
(1989) 10 GUJ CK 0009

In the Gujarat High Court

Case No : Special Civil Application No. 4256 of 1989

R.L. Kalathia and Co., Bhavnagar

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 20-10-1989

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (1990) 1 GLR 236 : (1991) 2 LLJ 377

Hon'ble Judges : V.H. Bhairavia, J;S.B. Majmudar, J

Bench : Division Bench

Judgement

Majmudar, J.—The learned Advocate for the petitioner is permitted to file separate writ petitions under Art. 227 of the Constitution challenging common orders in group of Recovery Applications Nos. 320 to 471 of 1980 u/s 33-(C)(2) of the Industrial Disputes Act, 1947. Special Civil Application No. 4256 of 1989 will be treated to be writ petition against the order in Recovery Application No. 320 of 1980. Separate writ petitions would be filed which may be treated as companion writ petitions challenging common order in Recovery Applications Nos. 321 of 1980 to 471 of 1980, meaning thereby, 151 additional companion petitions will be filed. They will bear necessary Court-fees. They will be filed on only one page showing names of the parties. Filing of rest of the pages in the petition and annexures dispensed with as they arise from the common award which was in consolidated proceedings. All these 152 petitions are being disposed of by this common judgment.

2. Rule in each of these petitions. We have heard the learned Advocate for the workmen Mrs. Shah and Mr. Shah for Mr. Dave for respondents Nos. 1 and 2. These petitions are disposed of by this common judgment.

3. The learned Advocate for the petitioner raised the following contentions in support of these petitions :

1. Minimum wage notification is not applicable to the facts of the present case

and hence Section 33-(C)(2) applications as granted by the Labour Court in favour of the workman are not sustainable.

2. Minimum Wages Act is a self-contained Code and, therefore, remedy of these workmen was to go under the Minimum Wages Act and they could not have filed Section 33-(C)(2) applications.

3. There is a patent error in calculating the amounts payable to the concerned workmen and, therefore, the demands exceed the amounts claimed in the applications and hence, the orders under challenge should not be enforced against the petitioner.

4. Before we proceed to consider these contentions, it is necessary to notice certain introductory facts leading to these petitions. Concerned 152 workmen are Adivasis residing in remote parts of Bharuch District. A dam called Pigu Dam was being constructed across river Narmada and for that purpose, services of these workmen were requisitioned by the Irrigation Department of the State of Gujarat which had appointed the petitioner as a contractor for carrying out the construction of the said dam. The petitioner employed the respondents-workmen for its work for the construction of the dam. The petitioner paid these workmen wages at the rate of Rs. 2-00 or Rs. 2-50 or Rs. 3-00 per day. It was contended on behalf of the workmen through their Union that this was sheer exploitation and that minimum wages of Rs. 6/- per day should have been paid to them by the petitioner. They, therefore, requested the Labour Court in proceeding u/s 33-(C)(2) of the I.D. Act to compute monetary benefits available to the workmen and direct the petitioner to pay the same to them. These applications were consolidated as common questions of law and fact arose. The Labour Court has noted that though the petitioner filed written objections, nobody remained present on their behalf to contest these proceedings. However, objections raised by the petitioner have been considered and by a common award, the Labour Court has granted to the respondent-workmen difference in minimum wages for the period from November 1977 to April 1980. It has to be noted that the claim of the concerned respondents was from May 1977 to April 1980. But according to the Labour Court, respondents were able to make out their case for grant of special allowance at the rate of Rs. 6/- per day only from November 1977 to April 1980. According, all 152 recovery applications were allowed by the Labour Court, Vadodara. It is interesting to note that this common order is dated October 8, 1984. It appears that despite this order, the concerned workmen were not paid under the award and years rolled by, nor did the petitioner challenge this common award before this Court for all these years. As the respondent-workmen had stood exploited and were not paid their minimum wages by the petitioner despite the common award, a public interest litigation under Art. 32 of the Constitution was moved before the Supreme Court. These proceedings were registered as Writ Petition No. 622 of 1986. The Supreme Court after hearing the present petitioner's Counsel as well as learned Advocate appearing for the respondent-workmen in the writ petition and also after hearing the learned

Advocate for the State of Gujarat, passed an order on February 13, 1989 which is necessary to be extracted in extenso at this stage :

"It is distressing to see that a beneficial legislation such as the Minimum Wages Act has not been given effect to fully and substantially even though forty years have passed since enactment. This is one such case where it seems to us that it is necessary that prompt steps be taken to effect enforcement of the material provisions of the Act. The State Government is directed to ensure that the order dated October 8, 1984 of the Labour Court is enforced expeditiously. The State Government will pay costs of appearance of Counsel for the petitioner. The writ petition is disposed of accordingly."

It is pertinent to note that after these peremptory directions of the Supreme Court to enforce common award of the Labour Court in all these recovery applications, the petitioner instead of complying with the direction of the Supreme Court and paying necessary amounts as awarded by the Labour Court to these workmen, chose to prefer this petition in this Court on June 19, 1989 challenging the common award in Section 33(C)(2) proceedings passed as early as in October 1984. In view of this development and background of facts and events, therefore, in our view, this petition cannot be entertained at such a belated stage especially after the petitioner was very much a party before the Supreme Court and has received direction of the Supreme Court to get this award enforced at the earliest. These petitions which suffer from gross delay and laches and which in a way would result, if entertained and allowed, in circumventing the order of the Supreme Court, cannot be entertained on merits and are liable to be rejected on this ground alone. However, in order to complete our judgment, we have thought it fit to examine the contentions raised before us, on merits.

5. So far as the first contention canvassed by the learned Advocate for the petitioner is concerned, the Labour Court has in terms observed that the petitioner in its reply could not produce any solid evidence or material on the basis of which it can be said that the activities of irrigation are such to which the provisions of the Minimum Wages Act are not applicable. The learned Advocate for the petitioner submitted that as per the minimum wage notification issued by the State Government, minimum wages are fixed for payment to labourers who are in employment of the constructing or maintenance of roads or in building operations. It was submitted that construction of dam would not be covered by the aforesaid phraseology employed by the minimum wage notification and, therefore, no minimum wages need be paid to the concerned workmen. It is not possible to agree with this contention for the simple reason that construction of dam would certainly be treated to be offering employment in building operation. It cannot be disputed that for constructing dams, huge buildings and masonry structures have to be constructed on spot and construction of dam would be a very massive building operation. Therefore, even on merits, there is no substance in this contention. The first contention therefore, stands rejected.

6. So far as second contention is concerned, even though the respondents may have remedy under the Minimum Wages Act, there is no law which prohibits them from going to the Labour Court for computation for their claims u/s 33-(C) (2) of the I.D. Act. Nothing could be pointed out by the learned Advocate for the petitioner to us to indicate that Minimum Wages Act provisions exclude the jurisdiction of the Labour Court u/s 33-(C)(2) of the Act. The Labour Court rightly came to the conclusion that looking to the provisions of Section 33-(C)(2) of the Act, it was clear that if there is a right arising in favour of the workmen, the same must be granted by the Court, even though Minimum Wages Act may have separate enforcement machinery. In absence of any express or even implied exclusion of the jurisdiction of the Labour Court u/s 33-(C)(2) of the I.D. Act, we cannot accept the contention of the learned Advocate for the petitioner that recovery applications are not maintainable. It is also not possible to agree that Minimum Wages Act is such complete Code that it excludes jurisdiction of Labour Court u/s 33-(C)(2) of the I.D. Act. The second contention also, is therefore, rejected.

7. So far as the last contention is concerned, it was submitted by the learned Advocate for the petitioner the State authorities pursuant to the order of the Supreme Court, were demanding Rs. 4,24,080/- from the petitioner for payment to the concerned workmen as per the common award of the Labour Court. According to the petitioner, this claim is exaggerated and does not flow from the common award of the Labour Court and that the claim amount payable to the concerned workmen would be much less and according to the petitioner, that amount would be Rs. 1,57,177/- only. Mrs. Shah for the respondent - Union representing all these workmen fairly stated that as per this common award 152 workmen would be entitled to receive in all not Rs. 4,24,080/- as demanded by the State authorities from the petitioner, but only Rs. 2,99,130/-. For that purpose, she has produced before as a complete chart showing how this amount of Rs. 2,99,130/- is calculated as payable to the concerned workmen as per the common award. That chart is produced along with the reply affidavit. The basis of the chart is that the Labour Court has directed in these recovery applications that the workmen will be entitled to difference in wages between the minimum wages of Rs. 6/- per day as payable to them and the actual wages paid to them and this difference will be for the period ranging from November 1977 to April 1980. This period would be for 30 months. On the basis of 26 working days per month, for 30 months, days for which workmen will have to be paid would work up to 780 days. The concerned workmen have been paid Rs. 2/-, Rs. 2.50 or Rs. 3/- per day. Minimum wage notification entitles them to receive Rs. 6/- per day as minimum wage. Therefore, difference will be Rs. 4/- or Rs. 3/- per day per workman. It is on that basis that entire chart has been worked out for all these 152 workmen and the total amount works up to Rs. 2,99,130/-. So far as this chart is concerned, the learned Advocate for the petitioner submitted by showing as example, the case of Ramtiben Jethiabhai who is claimant in Recovery Application No. 468 of 1980 (Sr. No. 149) that difference payable to her as per

the learned Advocate for the respondent is Rs. 1,950/- while her claim amount in the recovery application is Rs. 1,404/- He, therefore, submitted that these workmen cannot be paid more than what they have demanded in their 33-(C)(2) application and to that extent, proper direction should be issued for payment of the concerned different amounts to the workmen. It is not possible to agree with this contention for the simple reason that because of the fair stand taken by the respondent-Union, demand of the State authorities from the petitioner to pay Rs. 4,24,080/- is now substantially reduced to Rs. 2,99,130/- i.e. it has gone down by Rs. 1,25,000/- atleast. But even that apart, these workmen have claimed difference in minimum wages on the basis of minimum wage notification for the period from May 1977 to April 1980. The Labour Court has granted to them difference of minimum wage payable from November 1977 to April 1980. Now while calculating the actual amount payable to them, they might have mentioned figures as calculated by them. But if there is any calculation error, then it has got to be corrected and proper amounts payable to them have to be paid to them. It is now well settled that payment of minimum wages is a fundamental right of the concerned labourer and paying less would amount to violation of Art. 23 of the Constitution. In this connection, we may profitably refer to the decision of the Supreme Court in the case of People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, wherein Bhagwati, J. (as he then was) speaking for the Court observed as under (pp. 470-471) :

"Now the next question that arises for consideration is whether there is any breach of Art. 23 when a person provides labour or service to the State or to any person and is paid less than the minimum wage for it. It is obvious that ordinarily no one would willingly supply labour or service to another for less than the minimum wage, when he knows that under the law, he is entitled to get minimum wage for the labour or service provided by him. It may therefore be legitimately presumed that when a person provides labour or service to another against receipt of remuneration which is less than the minimum wage, he is acting under the force of some compulsion which drives him to work though he is paid less than what he is entitled under law to receive. What Art. 23 prohibits is "forced labour" that is labour or service which a person is forced to provide and "force" which would make such labour or service "forced labour" may arise in several ways. It may be physical force which may compel a person to provide labour or service to another or it may be force exerted through a legal provision such as a provision for imprisonment or fine in case the employee fails to provide labour or service or it may even be compulsion arising from hunger and poverty, want and destitution. Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as "force" and if labour or service is compelled as a result of such "force" it would be "forced labour ". Where a person is suffering from hunger or starvation, when he has nor resources at all to fight disease or to feed his wife and children or even to hide their nakedness, where utter grinding poverty has broken his back and reduced him to a state of helplessness and

despair and where no other employment is available to alleviate the rigour of his poverty, he would have no choice but to accept any work that comes his way, even if the remuneration offered to him is less than the minimum wage. He would be in no position to bargain with the employer; he would have to accept what is offered to him. And in doing so he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour or service provided by him would be clearly "forced labour". There is no reason why the word "forced" should be read in a narrow and restricted manner so as to be confined only to physical or legal "force" particularly when the national charter, its fundamental document has promised to build a new social republic where there will be socio-economic justice for all and everyone shall have the right to work, to education and to adequate means of livelihood. The Constitution makers have given us one of the most remarkable documents in history for ushering in a new socio-economic order and the Constitution which they have forged for us has a social purpose and an economic mission and, therefore, every word or phrase in the Constitution must be interpreted in a manner which would advance the socio-economic objective of the Constitution. It is not unoften that in a capitalist society economic circumstances exert much greater pressure on an individual driving him to a particular course of action than physical compulsion or force of legislative provision. The word "force" must therefore be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage. Of course, if a person provides labour or service to another against receipt of the minimum wage, it would not be possible to say that the labour or service provided by him is "forced labour" because he gets what he is entitled under law to receive. No inference can reasonably be drawn in such a case that he is forced to provide labour or service for the simple reason that he would be providing labour or service against receipt of what is lawfully payable to him just like any other person who is not under the force of any compulsion. We are therefore of the view that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour" under Art. 23. Such a person would be entitled to come to the Court for enforcement of his fundamental right under Art. 23 by asking the Court to direct payment of the minimum wage to him so that the labour or service provided by him ceases to be "forced labour" and the breach of Art. 23 is remedied. It is therefore clear that when the petitioners alleged that minimum wage was not paid to the workmen employed by the contractors, the complaint was really in effect and substance a complaint against violation of the fundamental rights of the workmen under Art. 23."

8. Therefore, merely because some calculation error might have been made by draftsman of Section 33-(C)(2), application and lesser amounts are claimed, it

would not be proper to deprive the concerned workmen of their rights and proper monetary benefits. But even apart from that, even if it is held that they could have been given only the amounts which are claimed by them and nothing more, even then, they would be entitled to more amounts which can be treated to be amounts payable to them towards interest as they are poor Adivasis who have worked since years on the Pigu Dam and they have not been paid anything upto now towards their claims for minimum wages. The award is for past period which is now more than a decade old. We are told that they have now left the jobs and gone away. To such poor Adivasis, if proper amounts of minimum wages are to be belatedly paid and even if there is calculation mistakes in original claims, extra amounts can be adjusted towards interest. That would meet the requirement of the case and interest of justice. 10 years' interest on the unpaid awarded amounts would exceed the claims which are now calculated as payable to the concerned workmen. We, therefore, reject this third contention of the learned Advocate for the petitioner and we direct the petitioner to deposit Rs. 2,99,130/- in the concerned Labour Court which now, we are told, will be Labour Court, Bharuch, as there is a separate Labour Court after the impugned award, at Bharuch. The amount shall be deposited for payment to 152 workmen of these Recovery Applications Nos. 320 to 471 of 1980 on or before November 30, 1989. Moment this amount is deposited, Secretary of the union of the workmen will arrange for withdrawal of this amount for payment to the concerned workmen and payments will be made by the Labour Court to the workmen on their identification by the Secretary of the Union before the Labour Court. Labour Court will see to it that concerned amounts to be paid to workmen listed in the chart at page 47 of the reply affidavit, are actually paid to the concerned workmen on due identification.

9. Rules issued in these petitions are discharged subject to the aforesaid directions. No order as to costs. Rs. 1,000/- is quantified as costs to be paid by the petitioner to the Secretary of the Union in one set only. Labour Court, Bharuch is directed to accept the deposited amount pursuant to our present order and carry out the exercise as directed by us. A copy of this order shall be sent to the Labour Court, Bharuch for information and necessary action.

10. Time of one week granted to file separate petitions. Filing of separate affidavits in all companion petitions dispensed with.