondent workmen. They were in fact claiming "potential wages", which is clearly not within the scope of the jurisdiction of the authority u/s 15 of the Act as has been laid down by the Hon'ble Supreme Court in the case of A.V. D'Costa (supra). I respectfully agree with the dictum of the Hon'ble Supreme Court. As such the impugned order is liable to be set aside.

19. In the result, the writ petition is allowed. The impugned order passed by the respondent No. 1 is quashed. There will be no order as to costs.